

OUR MISSION

To develop, promote and represent the video industry. To provide effective service, support and direction for our members.

Australian DVD and Video Industry Awards

*Proudly sponsored by
AAV Regency*

Silver Sponsors

Bronze Sponsors
Gadens Lawyers
Gfk Marketing Services Australia

*It's on again this year
Do not miss out
Put the date in your diary now
Friday 10th November 2006*

*7.00 pm
Star City Ballroom
Pyrmont, Sydney*

**For further information
and tickets sales**

Contact Ross 02 9960 0046 or
email: ross@avrra.com.au



AVRRA Ltd.

Ross Walden, Executive Director

Level 1, 3 Brady Street Mosman 2088 NSW

Postal: PO Box 420

Spit Junction 2088 NSW

Tel: (02) 9960 0046 Fax: (02) 9960 0041

Email: ross@avrra.com.au

ABN: 79 054 038 881

Imposition of late fees – sensible business practice or a vindictive moneymaking scheme?

Martina Stevens

May 2006

The attitude towards movie rental stores and late fees seems to be the same as the attitude towards legal professionals and legal fees – negative! The media seems to love a story claiming that a video store has overcharged a customer.

But what is the real position and is the attitude fair?



In April earlier this year the Melbourne Herald Sun published an article with the headline, "\$26m fines for video dodgers; 100,000 black-listed. One [movie rental store] owed \$91,980." There was no doubt that the writer wanted readers to gain the impression that there is a significant amount of money to be made by video stores through the imposition of late fees. But that's not true.

Generally, a video store may be able to 'rack up' thousands of dollars in fees under its conditions of hire. But it is likely to have difficulties in taking a customer to court to recover the debt. From a legal perspective, all sorts of arguments could be made by the customer who (obviously) would want to dispute a late fee debt running into the thousands. He or she could say the fees are excessive, unconscionable, unfair or have been imposed under what's known as a contractual 'penalty provision' (which would be void in contract law and unenforceable).

In reality however, most video stores are unlikely to pursue a debt (through court), no matter how large it is. Instead, they would probably write the debt off or accept a smaller sum. In the Sun Herald article a customer didn't return 6 videos for 6 years and faced fees in the amount of \$91,980. If that could have been successfully pursued in court, why then did the video store willingly accept \$2,000?

No doubt the answer is that at some point the video store replaced the 6 videos in order to reduce its losses. Legally, it would not have been able to keep charging late fees from the time of replacement. All it would have been able to do is claim damages from the customer to cover replacement costs and loss of use of the missing videos up to the time of replacement. This wouldn't be a significant amount and the time, cost and effort of pursuing the damages claim in court would likely exceed the amount involved.

So the imposition of late fees is not the vindictive money making scheme it's sometimes made out to be.

Membership 2006-2007

The membership year commences 1st July 2006 and all current AVRRA members will be receiving renewal invoices in late June.

The AVRRA Board of Directors wish to thank you for your support during the past year and looks forward to you renewing your membership and working with you to make the Video Industry the number one in home entertainment.

We ask that you all continue to encourage other retailers to be a part of AVRRA, the only independent body representing the rental channel.

And there's a practical way for customers to avoid getting into any legal argument about them. Take movies back on time!

Martina Stevens is a lawyer in Gadens Lawyers' commercial litigation division in Sydney. Contact: +612 9931 4805. mstevens@nsw.gadens.com.au

THE VIDEO INDUSTRY AWARDS (ADVIA)

**THEY'RE ON AGAIN THIS YEAR!
FRIDAY 10TH NOVEMBER 2006.**

After what has previously turned out to be the event of the year, the 3rd annual Australian DVD and Video Industry Awards (ADVIA) are on again, albeit a little earlier this year occurring on Friday 10th November 2006.

Back at Star City Ballroom, Pyrmont Sydney the event is again proudly sponsored by AAV Regency and recognizes the achievements of rental retailers in the Rental channel. Rental award winners will be judged on a state by state basis and the prestigious national winner selected from the highest assessed state winner.

Store nomination forms are enclosed with this newsletter and entries close on Friday 11th August 2006, please read the rules of condition of entry on the back page. Judging criteria will be based on the stores outside presentation, in store presentation, staff appearance, in store promotions, product range (including new releases and back catalogue) and ancillary products. The judging will again be conducted nationally by a Mystery shopper program by an expert independent company in this field with all stores nominated being visited twice during the months of September and October. As has been the case during the last few years the difference in the winning stores score has been very minimal mere percentages of a point, so start now, put your best foot forward as it may just make the difference in winning.

This event is a night of all nights when once a year the whole industry have a

chance to get together and just celebrate, the glamour, the hype, the entertainment and the black tie dress make it the place to be on Friday 10th November.

With over 600 people attending last year do not miss out, get all your friends together, get all your staff organized, book your table or buy your tickets now. First in, best seats.

Members are urged to take advantage of the great ticket discount offered by booking and paying for your tickets when lodging your stores entry form. Tickets are normally \$ 175 per person but book and pay when lodging your stores entry form and only pay \$ 155 per person.

Discounted Accommodation Packages Available at Star City.

On behalf of AVRRA members, the awards event co-ordinator has negotiated a very attractive room rate for those in need of accommodation on the night. Superior Pyrmont View Room \$230 and a Superior City View Room at \$250 per night.

To book just simply call Star City reservations 1800 700 700 and quote ADV 1011 or contact Ross Walden in the AVRRA office on 02 9960 0046.

MOVIE PIRATE CAUGHT IN THE ACT OF CAMCORDING "X-MEN 3"

Sydney, New South Wales – Reflecting increasing anti-piracy enforcement and sending a warning to movie pirates, staff at a western suburbs cinema yesterday seized a camcorder from a male patron recording the first screening of "X-Men 3: The Last Stand." Police, called by cinema staff, detained one man for questioning. Another man who left the cinema after the camcorder was discovered is being sought by police.

Adrienne Pecotic, Executive Director of the Australian Federation Against Copyright Theft (AFACT), said the actions of the cinema staff demonstrated the effectiveness of anti-piracy guidelines for cinema workers across Australia.

"Over 90% percent of all pirate movies start out as camcord copies taken from inside cinemas, making camcording a serious issue for the film and television industry in the ongoing fight against movie piracy," Pecotic said. "Within hours of the illegal camcording of a film from a theatre screen, countless digital copies are available for download via the Internet and hard copies are being burned onto DVDs for resale, costing the film industry worldwide billions of dollars every year."

"The actions of the cinema employees helped significantly to protect not only the filmmakers' business, but also cinemas – including the theatre where they work – as well as home video distributors worldwide," Pecotic added.

Pirate camcording is particularly damaging because it typically occurs at the very start of the distribution cycle, affecting the economic opportunities for the film throughout the rest of its existence.

The seizure came at the same time as a movie pirate pleaded guilty to 30 counts of piracy in Downing Centre Local Court, following the discovery of an optical disc duplicating operation capable of manufacturing nearly 200,000 DVD-Rs a year with a street value of over \$1.9 million dollars.

Gene Turner, from St Helen's Park, received an 18-month suspended sentence and was placed on a three-year good behaviour bond for committing movie piracy crimes.

NSW Police had laid the charges following an AFACT-assisted investigation which led to a raid on Turner's residence in July 2005. During the raid, police seized 4,000 DVD-Rs, eight DVD-R burners and three computers.

Magistrate Denes, on sentencing Turner, said there was "clear evidence [Turner's crimes were] a commercial enterprise" and reflected on the significant damage being caused to the film and television industry in Australia by this crime.

"We are very pleased to see decisive action from the police and the courts

against those involved in movie piracy at both the source of stolen copies of films and their illegal manufacturing and distribution,” Pecotic said.

DVD WHOLESALER FINED FOR TRADING IN COUNTERFEIT DVDS

Sydney, NSW – Joseph Costantini, a 59-year-old veteran of the video industry, was found guilty of two charges of copyright infringement and fined \$22,000 plus costs in Downing Centre Local Court on Friday, April 28th, having knowingly sold counterfeit DVDs to unsuspecting video retailers.

Costantini, who has worked in the video industry for over 25 years, as the owner of JJC Entertainment, a DVD wholesaler, sold 850 pirated copies of the film “Bring It On” and 4,650 pirated

copies of the “Rambo” movies, passing them off as legitimate.

These counterfeit DVDs were so sophisticated and cleverly disguised that the video store owners believed they were genuine. Following concern expressed by a video store owner, the Australian Federation Against Copyright Theft (AFACT) forensically identified the DVDs as counterfeit, and embarked on an extensive investigation with the Australian Federal Police.

On 17 December, 2004, the Australian Federal Police raided Costantini’s work premises, seizing a further 5,600 counterfeit DVDs.

Costantini’s actions are estimated by AFACT to have cost the Australian film industry \$141,000.

“This is a disturbing case given the sophisticated nature of the counterfeits,

and Costantini’s long association with the video industry,” said Adrienne Pecotic, Executive Director of AFACT. “His actions have deceived legitimate businesspeople, undermined confidence in the genuine product, and cost the industry a substantial amount of money.

“These factors were clearly recognised by the Magistrate in imposing a significant fine, which we hope will send a signal to others who contemplate movie piracy and ultimately protect the small businesses and film lovers who are victims of this crime.”

QUEENSLAND DVD STORE OWNER CHARGED WITH COPYRIGHT OFFENCES.

Ipswich, Queensland – On Wednesday, April 12th, Queensland Police charged the owner of an Ipswich DVD store with thirty-six copyright-related offences, including the unlawful import, possession and sale of counterfeit DVDs.

The charges were laid following a raid on November 24, 2005 on the store during which police seized 211 counterfeit DVDs that had been imported from Malaysia and were being offered for sale. Some of the titles seized had not yet been officially released on DVD format anywhere in the world.

The store owner is due to appear at Ipswich Magistrates Court in June.

Police became aware of illegal activity at the store following complaints from members of the public, and following investigations by the Australian Federation Against Copyright Theft (AFACT).

Adrienne Pecotic, Executive Director of AFACT, commented: "Every day legitimate Australian businesses face the unfair, and illegal, challenges of movie piracy which threaten their very livelihood and the jobs of everyone they employ. It is through information from the public, namely the people who buy the products, that we can best stop movie piracy. I encourage everyone who suspects movie piracy is occurring in their area to report it. We would like to thank Queensland Police for their hard work on this case."

FAIR USE REVIEW - AUSTRALIAN ATTORNEY GENERAL ANNOUNCES SIGNIFICANT FAVOURABLE COPYRIGHT REFORMS.

The Australian Government yesterday announced proposed major copyright reforms following its review into 'fair use' and other issues during 2005. The announcement flagged "a range of new measures to tackle piracy... [intended to] support Australian and international creators including small businesses such as cinema operators and video shops"

"Getting tougher on pirates, while making the law fairer for consumers and our educational and cultural institutions" were the Government's stated goals.

The key points of the reforms are:

- * Update the law to tackle piracy
- * Format shifting only for music and old VHS cassettes (DVD's to be reviewed in two years time);
- * Time shifting for TV (no archiving or distribution);
- * Revised presumptions making it easier for copyright owners to prove ownership in court;
- * Internet piracy - giving courts increased powers to award larger damages;
- * On the spot fines for police (against copyright pirates such as market stall traders);
- * Change in the definition of article for copyright cases;
- * Create new offences for pay TV piracy;
- * A commission to the Australian Institute of Criminology (AIC) to undertake research on piracy and counterfeiting and propose options for Government response;
- * Referral of organised crime involvement in piracy and counterfeiting to the Australian Crime Commission;
- * Steps to promote cooperation between law enforcement agencies, the States and industry to tackle the problem of copyright piracy;
- * "A proposal to establish a law enforcement body based on a United States model would specialize in investigating Internet piracy is also being considered"; and
- * Government to amend the Commerce (Trade Descriptions) Act 1905 to make it easier for Customs to seize articles containing a false trade description without a warrant.

The Australian Federation Against Copyright Theft [AFACT] with the support of member companies including Village Roadshow, and the home entertainment distributors association, AVSDA, worked closely with the Attorney General's department on these issues and AFACT is encouraged to see that a number of the reforms reflect submissions we

have made on film and TV copyright infringement and piracy.

Overall, AFACT is pleased with the tenor and content of the proposed copyright reforms and see them as predominantly in line with film and television interests and our extensive lobbying efforts. The Australian Government announced it is "committed to tackling copyright piracy. The Government regards this activity as stealing." recognizing the importance of the creative industries to Australia and that piracy is an issue which urgently needs to be tackled in this country.

We are delighted that the reforms will strengthen the powers of law enforcers; make it easier for customs to seize infringing imports and support public awareness initiatives to tackle copyright infringement. It is the government's intention that these reforms will help to clarify the position on copyright to the consumer and unequivocally confirm that "copyright owners are being severely disadvantaged by pirates through the thousands of infringements that occur regularly on websites and through peer-to-peer file sharing".

Further detail is not currently available, however AFACT welcomes the government's decision to release a draft exposure Bill and looks forward to further consultation on these reforms.

Da Vinci Code - THE SOCIAL PHENOMENON HITS DVD OCTOBER 11.

Da Vinci Code has opened at No. 1 all time on the international theatrical circuit. The phenomenon, starting with the book which has worldwide sales of over 40 million and Australia sales of over 1.5 million, will debut on DVD in Australia on October 11th.

After two weeks at the Australian box office it has already reached over \$17 million and on track to finish between \$30 and \$40 million, arguably the biggest title of the year. The Australian public continues to line up at the box

office despite poor reviews. The inability of the press to see any preview screenings has certainly influenced their opinion of the movie. The general public as they did with Titanic are voting with their feet and the box office continues to grow.

The DVD release will comprise of two versions at launch. A single disc, theatrical version with limited special features and a 2 disc extended Edition with over 2.5 hours of special features. Sony Pictures Home Entertainment will be supporting the launch with a comprehensive marketing campaign to drive consumer activity in the fourth and final quarter of the year.

PARAMOUNT ACCEPTS IT'S MISSION M:I:3 LAUNCH

On the night before the theatrical release of M:I:3 in cinemas, Paramount Home Entertainment kicked off their DVD campaign early with a celebration at Sydney's Entertainment Quarter. Four hundred guests were among the first in the world to indulge in this year's biggest action film.

Immediately after the screening guests were ushered down a 300 metre illuminated passage from the cinema to an after party where a special M:I:3 V8 race car specially created for the M:I:3 DVD marketing campaign waited for close inspection.

The night ended in high spirits with positive reviews from all.

Since its release the M:I:3 film has impressed audiences around the world and is hailed within the industry as the best Mission Impossible movie yet. Paramount Home Entertainment Australia are excited and all pumped up to make M:I:3 the biggest action DVD of the year.

AVRRA announces a new appointment to the Board

AVRRA proudly announces the appointment of Mr Rick Wight, Blockbuster Australia to the Board of AVRRA. In a unanimous vote at the recent AVRRA Board meeting held on 15th June 2006 the Board members appointed Rick Wight to the Board.

All Board members believe Rick's vast wealth of experience in the video industry will benefit all AVRRA members and the appointment of Rick now consolidates Board representation by all major rental groups.

Congratulations and welcome Rick on behalf of our members and the Board.

"Members Have your say"

We have decided to add a new section to the AVRRA newsletter, Members have your say. The Board is encouraging members to email or write to the AVRRA office detailing, in short or at length, their thoughts on the industry and the matters that concern them most. Email to ross@avrra.com.au or mail to AVRRA Ltd, P O Box 420 Spit Junction 2088. So get involved, let us know what's on your mind. Look forward to hearing from you.

QUEENSLAND VIDEO INDUSTRY 2006 GOLF DAY

Gainsborough Greens
Yawalpa Rd., PIMPAMA

(Gold Coast Highway midway Brisbane - Gold Coast)

Thursday 7th September 2006

12 noon shotgun start

4 ball Ambrose event

Individual or Team of 4 entries welcome

Enquiries and bookings from

Russell Beasley ☎ 0417 606 184 or email beasr@bigpond.net.au

All proceeds to Starlight Foundation

New markings



General



Parental guidance recommended



Recommended for mature audiences



Not suitable for people under 15.
Under 15s must be accompanied by a parent or adult guardian



Restricted to 18 and over

Films only

Industrial Relations Contact Numbers

One the most time consuming tasks of any business these days is ensuring wages and conditions for all staff are correct. For the convenience of members we have produced a list of contact details for all the Industrial Relations Departments (Australia)

New South Wales

131 628

www.dir.nsw.gov.au

Victoria

03 9651 5560 or 1800 287 287

www.ir.vic.gov.au

Western Australia

1300 655 266

www.docep.wa.gov.au

Queensland

1300 369 945 within state or

1800 177 717 elsewhere

www.dir.qld.gov.au

South Australia

08 8303 0400

www.industrialcourt.sa.gov.au

Tasmania

03 6233 7657

www.wst.tas.gov.au – *general info awards conditions*

www.pat.tas.gov.au – *award rates*

ACT and NT

1300 363 264

www.wagenet.gov.au

note this web address also has links to each state site.

ASSOCIATE MEMBERS

Rocket Software (Customsoft) | Imagine Entertainment (an IDT entertainment company)

Eagle Entertainment | Ezy DVD | Trade Guys International | Legal and Commercial / National

Default Registry | New Zealand Video Dealers Association