



Submission to the 2010 Review of the Australian Independent Screen Production Sector

April 2010

This submission is made by the Australian Directors Guild (ADG), the industry association representing the interests of film and television directors, writer/directors, documentary filmmakers, animators and independent producers throughout Australia. Formed in 1980, the ADG has 500 full members nationally.

The ADG works to promote excellence in screen direction, to encourage communication and collaboration between directors and others in the industry, and to provide professional support for its members. It maintains a high profile and leading cultural and policy role through its efforts to address issues affecting the industry from a broad perspective.

The ADG is internationally recognised as the representative body for Australian directors and is affiliated through the International Affiliation of English-Speaking Directors Organisations (IAESDO) with the Broadcasting, Entertainment Cinematograph and Theatre Union (BECTU), the Directors Guild of America (DGA), the Directors Guild of Canada (DGC), Directors UK, the Screen Directors Guild of Ireland (SDGI) and the Screen Directors Guild of New Zealand (SDGNZ)

Executive Summary

The ADG welcomes the opportunity to provide a submission to the 2010 Review of the Australian Independent Screen Production Sector.

As the majority of questions posed in the Discussion Paper are directed at producers and production companies, we anticipate that the broader industry will provide an overview of the status of the industry as a whole. The ADG will limit its response to those questions which are directly relevant to directors and directors who work as producers, and where the unique perspective and experience of directors as a key creative force in the industry needs to be illuminated in the context of the overall discussion about the sector.

The ADG would like to open by stating that:

- Directors are in the creative business of telling stories on screen. They tell these stories on screen by using visual, aural and written material.
- Directors are often the originators of screen content.
- Experienced directors have an intimate and comprehensive understanding of the creative process and have the expertise required to realise a successful screen story.
- Directing is an intense collaborative process that is driven by the director during preparation, shoot and post production, and requires the directors total and unique creative vision.

The ADG's key concerns regarding the sustainability of the independent production sector are:

- Entrepreneurial directors are not being offered reasonable opportunities and support to build on their creative endeavors and establish sustainable careers.
- There is a fundamental lack of understanding about the nature of the directors' creative work, and what it means to have a meaningful share in the creative control of what directors do.
- Directors need a strong effective system to protect and reward the exploitation of their Intellectual Property.
- Current industry practice is not building on the experience and expertise of directors. There is inadequate recognition of the craft of directing in creating consistently good quality screen work.

The ADG welcomes ongoing discussions and dialogue with government following this review. We would welcome the opportunity to elaborate on any of the issues we have raised in this submission, and remain committed to working with government and other stakeholders to build a stronger sustainable independent screen industry.

WHAT DOES A SUSTAINABLE PRODUCTION INDUSTRY LOOK LIKE, RECOGNISING THE NEED FOR PUBLIC AND PRIVATE SECTOR INVESTMENT?

- An industry with opportunities for all key creatives to earn a reasonable living, practice their craft, develop skills and collaborate creatively, and communicate their stories and visions to the widest possible audience.
- Directors benefitting from secondary income streams through non-assignable statutory rights schemes to help sustain careers.
- In light of the imminent launch of the National Broadband Network, a new model for future rights management, including remuneration for directors from digital distribution established by government as a matter of urgency.

IS THE CURRENT STRUCTURE OF THE FILM AND TELEVISION PRODUCTION SECTORS SUSTAINABLE?

- No. Experienced directors are currently struggling to sustain their careers.
- The history of one-off/singular feature production must be addressed in relation to directors as well as producers. Directors must be offered support to originate and develop projects without having to assign all rights to producers at a speculative stage.

HOW THE AUSTRALIAN GOVERNMENT'S SUPPORT, BOTH DIRECT AND INDIRECT, IS ASSISTING SMALL THROUGH TO LARGE-SCALE SCREEN PRODUCTION BUSINESSES.

- The ADG believes it is important to have a diversity of size amongst production companies in order to encourage a diversity of projects and support for emerging practitioners.

ANY OTHER ISSUES OF RELEVANCE TO THE VIABILITY OF THE SECTOR, CONSISTENT WITH THE TERMS OF REFERENCE.

Impact on the industry of increased funding to SBS and ABC.

- The increased funding to the ABC and SBS has clearly benefitted directors by allowing for additional hours of television production and the ADG is wholly supportive of the additional support to the public broadcasters. However, the documentary community have raised serious concerns about policy and practices at SBS, and drama directors are concerned that the ABC's role at the vanguard of high quality TV drama is yet to be restored.

Adequacy of current level of data collected.

- As Screen Australia has put greater emphasis on hard data as the basis for policy formation than the legacy agencies, the ADG would like to see more detailed and transparent data presented to the industry.

THE EFFECT OF FREE TRADE AGREEMENT IN PARTICULAR THE AUSTRALIA-US FREE TRADE AGREEMENT, ON LEVELS OF AUSTRALIAN CONTENT ON FREE-TO-AIR AND SUBSCRIPTION TELEVISION SERVICES.

- The ADG takes a joint position with the other industry organisations in relation to Australian content quotas and as such requests the Australian Government to restate its continuing commitment to ensuring the delivery of Australian content on free to air digital television including multi-channels by imposing local content standards on the multi-channels.

WHAT DOES A SUSTAINABLE PRODUCTION INDUSTRY LOOK LIKE, RECOGNISING THE NEED FOR PUBLIC AND PRIVATE SECTOR INVESTMENT?

- **An industry with opportunities for all key creatives to earn a reasonable living, practice their craft, develop skills and collaborate creatively, and communicate their stories and visions to the widest possible audience.**

The ADG supports the view that growth in enterprises and support for established production companies are a key factor to the sustainability of the industry. The rationale behind targeted support for established production companies who have slates of projects over one off productions is a reasonable one.

However, the ADG believes very strongly that this goal is not mutually exclusive with rewarding entrepreneurial directors and supporting directors rights. Directors play a key creative role in screen production, and historically in the Australian industry, have generated their own work. Indeed, it is a rare Australian director who has not been substantially involved in the development of a project they are attached to direct. Our leading directors have been the driving force of our most successful films. Collaboration with talented producers has also been crucial to realising director driven projects, and a flexible, balanced framework for supporting endeavours from all talented key creatives is essential to the growth of the industry.

Many experienced directors also use their skill and expertise to work as producers, bringing substantial skills to the producer's role, which has a further positive effect in assisting to build the careers of the emerging directors they produce for.

The application of the new policy intentions which came into being with the establishment of Screen Australia and the Producer Offset have created a one-size-fits-all system where all creative and economic control is intended to be concentrated in established production companies, regardless of whether or not this is the best outcome for a project. The fact that there is only a limited number of established production companies in the industry, with finite resources to take on new projects, whether as producer or executive producer, is also an issue which has not been adequately addressed.

It is the ADG's view that the Screen Australia guidelines need to demonstrate greater adaptability to specific circumstances to allow all talented key creatives to pursue their entrepreneurial and creative vision and share equitably in their successes. A more flexible approach has the added advantage of encouraging diversity and harnessing the full potential of the industry.

- **Directors benefitting from secondary income streams through non-assignable statutory rights schemes to help sustain careers.**

Underemployment amongst directors is very high. The ADG conducted a survey of its full members earlier this year which revealed that 69% of directors with a feature film credit make one or less films every five years, and that 71% of directors with a TV drama credit direct less than 30 hours of TV drama every five years (that is on average six hours a year). While the long-standing industry belief has been that feature directors rely on TV drama work to survive between feature film projects, both our survey and anecdotal evidence from working directors reveals that this mix is not adequate to sustain a career.

Non-assignable statutory rights schemes assist key creatives to support themselves between projects, explore new ideas and establish sustainable careers by providing income streams. This leads ultimately to a more robust ideas market, and less reliance on direct government support. In addition, statutory schemes are relatively efficient to administer and take the onus off production companies who may be under-resourced, to ensure that royalties are paid accurately and in a timely fashion.

The failure of the amendment to section 98 of the Copyright Act 1968 to adequately recognise directors and properly reward their creative work (through a share in retransmission royalties flowing to directors as intended by the legislation) in the five years since it was enacted, further supports the need for a non-assignable rights scheme.

The stated intention of the Parliament for the introduction of the Director's Rights legislation was to provide directors with a share of income from secondary use of their work, yet the industry has managed to circumvent that intention by requiring directors to assign that right to receive retransmission royalties to the Producer. Aside from our high profile feature film directors, the vast majority of working directors in Australia have little bargaining power when it comes to negotiations with producers. It is a buyers market with a limited range of projects for the suppliers of creative services such as directors.

Directors in Australia are in the unenviable economic position of benefitting from neither the European tradition of collective administration which collects remuneration for cable retransmission, rental rights, private copying and other secondary uses, nor from the support of a strong union like the Directors Guild of America or Directors Guild of Canada which have established and equitable residual arrangements with producers and studios.

The ADG is a professional organisation rather than a union, as well as being small and under-resourced in comparison to the Screen Producers Association of Australia (SPAA). Its attempts to negotiate on behalf of directors for residuals or a share of retransmission monies have consistently been resisted by the production companies and producers on the basis that as directors have no rights, they have nothing to claim. While this argument is not compelling, as directors in the United States who also do not have rights have been able to negotiate standard conditions of secondary and subsequent use income, it further highlights that in the absence of a power balance between the two organisations, securing secondary income streams for directors through collective negotiation is an unrealistic expectation in the current context. In this sense the experience of the ADG mirrors that of individual directors attempting to negotiate with producers.

As there is no history of secondary income streams or residual payments flowing to directors in Australia, it is near impossible to achieve the contractual changes that would address this. By contrast actors, musicians, composers and writers are all recognised in statutory schemes or award-style arrangements that reward their endeavours.

Therefore it is the view of the ADG that the amendment to section 98 of the Copyright Act 1968 is ineffective legislation, and that the 'market failure' in terms of the intention of the legislation needs to be urgently addressed by government if directors are to continue to provide their unique creative contribution to the Australian screen sector and properly remunerated.

The ADG urges Parliament to enact an amendment to section 98 of the Copyright Act to delete the concept of a "commissioned film" and make the right non-assignable, similar to the Composer's right to public performance royalties, and an actor's right to residuals for the use of their performance in various media.

Any progress made in terms of strengthening directors rights in the current industry context will encourage directors to remain in the Australian industry, to be entrepreneurial and will assist them in developing their skills and projects.

- **In light of the imminent launch of the National Broadband Network, a new model for future rights management including remuneration for directors from digital distribution established by government as a matter of urgency.**

In Australia, a cinematograph film is protected by copyright as "other subject matter" under the 1968 Copyright Act. The Act is silent on the issue of who is an author of a film. The "maker" the producer or production company is vested with first ownership

of a film. The framing of the Act in respect of film is a consequence of the period in Australia in which the legislation was drafted and enacted in the 1960s. That is, before there was clear understanding of the film director's role or a professional guild for directors.

Since the Australian film industry emerged in the mid 1970s, Australian film directors have become very significant cultural exports and often the driving force behind some of our best loved and successful films . The list includes George Miller (*Happy Feet*, the *Mad Max* franchise), Baz Luhrman (*Australia*, *Moulin Rouge*, *Strictly Ballroom*), Jane Campion (*Bright Star*, *The Piano*) and Clayton Jacobson (*Kenny*) to name a few. They are also closely involved in creating the distinctive flavour of some of Australia's most popular television shows such as *Underbelly* and *Packed to the Rafters*. Documentary and animation directors have also been recognised around the globe, receiving Academy Awards and importantly have been embraced by Australian audiences.

The key creative role of the director is now not only better understood but revered. In this context it would be reasonable to say that the absence of directors as co-creators and joint copyright holders along with producers, writers, musicians and music publishers in the Copyright Act is an historical oversight.

The ADG believes that the digital distribution landscape offers an opportunity to redress this anomaly. In addition, a new remuneration model for all key creatives is crucial to the sustainability of the industry. Already directors are finding that that the need for content in a multi-channel and multi-platform environment is providing new opportunities for rights holders which they do not benefit from.

The Directors Guild of America negotiated with all studios and producers to agree that the directors of screen content would be entitled to share in the revenue from all digital uses of the screen content on a defined residual basis. In the Australian context, a "fair compensation" rate could be set by the Copyright Tribunal every few years, similar to the compulsory licence fee for mechanical reproduction of a musical work would be the most effective mechanism.

The National Broadband Network offers a unique once in a lifetime opportunity to build income streams for creatives, to stimulate creative enterprises, and reward creative entrepreneurial endeavors. The window is there to create a more robust system where those who create the content and tell the stories are recognised. If there was a stronger reliable income stream flowing direct to creatives, it would reduce demand on tax-payer assisted government agency resources, allowing them to better direct support to areas of need.

The government must ensure that directors are finally appropriately recognised, along with other key creatives for the very significant role they play in the creation and success of the content which is at its very foundation.

IS THE CURRENT STRUCTURE OF THE FILM AND TELEVISION PRODUCTION SECTORS SUSTAINABLE?
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- **No. Experienced directors are currently struggling to sustain their careers.**

There is a marked discrepancy between the public perception of directors incomes/ lifestyles and the reality. Anecdotal information from experienced directors confirms that even directors of some very successful projects are struggling financially. The ADG's recent member survey revealed that 58% of full members earned less than \$60K in the last financial year. Given that 54% of all the survey respondents had worked in the industry professionally for over 20 years and 26% between 10-20 years, these statistics are very worrying. Unlike other industries, directors are often not compensated for the skills and experience they develop over time. While time constraints have not allowed the ADG to gather additional data about trends over

time, anecdotal information forwarded by experienced directors suggests that directors' careers experience modest peaks between extended plateau periods. There are also few avenues for targeted support for directors to allow them to generate new work or explore new ideas during the lean times.

Directors face a unique problem within the industry in that it is difficult to practice, develop and extend their craft at a professional level without opportunities to work. Directing for the screen takes a long time to learn, and even longer to learn to do it well. Directing in Australia should not be a hobby; it should be a legitimate career, providing an adequate living for those who practice it. A screenwriter can still write and a producer can still source and develop projects between projects. A director can be involved in these activities, and more often than not is, however without paid work, cannot in effect practice and refine their skills.

While the view in the industry is that it is too early to tell whether the Producer Offset is working, and this may well be true, the ADG has concerns that the flow-on effect for directors will not only be too slow, but will also be negligible.

For example, the recent statistics released by Screen Australia to the industry indicate that the Producer Offset is working well for television, and that at February 2010, \$34.73 million had been returned to the industry through the Offset. However, these statistics do not include a breakdown of where the money is flowing to. The ADG has been advised by Screen Australia that there has not been a substantial increase in the number of television hours since the introduction of the Offset. This has been attributed to an increase in the cost per hour to produce programs.

The ADG has collected information from the major creative agencies representing TV directors and they have all confirmed that directors fees have remained static in this period. If opportunities for employment and fees have not increased in an area where the Offset is working well, then it seems unlikely that the current structure will contribute to broad industry sustainability.

Documentary is another sector which has always been considered to perform well. With the introduction of the Offset, recent statistics released by Screen Australia indicate that in the \$250-\$500k per hour bracket, it has made a significant contribution, and overall \$9.74 million has been returned to the industry through documentary production. Recent panel discussions at the AIDC also suggest that documentary producers feel that the Offset has assisted them.

For documentary directors however it is a different story. Many are now being required to multi-skill on projects (also act as DOP, write or co-write narration or production manage for example) without any additional payment in order to keep budgets low. Of even more concern to the ADG is the practice of contracting experienced directors as field producers in order to benefit from their skills and experience for a lower fee. This has occurred on high quality titles which attract healthy audiences. The desire to work on quality projects, coupled with limited opportunities for work, often require that directors accept these jobs.

Additionally, there is a developing trend of separating out what have generally been understood to be the duties of a director in the Australian industry, into directing the shoot and directing in post production. Directors are also being employed on daily rates on an as required basis, which is a fundamental shift away from how documentaries have been produced in Australia. Not only is there no creative continuity, but it is not possible for directors to earn a reasonable living within this new model which erodes directors' hard earned status as key creatives, their creative rights and the ability to maintain a career.

These practices have been carried out by established production companies who have benefitted from Enterprise funding from Screen Australia. This supports the ADG's view that the exclusive funding focus on producers has led to benefits to only one section of the industry and there has been negligible economic flow-on effect for directors.

The ADG believes that if this trend continues, it will lead to a de-skilling of documentary directors, a further lowering of overall income to completely unsustainable levels, and an increase in talented directors leaving the industry for lack of opportunity and the ability to earn a reasonable income. The documentary sector cannot be expected to continue to perform well if the creative talent who have contributed so significantly to it, are not able to exercise creative responsibility, be properly remunerated for their skills/experience or retain some ownership of the work that they create. The ADG advocates for support for a model where meaningful distinctions are made between types of documentary programs, and when directors are originators and the key driving force, that Intellectual Property can be retained or shared.

- **The history of one-off/singular feature production must be addressed in relation to directors as well as producers. Directors must be offered support to originate and develop projects without having to assign all rights to producers at a speculative stage.**

The issue of the majority of producers over the last 30 years only making one feature film highlights a problem of career sustainability within the industry which extends to feature directors also. Some survey results in relation to this have been discussed above in pg. 4, and information gathered from the key creative agents representing feature directors also confirms that the only Australian directors who have sustained a career in feature films only work primarily in the US.

The difficulty in sustaining a career in the Australian film and television industry is particularly troubling for directors. Directors rarely “dabble” in the industry as the skills that they acquire and develop over time require a substantial commitment in terms of education, training and refinement of their craft.

The AFTRS increased its intake of full-time directing students from four in previous years to 18 in 2009 and 15 in 2010. A great deal of resources have been channelled towards these students, and they have committed themselves to a career in the industry. It is difficult to see in the current climate, how they will be able to capitalise on this, develop their talent or sustain a living in Australia. It seems inevitable there will be a brain drain to where there are greater opportunities, and we will lose the creative capital of those directors.

Adequate development support is crucial to the industry’s growth, and directors in Australia have historically been effective at successfully generating their own work. Directors who demonstrate a commitment to the industry, and who are endeavouring to generate their own work should be afforded at least as many development funding opportunities as similarly experienced producers.

Currently under the Screen Australia guidelines, a producer with a feature film credit is eligible to apply for development funding, but a director with a feature film credit is not, unless they either assign all rights to a producer (who is not required to be any more experienced or successful than the director) or have additional qualities as a ‘proven director’ such as selection for a major film festival or an Academy Award. It is the ADG’s view that this additional burden placed on directors to prove themselves further when they have often spent years directing short films, short features, TVCs, television and a feature, while a producer with much less production experience can, is not only inconsistent, but does not reflect a true understanding of the creative process of development.

Quality screen content is created through ideas that are visual, aural and written. The page is one part of a larger creative process in development that often involves a director working with actors, designers, musicians and creative technicians. Unique strong creative ideas come from unique strong creative individuals, and they need to be encouraged to explore ideas and work in ways that best suit them.

Assigning rights and creative control to producers at an early stage of development without allowing for equitable sharing in future success acts as a disincentive, as well as crushing the morale and self esteem of the director. This problem does not necessarily show up in statistics or surveys, however as discussions with directors attests, it is nonetheless very real and should be addressed.

HOW THE AUSTRALIAN GOVERNMENT'S SUPPORT, BOTH DIRECT AND INDIRECT, IS ASSISTING SMALL THROUGH TO LARGE-SCALE SCREEN PRODUCTION BUSINESSES.

The ADG believes it is important to have a diversity of size amongst production companies in order to encourage a diversity of projects and support for emerging practitioners. Smaller companies most often offer emerging directors their first professional jobs, and the potential for directors to grow with these companies whether in partnership or as regular collaborators. They are also often in the business of ideas, and as such do not necessarily require large resources or infrastructure, particularly during early research and development, but often produce substantial results with modest support.

Almost all of the most significant Australian films have been made by small-scale independent film makers, and their creativity and vision should be supported if Australia is to have a vibrant content industry.

ANY OTHER ISSUES OF RELEVANCE TO THE VIABILITY OF THE SECTOR, CONSISTENT WITH THE TERMS OF REFERENCE.

- **Impact on the industry of increased funding to SBS and ABC.**

The increased funding to the ABC and SBS has clearly benefitted directors by allowing for additional hours of television production and the ADG is wholly supportive of the additional support to the public broadcasters.

However, the documentary community have raised serious concerns about policy and practices at SBS. A clear privileging of factual entertainment over other forms has led to a proliferation of some of the practices outlined above on pg. 7 which diminish the skills and experience of directors, as well as the creative ambition of the Australian documentary community.

The output deals with a select number of production companies (mainly for factual entertainment) has again led to the problem of a concentration of bargaining power in the production companies and limited opportunities for directors.

The ADG would advocate a broader and more diverse approach to programming at SBS, and a requirement for production companies contracted by both the public broadcasters to adopt best practice models when dealing with key creatives.

In addition, drama directors are concerned that the ABC's role at the vanguard of quality TV drama is yet to be restored.

- **Adequacy of current level of data collected.**

As Screen Australia has put greater emphasis on hard data as the basis for policy formation than the legacy agencies, the ADG would like to see more detailed and transparent data presented. While the industry is aware of the limitations placed upon the organisation in terms of what information can be shared, more detailed analysis and breakdowns of what is available would be welcomed.

Clearer distinctions between categories of production, particularly in the non-drama areas, would help identify for example, whether documentary which has a cultural, historical or social dimension is being supported adequately along with the more popular factual entertainment programs which also fall under that rubric.

**THE EFFECT OF FREE TRADE AGREEMENT IN PARTICULAR THE AUSTRALIA-US
FREE TRADE AGREEMENT, ON LEVELS OF AUSTRALIAN CONTENT ON FREE-TO-AIR
AND SUBSCRIPTION TELEVISION SERVICES.**

The ADG does not have specific information in response to this question. However, the ADG takes a joint position with the other industry organisations in relation to Australian content quotas and as such requests the Australian Government to restate its continuing commitment to ensuring the delivery of Australian content on free to air digital television including multi-channels by imposing local content standards on the multi-channels.