



RESPONSE TO SCREEN AUSTRALIA TERMS OF TRADE AND PROGRAM GUIDELINES

Australian Directors Guild (ADG) DECEMBER 22nd 2009.

OVERVIEW:

Once again The ADG welcomes the opportunity to comment on the Draft revised terms of trade and guidelines as released on 13th November 2009.

The ADG recognises the current challenges facing us as an industry, and acknowledges the growing demands on Screen Australia resources to support the industry. We would like to continue to work with Screen Australia to address these challenges and find common goals and objectives to achieve the best results for the screen industry and our members.

We would like to outline some key issues that affect directors and independent filmmakers that should be considered when reviewing the Terms of Trade and Program guidelines for Screen Australia.

Of particular concern for the ADG:

- Maintaining and building sustainable careers for industry professionals;
- establishing fair and equitable rates and conditions;
- modelling secondary income streams for directors and independent filmmakers from the exploitation of their creative work.
- shifting industry practice to respect and reward the Intellectual Property of directors and independent filmmakers.
- working to build unity in the screen industry, with an emphasis on the key collaborations between producer and director.

GENERAL COMMENTS

Directors understand better than anyone the importance of adequate time and budget to realise something on screen. Because of this, directors have been the most vulnerable to compromises in their working conditions, and increasingly are required to invest more creative energy to get through the growing demands of screen production.

While the pay structures and working conditions differ for directors in different fields - TV Drama, documentary, feature, animation - the need for them to deliver excellent, diverse and unique work is greater than it has ever been.

The current Screen Australia programs are providing greater support for producers through initiatives to build screen businesses, the Producer Offset, the proposed increase in producer margin, Screenrights income and reversion.

The ADG encourages aid that builds a sustainable industry for all screen professionals, but we remain concerned about the disproportionate emphasis on producers and production companies over directors in the draft guidelines, most notably in feature development and production. Especially as directors are increasingly being asked to share in the exposure/risk and invest their time and fees into projects (often on an equal footing with producer).

We would welcome positive collaborations like this with like-minded producers, however currently Australian directors do not share in the rewards of their work as do their peers in other countries. Nor do they receive on going secondary incomes from their work inside Australia as do other Australian creatives (writers, composers, producers).

Accordingly, we believe Screen Australia's guidelines must reinforce the concept of fair and equitable practice in the sharing and allocation of copyright and profit sharing with those that create the intellectual property of the screen content produced.

The ADG also encourages support that allows those creatively driving a project to retain the copyright in that project during development, rather than being obliged to option or sell off that interest during this stage. To quote Arts Minister Peter Garrett: *"for a creative practitioner anywhere in the arts, the most desirable situation is to have both creative and financial independence."*

In an evolving screen production landscape with new technology, viewing formats and shifting audience expectations, the expertise and creative skills of experienced screen directors will grow in value. We expect Screen Australia to endorse the principles of creative and financial independence for directors, and provide support mechanisms that help them build sustainable careers where they are appropriately recognised and rewarded for their creative work.

Finally we recommend that experienced screen directors are engaged in all areas of Screen Australia assessment committees, procedures and policy reviews reflecting their area of expertise ie: Drama, Television, Documentary, Animation.

SOME SPECIFIC RESPONSES TO THE DRAFT TERMS OF TRADE:

1.2 In Eligibility we recommend dropping the six month rule because you either are an Australian citizen/resident, or you are not. Six months of living here is open to misuse.

1.3 We commend Screen Australia for requiring recipients of Screen Australia funding to deal in good faith with third parties.

The use of the wording *“paying atleast award minimum rates”* is not appropriate to most directors and independent filmmakers, who work as contractors or sub-contractors under agreements negotiated between producer and director (The ADG currently has recommended standard agreements for directors in feature and documentary, and we are developing agreements in other areas). These agreements contain a range of rights and conditions including agreed fees. Further, the award rates outlined in the MPA bear little relevance to standard industry practice in the screen industry for directors working as freelancers.

To be consistent with the overview for production and documentary budgets to pay “industry norms” (pg 31, 36 & 46 in the Program Guidelines) we recommend the wording avoid reference to the MPA award and include:

(a) *paying market rates for all work performed by third parties on their project as recommended by the relevant industry bodies, ie: ADG, AWG.*

1.4 Fees. We feel the application fees for Provisional Certification are steep, and while well resourced screen businesses maybe able to afford these rates, it will be financially difficult for others, especially for independent filmmakers developing feature projects or documentary work between \$1-2m.

5. ADG Documentary filmmakers are particularly concerned that the previous 35% equity minimum is no longer guaranteed. While we recognise the increase in profit share offered, profit is not the only element of the filmmakers focus for success. As many documentaries do not go into profit quickly, a lower equity minimum could threaten short term sustainability.

6. In the case of the NDP projects, we firmly believe that documentary filmmakers should hold the rights to the stock footage from their programs, as this helps build revenue streams that contribute to on-going career sustainability.

The Zero-fee Licensing initiative should be subject to third party licences because filmmaker's licences to third party copyright material may not allow on-licensing for free.

7. Reversion. We commend Screen Australia for allowing for a reversion to the producer, however we would expect the producer's obligations to share part of that equity with creators/originators and key creatives to be clearly stated in the Terms of Trade, as it is for the producers responsibilities to any other investors.

For the sake of consistency we recommend Screen Australia have all previous Agency productions revert after seven years.

SOME SPECIFIC RESPONSES TO THE DRAFT GUIDELINES:

The ADG appreciate the efforts in the guidelines to encourage fair and equitable practice to all screen professionals, including directors.

However we strongly object to the guidelines recognising applicants eligibility for support (pg 4, 5 of the Program guidelines). Qualifying an Academy Award, yet no other awarded achievements reinforces the sense that we aspire only to US production and Hollywood models. Surely in Australia we should be looking widely for markers of our success? Consider the Australian filmmakers awarded at a multitude of international festivals? (recognised within Screen Australia's own marketing guidelines). Or Australian filmmakers who have won AFI or IF awards? Surely our own critical recognition is equally relevant?

We suggest that eligibility be in broader, more flexible terms including critical appraisal as known within the industry at any given time and clearly evident within Screen Australia's marketing department.

The guidelines for features do not appear to acknowledge the history of Australian cinema, which is built around inventive and resourceful screen directors, who have produced, written and directed. Their work generates considerable production activity in Australia through employment, sales, facilities hire, and makes a substantial contribution to the economy. Research shows that:

- Four out of five of the most popular features (AFI/Australia Post) were by directors working as writers, co-writers, or story originators, with one director also a producer.
- Screen Australia figures for highest gross box office between 1999 and 2007 show 75% of these films are by directors working as writers or co-writers, 40% are by directors working as producers or co-producers.
- In 2008-09 the leading Australian films at the box office were creatively driven by directors; writer/directors, or director/producers.

As it is currently drafted in the feature development and production guidelines, directors will need to identify themselves as writers and producers to be eligible (pg 5 on the Program guidelines). Arguably this threatens to devalue the role of the producer, and the guidelines must allow enough flexibility for individuals with demonstrable talent to access support.

We would like to see consistency in the wording within guidelines ie: On pg 8 *eligibility* is for individual writers, directors or producers - but *funding* is for the writer, writer/director, producer or writer/producer (but one assumes not for the director - unless they are a writer/director?)

The ADG also recommends that the assessment panels be sourced from screen professionals including experienced screen directors.

- In the Overview for the **Springboard** Initiative (pg 19) and the **Short Film** completion Fund (pg 22) we question the exclusive focus of this initiative as advancing towards feature film. In Australia it is extremely rare for professional filmmakers to have a career exclusively in feature drama, and

one would expect initiatives from Screen Australia to reflect that. Rather than set unrealistic expectations of careers in features, we would encourage a recognition that screen drama takes other forms as well - ie: Shorts can also give invaluable experience that leads to work in TV Drama and increasingly screen drama in other media.

- In the Overview for short **Animation** production (pg 24) we note the statement that “*such projects will further develop Australia’s mainstream and commercial animation industry...*”

We are particularly concerned that this line of support also allow for independent animators to produce short animations. Independent Animators work in traditional media, digital media and visual effects; they are professionals but do not always work in the larger animation studios.

We recommend adjusting the *eligibility* wording to allow flexibility for the broader independent Animation community. Many animators produce their own works. The concept of teamwork is different in independent animation (whether traditional or digital), principally because it is usually very labour-intensive, through long periods of production, and uses very few (if any) staff or resources. The guidelines need to allow for animators producing their own work, which in turn facilitates the animator maximising returns from their artistic investment and building a sustainable career.

In these guidelines there is no specific area identified for *development* of animation projects, as distinct from feature development. Many successful animation films have benefited from seed money, and adequate provisions for the development of animation projects is as important as for drama or documentary production.

- We support the initiatives in the **Innovation** program. We would like to clarify that a filmmaker initiating and creatively driving a project will be considered the producer? (pg 27). We recognise that ‘*Producer*’ in New/Digital Media usually equates to ‘*Filmmaker*’ (in the heritage world) and note that both terms are used. We would encourage flexibility in the wording that encourages experienced filmmakers to work in New Media.

We question why the Innovation program does not support crossover funding with linear screen content. In an evolving world of screen content, the lines between linear and non-linear content are blurring in all areas - documentary, drama, and animation. We would encourage any recognition by Screen Australia that allows filmmakers to access a range of SA support that embraces a broader definition of ‘*project*’.

A big challenge for filmmakers is financing projects that contain equal parts of linear and non-linear content; and we recommend SA allow a flexible interpretation of what is considered a ‘*primary market*’ which can have demands across linear and non linear content within the same project (and a recognition that increasingly one area may lead to the other for the overall benefit of the project).

In light of this we encourage any support or initiatives that build and foster the relationship between traditional/heritage filmmakers and new media producers; and we note the positive indications for this in the **Low Budget Drama Program**.

- In the **Feature Film** Production guidelines we are concerned that ALL features - whether Offset or Non-Offset, are assessed in the same way. In particular we believe the requirements are inappropriate for low budget features (pg 34-35). While certain market attachments are reasonable expectations for larger budget films, it can be a disincentive for low budget films.

We urge Screen Australia to keep an open mind to business models that anticipate reasonable returns from the Australian market, and to broaden the definition of market attachments in light of the rapidly evolving distribution and exhibition landscape (including how a *'primary market'* is defined and spread across different media).

We also draw attention to the cost of servicing and producing cross platform elements, which reduces the available spend on principal production e.g. a \$2M film arguably becomes a \$1.6M film when allowing for the cross platform elements and the definition of a 'low budget' film should be adjusted accordingly.

Finally, we do not support the practice of all feature drama production falling under the same evaluation and assessment committee. It is also unclear in the guidelines whether there will be different assessment committees evaluating all other drama production. It is hard to imagine how one committee can collectively have the unique and specialised expertise required to effectively evaluate such a broad range of drama production as submitted to Screen Australia on a regular basis. We recommend the committee procedures be clarified in the guidelines, and that Screen Australia assessments reflect the objectives stated in the overview to support broad diversity in the slate of screen production.

- We firmly endorse the continuation of the **LOW BUDGET DRAMA PROGRAM**, and note the acknowledgment that broadcast platforms are evolving in new directions, and can require innovative and experimental approaches. Our feedback from members for support in this area has been very positive, and we believe this will be developing area for emerging and established screen professionals. Screen Australia's support program will be an important element in building bridges between traditional/heritage filmmakers and new media producers.

Accordingly we would encourage the guidelines to recognise presentation materials in addition or in place of what is traditionally referred to as *"the script"*.

It is also increasingly likely that low budget drama would be developed in both linear and non-linear directions. We recommend that SA take this into account when revising guidelines for the Innovation Program and consider any cross fertilisation that can take place between the two levels of support.