



## **Submission to Television Funding- A Review of Screen Australia's Roles and Objectives**

**August 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 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 respond to Screen Australia's Review of Television Funding.

Due to time and resource constraints, we will be limiting our response to specific issues that directly affect our members, rather than taking a broad industry view. We have highlighted the key issues for the ADG and its members in our submission to the Government Review of April 2010. We include some background notes from that submission about the unique difficulties directors face, at the end of this document for your reference.

In the context of Screen Australia's TV funding, our primary concerns remain largely unchanged. The issues of highest priority for the ADG continue to be:

- That TV drama, documentary and comedy directors are not being offered the reasonable fees, conditions and opportunities required to establish sustainable careers, build on their creative endeavors or be entrepreneurial in the current system.
- The fundamental lack of understanding in the industry about the nature of the directors' craft, and the need for directors to have meaningful ongoing economic and creative share in the work they do.
- That current industry practice does not build on the experience and expertise of directors.
- That a strong and effective digital rights management system must be established to protect and reward the exploitation of directors' Intellectual Property and creative contribution, particularly as demands for quality content in the multi-channel and online environment continue to grow at a rapid pace.

If Screen Australia envisages a strong professional industry built around experienced producers, writers and directors, it must support adequate measures that ensure directors are not left out of being appropriately rewarded and valued for their creative contribution.

### **Fees and Conditions**

While there are obviously variations in fees across different programs and types of programs, the consistent message we are receiving from working directors is that currently, they are either working longer hours to maintain the same level of income as in previous years, or their income levels are dropping. Directors are also frequently being required to take on additional roles and responsibility to deliver higher production values and this is rarely reflected in their fee. This is occurring across all TV formats.

The ADG is currently undertaking further research into the status of TV directors' fees and conditions over the past ten years. This is due to the large number of members who are advising us that in terms of weekly fees, and overall annual income, they are earning less than they were ten to fifteen years ago. Our member survey conducted earlier this year also suggests that overall, fees for both documentary and drama directors have remained at best, static over the past ten years.

Even directors of some of Australia's most popular and critically successful TV programs are not paid fees which are commensurate to their experience or successful track record, and this is a source of great frustration to them. Despite their ongoing successes and the perception that their profile allows them to command high fees, they are in fact generally paid a standard fee, with at best only negligible increases over the past five years.

Further offsetting this is a shift away from covering accommodation fees and per diems to interstate directors. With many productions now filming in Victoria this has had the most impact on NSW-based directors, but is a real concern for directors across all states. They have no option but to "work as locals" in order to secure jobs, which either means covering the costs themselves thereby further lowering their fees, or staying with friends or relatives. **This increasingly common practice does not reflect the standards of a professional industry.** We urge Screen Australia to promote the payment of accommodation and per diems for interstate directors as industry standard.

For directors working in TV comedy, fees have fallen considerably, despite the ongoing success of the programs they have directed. Many are forced to take on work outside the industry, and despite having specialised skills for which there is a clear demand, find that the low fees make full time TV directing financially unfeasible. This then creates a talent vacuum when those specific skills are again required, and those directors cannot risk losing a steady income in order to undertake short-term work with no ongoing rewards.

Once we have collated more detailed information from our members, the ADG intends to use it to support our case that negotiated agreements, particularly in the area of TV drama, are essential to the sustainability of the industry. The negotiation process, and engaging SPAA in this, will not be resolved in the short term. However, in the meantime we expect Screen Australia to:

- monitor projects receiving Screen Australia financial support and ensure that their dealings with directors are in good faith, as is clearly stated in the current Terms of Trade in relation to working with third parties.
- alert producers to these obligations under the Terms of Trade at the earliest opportunity.
- direct producers to the relevant areas where "best practice" dealings with third parties are articulated (such as Codes of Practice, rates cards and conditions as published by the Guilds).

The ADG has recommended rates cards for documentary and TV drama which are available on our website (<http://www.adg.org.au/resources-otherpapers.aspx>). These were developed in consultation with agents and a group of experienced working directors who are well versed in the production environment.

And finally, all television directors would be greatly encouraged if directors fees on subsequent series' reflected the contribution that directors have made to successful Screen Australia funded programs.

## **BACKGROUND NOTES**

The comments below reiterate and in some cases clarify the issues we raised in our submission the Government Review of April 2010, which are relevant to the current context.

### **TV Drama**

- Underemployment amongst TV directors is high. The ADG conducted a survey of its full members earlier this year which revealed 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).
- The ADG has collected information from the major creative agencies representing TV directors and they have all confirmed that directors fees have remained static since the Producer Offset was introduced. 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.

### **Career Opportunities**

- The lack of career opportunities for mid-career directors is of particular concern to ADG members. While we do not have any specific proposals to address this, we would welcome further discussion with Screen Australia and the broader industry on this issue.

### **Documentary**

- Many documentary directors are raising concerns about being increasingly 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 greater 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 on both the commercial and public broadcasters. 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 has 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. It 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 which 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. We do not believe that the Enterprise funding model can create the volume of production required to create adequate opportunities for other creatives.

- 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 maintain its performance levels 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 supports 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.
- In the current climate where larger companies are receiving the most support, the ADG believes the Special Documentary Fund is of vital importance to the independent documentary community and should be expanded. We urge Screen Australia to ensure that producers on these projects deal with directors in good faith and that where directors are the originators of works and have performed duties commonly accepted in the industry as producer, that their work as a producer is recognised appropriately.
- Acknowledging that independent documentary filmmaking is often generated from producer/directors working through their own companies, and allowing them access to support schemes would be a step in the right direction.

## **Secondary Rights Income**

### **1. Retransmission Rights**

- Income from statutory rights schemes assist key creatives to support themselves between projects, explore new ideas and establish sustainable careers. 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 stated intention of the Parliament for the introduction in 2005 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. 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 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 going to be at best a protracted process.
- As there is no history of secondary income streams or residual payments flowing to directors in Australia, it is difficult 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.
- The ADG is continuing to lobby Government to address the failure of the Directors Rights Legislation by enacting 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.
- The ADG urges Screen Australia to encourage producers to allow directors to reserve the rights they are entitled to under the Directors Rights Legislation. The wording of the appropriate Directors Standard Collection Society Income Clause can be found on the ADG website (<http://www.adg.org.au/resources-otherpapers.aspx>).
- Any support from Screen Australia 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.

## **2. Proposal for a Non-assignable Secondary Rights Model**

- 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 screen industry emerged in the mid 1970s directors have been 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 comedy directors have also been integral to globally recognised programs which importantly have also been embraced by

Australian audiences.

- The key creative role of the director is now not only better understood but revered. In this context, 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 TV directors are finding that the need for content in a multi-channel and online environment is providing new opportunities for rights holders which they do not benefit from. Directors are increasingly frustrated that successful programs which they have been key creative contributors to are providing substantial additional income streams to not only the producers but also writers, composers and actors. Directors are the only key creatives not rewarded for industry successes under current industry practice.
- 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.
- Directors need the screen agencies to support a more fair and equitable model so that the pool of talented directors is able to thrive and grow.