



**Submission to the National Cultural Policy
October 2011**

AUSTRALIAN DIRECTORS GUILD
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About the Australian Directors Guild (ADG)

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 700 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) and the Australian Coalition for Cultural Diversity (ACCD).

POLICY OVERVIEW

As a member of the Australian Coalition for Cultural Diversity (ACCD)¹ the ADG welcomes the opportunity to provide a submission to the 2011 National Cultural Policy.

In 2009, the ADG applauded the Federal Government's decision to accede to the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005 (Cultural Diversity Convention).

The ADG considers that the articles of the Cultural Diversity Convention provide a useful framework within which the development of a national cultural policy can be considered. Importantly, it recognizes: **“that cultural activities, goods and service have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value”**.

1. Consistent with the objectives of the Cultural Diversity Convention **“to protect and promote the diversity of cultural expressions”**, the ADG considers that the Government must retain its unfettered right to quarantine cultural industries in all free trade agreements. This position has enjoyed bipartisan support since the negotiation of the General Agreement on Tariffs and Trade. [That principle has been offended only twice – in the Closer Economic Agreement between Australia and New Zealand and in the Australia United States Free Trade Agreement.] The ADG appreciates the Government's current commitment to the protection of cultural industries in the context of free trade agreements and considers it should remain a fundamental tenet of any national cultural policy.

2. Consistent with the objective of creating **“the conditions for cultures to flourish and to freely interact in a mutual beneficial manner”**, the ADG considers that crucial to the flourishing of cultural industries in a digital environment will be:

- ongoing support for Australia's audiovisual and cultural industries by way of direct and indirect subsidy;
- appropriation to adequately support public broadcasting (the ABC, SBS and NITV);
- regulatory mechanisms, including content quotas in a multi-channel environment and in the digital landscape following the switch-off of the analogue signal in 2013;
- the development and construction of the National Broadband Network to ensure Australians continue to have access to stories and news and

¹ The Australian Coalition for Cultural Diversity (ACCD) is a coalition of Australian arts and cultural organisations, and is a member of the International Federation of Coalitions for Cultural Diversity.

information created by Australians, for Australians.

3. The ADG also supports Australia facilitating the entry to Australia of cultural practitioners from around the world in a manner that strengthens and develops the opportunities for Australian practitioners to work in their own country.

4. Crucial to the integrity and economic viability of cultural industries is an effective copyright regime that facilitates the monetizing of cultural output where appropriate to underpin income generation and enable cultural practitioners to live in dignity. The ADG supports freedom of access, not access for free.

5. The ADG also supports the Government's decision to reverse the position of the previous government and endorse the Declaration of the Rights of Indigenous Peoples adopted by the United Nations General Assembly on 13 September 2007. Consistent with this decision, the ADG supports Australia working collaboratively with the United Nations in safeguarding endangered languages, important because of the 273 languages spoken at the time of white settlement, 111 are extinct. Of the 162 living languages, 111 are spoken by only a handful of people. With the death of languages, especially where the language has not been recorded, the death of cultures follow.

6. It follows that the ADG considers Australia should accede to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, adopted on 17 October 2003, and support the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

THE DIRECTORS ROLE IN AUSTRALIAN CULTURE

As part of screen culture, directors play a crucial role in the development and production of cultural content. From the high profile ADG members such as Phillip Noyce, Baz Luhrmann, Peter Weir, Fred Schepisi and Gillian Armstrong to the new media members such as Michela Ledwidge, the ADG represents the cutting edge of screen content creators in Australia.

It is this role that the director plays in the authorship of Australian screen material that is vital to the health and wellbeing of Australian culture. More than any other aspect of Australian life, Screen Culture dominates the cultural landscape.

“It is perhaps not too surprising that watching or listening to TV was found to be the activity which took up most people's leisure time. On a daily basis 87% of Australians watched or listened to TV for an average of just under 3 hours (179 minutes), down slightly from the 1997 figure of 182 minutes. This means that in 2006, Australians aged 15 years and over spent a total of 42 million hours watching or listening to TV each day.²”

This dominance by screen culture places a heavy burden on the regulation and management of how this culture is delivered to Australian audiences and more importantly for this discussion, who creates this culture. It is therefore the ADG's view that:

- the majority of screen content created within Australia should be produced by Australians;
- the creators of this culture should benefit from its exploitation to help sustain screen culture creators;
- the government should ensure that in line with goal 2 of the National Cultural Policy Discussion Paper it should strengthen the capacity of artists, performers and screen content creators to manage copyright and intellectual property, particularly in relation to online content;
- the government should grow creative content and services by driving creative innovation, powering intellectual property and copyright, exploring flexible business models, and promoting collaborative networks and spaces.

² ABS – Arts and Culture in Australia: A Statistical Overview, 2010.

CULTURAL CONTENT AND SUSTAINABILITY FOR SCREEN DIRECTORS IN AUSTRALIA

As outlined in Goal 2, the use of emerging technologies is of major concern to the ADG. Currently, the Federal Government is conducting a Convergence Review that will examine the role of new and emerging technologies in the delivery of audio-visual material to Australians.

One of the most important issues for the ADG and its members is the ability of our members to exploit their creative talent to create a sustainable creative industry for directors.

In 2005 the Federal Government passed an amendment to section 98 of the Copyright Act 1968 which gave directors copyright in their creative work. This was in line with the way directors are treated around the world and potentially provided them with a way to exploit their creative talent economically.

Unfortunately this has not provided the revenue stream that was hoped for by the ADG. Instead, directors have been sidelined and are unable to enforce their rights under the amendment.

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. Almost no producers have agreed to allow directors to reserve their retransmission rights contractually in the last five years and the only projects where these rights are conferred to directors in the absence of a contract, are 'guerilla' films with limited commercial potential. 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.

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 always 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.

The biggest hurdle for Australian directors is shifting industry practice to recognise and value their contribution. 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.

The stated intention of the Parliament in the introduction of the Director's Rights share of retransmission royalties provisions of the Copyright Act was to provide director's with a share of income from secondary use of their work, yet the industry has managed to circumvent that intention by requiring director's to assign that right to retransmission royalties to the Producer. The Parliament should enact an amendment to section 98 of the Copyright Act to delete the concept of a "commission 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.

While retransmission rights represent only a small proportion of the rights pie, and therefore will provide only a modest secondary income stream at best, it is the ADG's view that 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.

We are proposing a new model for future rights management including remuneration for directors from digital distribution to be established by government.

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*.

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 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. It is the ADG's view that 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.

With the imminent arrival of the National Broadband Network, 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.

Australian Directors Guild

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