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TO: **Screen Australia**

FROM: **Dr Daryl Sparkes**
Senior Lecturer
Film, Television and Radio Production
University of Southern Queensland

RE: **Response to Round 2**
Draft Guidelines: Documentary Programs

Preamble

The release of the second round of the draft guidelines identifies a significant number of financial and creative challenges for Screen Australia and documentary screen producers alike. It is also a major step in another direction from what the Round 1 Draft Guidelines were. However, taking into consideration the changes incurred it is important to highlight some concerns with the draft guidelines that would be of concern to many individual independent producers or smaller companies. These are as follows:

1. BROADCAST PROGRAM

1.1. Broadcast Program – Minimum budget of $250,000 per hour and corresponding licence fees.

Considering we are in a domestic financial climate where broadcasters such as the ABC and SBS are having to face reduced operational budgets, it could be argued that $250,000 per hour of budget minimum and licence fees commencing at $150,000 (without international advances) is too high.

In the 2007-2013 approximately 33% of single documentaries and 33% of documentary series were under the $250k budget mark. If these numbers continue then one third of our entire documentary output would be immediately ineligible to apply for funding.

The ABC and SBS historically fund the greater proportion of documentaries and series above the minimum eligible budget level. However, with projected reduced Network operational budgets, are the ABC and SBS likely to support these budget levels in the future with the proposed/current licence fees or, if they are, will they be forced into a position of not licensing as many as documentaries as in previous years? When operational budgets are reduced something must give somewhere along the production chain – either you reduce the budgets and the licence fees of the documentaries produced to maintain levels of output or you don't make as many.

Additionally, the commercial free-to-air networks and cable broadcasters have historically been reluctant to fund many independently produced documentaries at that minimum budget level with the licence fee attached. It could also be argued, based on overseas market numbers, that any new players entering the market in the on-line domain would also be reluctant to consider documentary productions at that minimum budget/licence fee level. Commercial free-to-air and cable broadcasters themselves are feeling budget restraints as costs rise and gross advertising revenue remains flat or, in some periods, decreases (1) or in the case of Foxtel, reducing their subscription fees (2).

If this "perfect storm" of ABC/SBS/Commercial/Foxtel lower operational budgets combine with introduced eligible Screen Australia budget limits, this could potentially shrink the market and/or just favour the larger production houses because it is probable that the broadcasters will less likely risk their reduced broadcast hours or their decreased operational budgets on less experienced producers, whichever it turns out to be.

Many producers may argue that production costs have been increasing, however, with new technologies it would appear that the exact opposite is occurring (3).

Although it could be argued that PEP catches those that are not eligible this is a false assumption, as the eligible budget threshold for this program is also $250k. Even though there is the clause that states that deferred or in-kind support is recognised as part of the budget these will not be recognised in the PEP calculation, leaving film makers struggling to make a film on whatever is left after deferrals and in-kind is deducted.

Recommendation:
As a result of the above would it not be more reasonable to maintain a minimum budget standard across both the Producer program and the Broadcaster program of $120,000 per hour and also correspondingly reduce the local pre-sale licence fees.

Firstly, this will greatly reduce confusion across the two programs. Secondly, if this minimum level of budget for the broadcast program is maintained then it would appear that one of its primary functions is to immediately disqualify a raft of documentary productions under $250,000 or otherwise force them into applying for the Producers program, with the difficulty being there that this program has approximately half the funding available of the Broadcast program; or, alternatively PEP, which is 20% or less (after deferred and in-kind is deducted).

Reducing the eligible budget level and minimum licence fees will also create greater output of product then the predicted 30-40 hours and create more opportunities for smaller independent producers if the broadcasters are allowed to reduce their licence fees. They will be able to create a greater diverse range of product from lower budget to blue chip product. Again, if the ABC and SBS are facing budget cuts (and probably the commercial free-to-air/cable broadcasters as well) then wouldn’t reducing the eligible licence fee encourage more hours of documentary product or at least maintain current levels? I think you will find that with reduced budgets and licence fees that commercial free-to-air, cable and ‘new player’ broadcasters will find the independent documentary sector much more attractive than they do currently.

And while it could be argued that the level of presale is much lower if there is a sales agent advance or international territory presales, this can be a difficult task especially since many sales agents now refuse to grant advances or international presales unless the documentary or series has significant “other territory” appeal (ie it is not a parochial Australian story).

1.2. Broadcast program allocations.

It states in the Draft guidelines, “45 per cent for projects to be broadcast on the ABC, 40 per cent for SBS projects and 15 per cent for other platforms”. As this stands it means that the lion’s share on the funding is specifically reserved for two broadcasters. The 15 percent for all others (and by that I assume “all others” means 7, 9, 10, Foxtel and any new players) is too small to make a concerted impression on these broadcasters to take independent documentary production seriously if they can’t get access to funds.

If we divide the $1.5 million available between just the three commercial free-to-air networks and Foxtel ”others”, this would equate to $375,000 each, while the ABC is allocated $4.5 million and SBS $4 million. This means that each commercial free-to-air broadcaster and Foxtel would only be able to make two $500,000 documentaries each before their funding allocation ran out [$500,000 budget – ($180,000 licence fee +$100,000 or 20% Offset + $50,000 State Agency) = $170,000 needed from Screen Australia] – but then the producer offset is never exactly 20% of the entire budget.

Arguments have been presented that state that commercial free-to-air and cable broadcasters don’t licence many documentaries from independent producers. However, perhaps this is because previously their access to Screen Australia funds has been similarly limited through allocations (currently 10% across the current programs). This gives very little leverage to a producer when dealing with these non-ABC/SBS broadcasters and doesn't factor in what could likely happen with other media organisations coming into the Australian market.

Recommendation:
Allocations need to be opened to a more competitive field. In other words, don't have allocations. Open up the entire fund to whoever can make the best deal with whatever broadcaster. At present the allocation significantly favours two organisations. This appears somewhat inequitable, anti-competitive and dual-monopolistic.

If it is a case that the commercial free-to-air and cable broadcasters don't want to be involved in the independent documentary sector, than the majority of the allocations will still end up, by default, going to the ABC and SBS anyway. However, it may also strongly encourage commercial free-to-air and cable broadcasters to invest in the independent documentary sector in a more determined way.

1.3. The exclusion of New Zealand pre-sale from eligibility for the Broadcast program.

As it states in the draft guidelines:
"The required local presale must not include:
• broadcast rights for New Zealand or another Rest of World territory".
While it is agreed that RoW should be included it can be argued that New Zealand shouldn't.

Excluding a New Zealand pre-sale from the Australian broadcast rights could be in breach of ANZCERTA and ASEAN agreements and any of the 80 government-to-government bilateral treaties covering trade between constituent partners. The Australia and New Zealand Closer Economic Relations Trade Agreement requires that New Zealand television programs are treated as Australian programs and vice versa (5). As a result, Australian television programs should be treated as being encapsulated in the same broadcast rights cluster as New Zealand.

Additionally, pre-sales from New Zealand are often very small and are also often bundled into rights deals given by cable and other broadcasters. There is also an increasing relationship between Australian and New Zealand producers as many of our documentary stories overlap with New Zealand's (ANZAC anyone?). As a result, the guidelines for the Broadcast program could be disqualifying projects for very little "back-end" benefit.

2. PRODUCER PROGRAM

2.1. Producer program: Shortlisting

According to the draft guidelines an eligible application for the Producer program will be considered for shortlisting against the following criteria:
"• Track record and capacity of the creative team
• Creative strength of the project, including: - the concept/idea: its distinctiveness, clarity of objectives, - the proposed realisation: level of boldness or innovation - the project's cultural significance and ability to endure beyond the first viewing".

The first point is always a difficult argument which, especially for less experienced practitioners runs along the line "How do I get a track record when no-one will fund me, therefore I can't get funding because I don't have a track record". However, I agree that there needs to be some benchmark involved in this process.

However, the second condition does create some issues. This is because the criteria for success appears to be somewhat arbitrary. How do you evaluate “Boldness”, “innovation” or “cultural significance”? Against what benchmarks? These terms are all too open to individual interpretation. Something “bold” for one assessor could be not bold at all to another. ”Endure beyond the first viewing” also is subjective. How can that be gauged apart from personal opinion?

While we do work in a creative field and these criteria cannot be based on empirical evidence (or can they?) they currently appear far too difficult to be able to be evaluated with any benchmarking beyond the opinion of the assessor. Therefore, we become captive to the individual subjective beliefs of each assessor. Which then could lead to possible claims of personal bias or favouritism in their evaluations. This stage in the application is not based on a comprehensive objective process but on the subjective interpretation of these terms by individual assessors.

Additionally, the guidelines do not state what happens if projects do not get through the first stage of application. Is that the end of the application process for good? Or are applicants allowed more than one chance? Will feedback be supplied to allow applications to be changed and applied for a second time?

Recommendation:

Benchmarking needs to be an absolute. When you create benchmarking, criteria decisions can be justified without the individual assessors input being solely based on “their professional opinion”, because that is what these assessments will come down to – “opinion” - regardless whether it is professional or personal. Benchmarking will give clear and precise evaluation of the project away from the realm of the subjective and will lessen any conflict due to applicants perceptions of bias. Benchmarking is obvious in stage 2 of the Application, but much less so in Stage 1.

Clear instruction needs to be apparent for projects that are not successful in the first round of application.

3. POST-PRODUCTION FUNDING

In the current Screen Australia guidelines for funding there is a section for "Post-Production" funding. This appears to have been removed in the Second Draft guidelines.

Sometimes commissioning editors or broadcasters will refuse a project because of doubts in the content or the filmmakers themselves. However, once the project has been shot and a rough edit done the worth of the project can become obvious. This is the stage where a pre-sale can occur. The good thing from a funding point of view for a Screen Agency is that they do not have to invest in the whole production process of the film. The film, therefore, does not end up being as heavy a demand on Screen Agency funds as one funded from pre-production.

Secondly, this is often a good route for less experienced filmmakers to get their films broadcast, because commissioning editors are able to accept the risk inherent in the program at a later stage because most of it has already been produced. It also allows the less experienced to gain necessary screen credits thereby alleviating the issue of how less experienced filmmakers become experienced and therefore, eligible for further Screen Australia programs.

The PEP amount may also not be enough to cover the increasing costs of post-production at 20%, considering post-production of a documentary can be time-consuming and often be longer than actual production. Often costs of post can be as high as 30-50% of budgets. This could especially affect documentaries that had some or significant parts of their production stage made up of deferred or in-kind support, which is what often happens with non-commissioned projects. So, in fact, the 20% of

PEP could actually end really being 5-10% of the entire budget and not enough to complete post-production.

RECOMMENDATION

A Post-Production element needs to be re-included into the Draft Guidelines.

SUMMARY

While it appears that there is much to admire in the Second draft of the guidelines, there does need to be some attention to the issues above to make both the Producer program and the Broadcast program to be as fair and equitable between the major documentary production companies and the smaller companies and individual producers. Additionally, these recommendations will lead to less possible assertions of bias while restoring some elements of the current funding guidelines that were supporting production at different levels and different stages of production.

Dr Daryl J. Sparkes

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