

FILMS CO-PRODUCTION AGREEMENT

BETWEEN THE GOVERNMENT OF AUSTRALIA

AND THE GOVERNMENT OF CANADA

The Government of Australia and the Government of Canada ("the Contracting Parties");

CONSIDERING that the film industries of their two countries will benefit from closer mutual co-operation in the production of films; and

CONSIDERING that films capable of enhancing the prestige of the film industries and of the two countries should benefit from the provisions of this Agreement;

HAVE agreed as follows:-

ARTICLE 1

For the purposes of this Agreement:

(1) (a) a "co-production film" shall be:

- i) a film made by one or more Australian producers ("the Australian co-producer") in conjunction with one or more Canadian producers ("the Canadian co-producer"); or
- ii) a film made by an Australian co-producer and a Canadian co-producer in conjunction with a producer of another country with which Australia or Canada has signed a co-production Treaty ("third co-producer");

and in either case the film shall be made in accordance with the terms of an approval as a Co-production Film given by the competent authorities jointly;

(b) "film" means any sequence of visual images, irrespective of length or format, including animation and documentaries, produced either on film, video tape or videodisc, for distribution in theatres, on television, video-cassette, videodisc or any other form of distribution.

(2) "nationals" means:

(a) in relation to Australia, Australian citizens;

(b) in relation to Canada, Canadian citizens.

(3) "residents" means:

(a) in relation to Australia, persons who are not Australian citizens but are permanent residents;

(b) in relation to Canada, permanent residents of Canada.

(4) "competent authorities" means the authorities respectively designated as such by the Government of Australia and the Government of Canada.

ARTICLE 2

A co-production film shall be entitled to the full enjoyment of all the benefits which are or may be accorded in Australia and Canada respectively to national films subject to the laws in force from time to time in that country.

ARTICLE 3

In approving films under this Agreement, the competent authorities, acting jointly, shall apply the rules set out in the Annex, which forms an integral part of this Agreement.

ARTICLE 4

Each of the Contracting Parties shall provide, in accordance with national legislation, temporary admission, free of import duties and taxes, of cinematographic equipment for the making of co-production films.

ARTICLE 5

Each of the Contracting Parties shall permit the nationals and residents of the other country and citizens of the country of the third co-producer to enter and remain in Australia or Canada as the case may be, for the purpose of making or exploiting a co-production film, subject to the requirement that they comply with the laws and regulations relating to entry and residence.

ARTICLE 6

There shall be a Mixed Commission equally composed of representatives of the Contracting Parties to supervise and review the working of this Agreement and to make any proposals considered necessary for any modification of this Agreement. Its meetings shall be held alternately in Australia and in Canada. The Commission shall meet eighteen months after the date of signing this Agreement, and thereafter within six months of a request to meet being made by either Contracting Party.

ARTICLE 7

Each of the Contracting Parties shall notify the other of the completion of any procedure required by its laws for giving effect to this Agreement, which shall enter into force from the date of receipt of the later of these notifications.

ARTICLE 8

This Agreement shall remain in force initially for a period of three years from the date of its entry into force. Either Contracting Party wishing to terminate it shall give written notice to terminate to the other six months before the end of that period and the Agreement shall then terminate at the end of the three years. If no such notice is given the Agreement shall automatically remain in force for successive periods each of three years, unless written notice to terminate is given by either Contracting Party at least six months before the end of any period of three years, in which case it shall terminate at the end of that period.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective governments,
have signed this Agreement.

DONE at Canberra in duplicate in English and French, each version being equally authentic this

THIRD day of JULY 1990.

For the Government of Australia: For the Government of Canada:

ANNEX

- (1) The competent authorities shall consult to enable them to ensure that a project conforms with the provisions of this Agreement. Each competent authority, in deciding whether to grant or refuse an application, shall apply its own policies and guidelines. When approving a project for a co-production film, each may stipulate conditions of approval framed in order to achieve the general aims and objects of the Agreement. In the event of a disagreement between the competent authorities about the giving of such an approval or the inclusion of such a condition the project concerned shall not be approved under this Agreement.
- (2) The contract or contracts governing the making of the co-production film shall provide that a co-producer may assign or dispose of the benefits referred to in Article 2 of the Agreement only to an individual who is a national or resident of that co-producer's country or to a company or partnership which is resident in that country.
- (3) The competent authorities shall satisfy themselves that conditions of work in the making of co-production films under this Agreement in each of the countries of the participating co-producers are in broad terms comparable. In the event that location shooting of the film takes place in a country other than that of a co-producer, conditions shall be, in broad terms, no less favourable.

- (4) (a) The Australian co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled if that producer were the only producer, in order for the production to be eligible as an Australian film.
- (b) The Canadian co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled if that producer were the only producer, in order for the production to be eligible as a Canadian film.
- (c) Any third co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled to produce a film under the terms of the co-production treaty in force between that co-producer's country and either Australia or Canada.
- (d) None of the co-producers shall be linked by common management, ownership or control, save to the extent that it is inherent in the making of the co-production film itself
- (5) Co-production films shall be made and processed in their entirety up to the creation of the answer print in Australia and/or Canada and/or where there is a third co-producer, in that co-producer's country (and dubbing may be carried out in Australia and/or in Canada and/or, where there is a third co-producer, in that co-producer's country). The majority of this work shall normally be carried out in the country of the co-producer which has the major financial participation. The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers.

(6) Individuals participating in the making of co-production films shall be nationals or residents of Australia, Canada, or, where there is a third co-producer, citizens of that co-producer's country. In exceptional circumstances, where script or financing dictates but subject always to the approval of the competent authorities, internationally recognised performers from other countries may be engaged. The engagement of such performers shall be restricted and, as a general rule, performers from the participating co-production countries shall be engaged in the production.

Where the competent authorities have approved location filming in a country other than that of the participating co-producers, citizens of that country may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.

(7) The performing, technical and craft contribution of each co-producer to a co-production film shall be in reasonable proportion to each of the co-producer's financial participation.

(8) In any event, each co-producer shall have a financial and creative contribution of not less than thirty per cent (30%) of the total financial and creative contribution for the co-production film.

(9) Any music specially composed for a co-production film shall, subject to any departure from this rule which is approved by the competent authorities, be composed by nationals or residents of Australia or Canada, or, where there is a third co-producer, by citizens of that co-producer's country.

(10) At least ninety per cent (90%) of the footage included in a co-production film shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot for that film.

(11) The contracts between the co-producers shall:

(a) provide that a sufficient number of copies of the final protection and reproduction material used in the production be made for all the co-producers. Each co-producer shall be the owner of a copy of the protection and reproduction material and shall be entitled to use it to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with the conditions agreed upon between the co-producers;

(b) set out the financial liability of each co-producer for costs incurred:

(i) in preparing a project which is refused conditional approval as a co-production film by the competent authorities;

- (ii) in making a film which has been given such conditional approval and fails to comply with the conditions of such approval; or
 - (iii) in making an approved co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
- (c) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the film, including those from export markets;
- (d) specify the dates by which their respective contributions to the production of that film shall have been completed;
- (e) provide for the sharing of the copyright.
- (12) Each co-production film shall include either a separate credit title indicating that the film is either an "Australian-Canadian co-production", or a "Canadian-Australian co-production", or where relevant, a credit which reflects the participation of Canada, Australia and the country of the third co-producer.
- (13) A film made in accordance with an approval by the competent authorities under this Agreement but completed after the termination of this Agreement shall be treated as a co-production film and its co-producers shall accordingly be entitled to all the benefits of this Agreement.

14) Over each period of three years commencing on the date that this Agreement enters into force, an overriding aim of the Agreement, monitored by the Mixed Commission and the competent authorities, shall be to ensure that an overall balance is achieved as regards:

(a) the contributions of each country to the production costs of all films;

(b) the usage of studios and laboratories;

(c) the employment of all creative, craft and technical personnel, measured on a straight head count basis; and

(d) the participation in each of the major creative craft and technical categories and in particular, that of the writer, director and lead cast.

(15) Either competent authority may withhold approval of a project as a co-production film on the basis that the overriding aim of overall balance referred to in paragraph (14) would be prejudiced by such an approval.

(16) The approval of a project for a co-production film by the competent authorities shall not bind the relevant authorities in either country to permit the public exhibition of the resulting film.

(17) The provisions of this Annex may from time to time be amended by the mutual consent in writing of the competent authorities, after consultation with the Mixed Commission, provided that those amendments do not conflict with Articles 1 to 8 inclusive of the Agreement.