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Screen Australia
Level 4, 150 William Street
Woolloomooloo NSW 2011

By email: terms@screenaustralia.gov.au

Dear Sir/Madam

SCREEN AUSTRALIA: DRAFT TERMS OF TRADE

Free TV Australia welcomes the opportunity to comment on Screen Australia's draft Terms of Trade.

Screen Australia provides an important source of funding for the Australian production industry and any measures which it introduces (including by way of its Production Guidelines and Terms of Trade) have a significant impact on the way the industry operates.

General eligibility for Screen Australia funding

Free TV has concerns and is seeking clarification regarding several of the conditions for eligibility for Screen Australia funding.

Under the draft Terms of Trade, Screen Australia requires applicants to have substantial creative control of the project. However it is not clear what this encompasses. Productions are collaborative endeavours which seek to satisfy the creative and commercial objectives for all stakeholders (including producers, Australian broadcasters and distributors). Broadcasters and distributors need to maintain an effective and meaningful level of involvement in the creative direction of a project to ensure that a producer delivers what is required for a broadcaster's audience and what will sell in the marketplace.

The draft Terms of Trade would also require that a project be independent of broadcasters. Again, we seek clarification as to what this will mean in practice.

Television productions are by their nature dependent on broadcasters – the productions are made for broadcast and for successful broadcast. Indeed, a significant Australian broadcast pre-sale is a prerequisite for Screen Australia funding. Broadcasters must be involved in the production process to ensure that product delivered will work for their audiences. Productions can simply not be made independently of broadcasters and in many instances a project's initial conception and development (both financial and creative) comes from broadcasters.

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Production financing: Recoupment

Free TV Australia has concerns regarding Screen Australia's proposed production financing model and in particular its treatment of equity and recoupment in the context of the Producer Offset.

Free TV supports the view that independent producers should retain an "equity share" in their productions – our concern relates to the interpretation of "equity share".

Based on the draft Terms of Trade, we understand Screen Australia's position to be that:

1. Independent producers should be entitled to a priority corridor to access project revenues before other, at-risk investors have recouped their investments. This priority corridor is to reflect the value of the Producer Offset provided by government and should be at least 35%.
2. Independent producers should be entitled to at least 50% of net profits from a project.

While the drafting of the proposed Terms of Trade suggest that this is only Screen Australia's preferred position, the experience of broadcasters to date has been that such Terms of Trade are effectively non-negotiable.

Investors will be, (and have already been) discouraged from investing in projects where producers have pressed for a priority share of project revenues (on the basis of the Producer Offset alone) before investors who have contributed at-risk investment have been able to recoup their at-risk investment.

Further, while we agree that producers should be entitled to net profits from a project, Screen Australia's requirement that producers receive 50% of such net projects is inflexible and does not allow proper assessment of the value brought to a project by all stakeholders. Prescribing how revenues are divided does not take into account the complexity of commissioning deals and the related rights negotiations. An appropriate division of revenues will also depend on how other rights in the program have been divided. Revenue share, broadcast rights, online rights etc, are all negotiable as between the producer and the broadcaster. The position agreed in respect to one will affect what is a reasonable position in respect to another.

Such inflexible, prescriptive rules giving independent producers automatic entitlements discourages private investment and would therefore undermine Screen Australia's objectives of encouraging private investment in the Australian Production industry.

These effects would be exacerbated by the fact that, for many projects, the quantum of Screen Australia investment is small relative to the cost of a project.

Free TV suggests that if Screen Australia were to adopt the investment structure outlined above, its application should be limited to Screen Australia's own investment share in a project and should not be imposed on all other investors.

Productions and projects are not standard businesses or products and do not lend themselves to prescriptive and restrictive rules. We would welcome final Terms of Trade and the application

of such Terms of Trade in a manner that encourages private investment in the Australian production industry to the benefit of all.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Julie Flynn', with a long, sweeping horizontal line extending to the right.

Julie Flynn
CEO
Free TV Australia