

WITHOUT PREJUDICE TO FURTHER SPAA RESPONSES ON THESE ISSUES

SPAA SUBMISSION

SCREEN AUSTRALIA GUIDELINES

AND

TERMS OF TRADE

19 DECEMBER 2008

SPAA broadly endorses the guidelines, in particular the streamlining of programs into less categories, and the intention to adopt a quicker turnaround time for funding decisions.

SPAA has had significant feedback on many aspects of the guidelines and terms of trade, and outlines its positions below. In general, SPAA feels that the terms of trade in their present form need much further discussion. It seems that Screen Australia, in the approval clauses in particular, is still taking the position of a majority investor, which is unlikely to be the case for the majority of projects funded. Many members have expressed concern about this aspect of the terms of trade, and feel that the opportunity for procedural change within the organisation has been missed. In SPAA's view much in these terms of trade guidelines still reflect the old FFC guidelines, the old FFC corporate culture, and in some cases, back-pedal on progress made during the past six years. Most importantly, the terms of trade seem specifically for feature film. Television drama producers, documentary producers, and children's television producers have all expressed concerns on this point.

Here follow the main points and questions at issue:

DEVELOPMENT GUIDELINES

Page 8 Eligibility.

- Define 'outstanding commercial success' – in relation to budget/box office returns, or above a certain figure, how would these definitions be arrived at?
- The requirement for 'primetime broadcast credits' should be amended to include children's producers, who by definition do not enjoy prime time exposure.

- A general point with regard to C and P television projects; the assessment of whether these types of program conform to the Australian children’s classification guidelines and the content standard will already have been undertaken by ACMA. SPAA would question whether there needs to be a double assessment procedure. Similarly for co-production, a point which was made in SPAA’s earlier submission.

Page 8. Executive Producer attachment and owners of rights.

This stipulation is tantamount to Screen Australia admitting that experienced Executive Producers are attached for purely pragmatic and cosmetic reasons to get through the guidelines. It calls into question exactly what Screen Australia imagines is the role of an EP, and doesn’t inspire much confidence in the process of EP attachment. What possible incentive is there for EP’s to be attached if there is no residual interest in a project? What happens if an EP has an idea and decides to let other producers run with it?

Page 14 Talent Escalator – first paragraph, excise the word ‘and’.

PRODUCTION FINANCING

Many of the comments in this section are also reflected in the terms of trade comments below:

Page 5 Budget Notes

‘the cost of production, both above and below the line’ should reflect the level of recoupment that the project can reasonably expect to earn. In which case, very little would get made on the basis of expectations versus reality – 10 FFC films over the last 20 years have made profit. This was in the FFC guidelines and has always been an obtuse sentence, and should be removed. This inclusion is worrying in that there seems to be no fundamental change in Screen Australia’s attitude, or an accommodation of the past and current realities of the Australian industry.

Page 5 Budget Notes

“Screen Australia reserves the right to look at the whole package ... including cast fees ..etc”. Budget, target audience, cast, fees, all in the same sentence – what is left for the producer to do? This is onerous, and once again, is more of a majority investor ‘studio’ position.

Page 7, Animation

SPAA would question whether any productive 15 minute animation can be made for \$120K.

Page 11, Documentary Production

Screen Australia needs to clarify its attitude towards ‘off-budget’ percentage of PO for documentary – earlier this year, they conceded that this was inappropriate, but it’s crept back in.

Page 12, Domestic Program.

How has Screen Australia arrived at these cap figures for the future? SPAA has been asking for the domestic broadcaster to pay 50% of the domestic licence fee since before the PO was introduced. It’s as if there’s a cap on the types and scope of domestic docs that can be produced with these figures.

Page 12, International Program.

Why would Screen Australia be prepared to accept a lesser domestic broadcaster fee under any circumstances? SPAA is trying to RAISE the level of broadcaster licence fees. In our last submission, we asked that Screen Australia support SPAA raising the minimum licence fee from \$110,000, which hasn’t changed in seven years.

TERMS OF TRADE

General comment: these terms of trade provisions appear to have been lifted wholesale from the old FFC guidelines and do not reflect Screen Australia’s position as a minority investor for the future, and are generally onerous, particularly in the area of approvals.

If the producer and other investors brought in by the producer have a larger percentage of the equity (particularly if producers are to keep 35%), Screen Australia are inevitably going to be a minor investor, so why should they have controlling approvals? These guidelines are also almost exclusively confined to film.

SPAA welcomes the return of Screenrights to producers. Income from stock footage should be treated in the same manner. Producers should be able to retain any returns from stock footage. They should be excluded from gross receipts in the PIA. Producers should be able to retain safety copies of their own material and market/exploit their rights accordingly.

SPECIFIC POINTS

Page 3 and 4 - 1.6 A holistic evaluation of cultural merit? Meaning? Criteria applied? Or, say what ISN’T of cultural merit.

Page 8, 3.5, 3.6, 3.7 Rights. Screen Australia has back-pedalled on the notion of holding copyright for 7 years. Some state agencies have adopted this policy, as did the AFC before the merger. Why can't Screen Australia? This is fundamentally about producers building wholly owned assets, and is part of the PO push to develop sustainable businesses. SPAA is seeking a legal opinion on whether it is necessary for Screen Australia to hold copyright. A similar issue was raised in the past with Film Australia's insistence on maintaining 100% copyright ownership in order to administer the NIP. The Attorney-General's office at that time advised SPAA that this was not the case and that it was not a condition of their contract with Government.

Page 8, 3.7 National Documentary Program – “exploit the production for educational and learning purposes” – what capacity will Screen Australia have to do non-theatrical distribution? SPAA assumes that any revenue derived from this will come back to the producer as per Screenrights. “Screen Australia requires the right to make up to 10 minutes of the production available to other documentary filmmakers ...” 10 minutes per film? Surely this is a misinterpretation of the old Film Australia guidelines that stipulated 10 minutes in total of archival footage from their entire library could be used in any one program?

Page 9. 3.7 The remake and sequel pricing between 2% of the production budget and \$5000 per episode, etc, seems out of kilter and the 2% needs to be capped. What is the rationale for increasing the fee from the first series to next series? Why should these calculations be on the production budget and not on the QAPE-able budget? What is the difference between the blanket ‘television drama’ in the first genre definition, and ‘adult television’ in the second genre definition? Why not make the second genre definition all television? Distinctions should be made between half hours and hours.

Page 9 3.12 Subordination. In the last 5 or 6 years, the FFC did subordinate its investment. SPAA would argue this should be on a case-by-case basis, once again, there will be investors in front of Screen Australia – there will be cases where producers and minor investors will have to take a back seat.

Page 10, 3.13 Recoupment entitlements. We are assuming that this clause specifically relates to feature film. Screen Australia must state this clearly. If not, TV and doc producers will be delighted.

Page 10, 3.17 SPAA has called upon the Government to look at cash flowing the Producer Offset with a loan facility through Screen Australia. If there has been recent communication on this issue with Government, SPAA would appreciate Screen Australia's advice.

Page 11, 3.20 Once again, this approval seems to be specifically film related and once again a hang back to majority investment. It could be that a sales agent could also be an equity investor and also have approvals that are market place driven. Why should Screen Australia insist that payment be on delivery? It is common for sales agents and distributors to pay last instalments of distribution advances, guarantees and licence fees 12 months AFTER delivery.

Page 11, 3.21 This clause seems to be pushing against the stated aims of enterprise/distribution. What happens if Madman and Hopscotch are simultaneously producer and distributor. Screen Australia should at least set a common ceiling. There may well be instances where producers take back rights, re-exploit them together with a sales agent and take a cut of the commission – what business is that of Screen Australia? Also, if the producer has distribution expertise and has pulled the funding together, why shouldn't they sell? Where a producer acts as a distributor under any circumstances, there should be a commission entitlement.

Page 11, 3.23 Completion guarantees. Documentary producers should be able to use discretion on completion guarantors. There is a feeling among experienced documentary producers that bonding documentaries is a waste of money, particularly as there are documented instances where foreign broadcasters will not sign bond agreements.

Page 11, 3.24. **Important.** Firstly, the agreements are **SPAA-MEAA** agreements, and secondly, this clause is not consistent with the provisions of the Workplace Relations Act. Any producer is at liberty to enter into a separate Enterprise Bargaining Agreement with his/her crew and cast. SPAA is happy to advise Screen Australia about its own position as the registered industrial negotiator for the production industry vis-a-vis these agreements and its general advice to members.

Page 11, 3.25 If a producer wants to defer fees for whatever reason, they should be able to. This is an onerous imposition, and ironic, considering that in the past, producers have been encouraged to defer fees by the FFC for feature film.

SPAA would welcome the opportunity to discuss these points with Screen Australia in the near future.

19 December 2008