

Co-producing film and television

Jock Given explains Australia's international co-production scheme

Earlier this year, the Australian government entered into film and television co-production treaties with the UK and Canada. While the kind of arrangements are common in other countries, they are Australia's first such treaties and represent important milestones in the official co-production program established by the Australian Film Commission (AFC) in 1985.

The treaties provide a mechanism for Australian producers to collaborate creatively and financially with UK and Canadian colleagues on film and television projects while receiving some of the benefits available to local production in their respective countries.

History of the program

The official co-production program is a government-sanctioned scheme to encourage Australian producers who wish to produce film and television projects either in collaboration with foreign colleagues, where the storyline demands foreign creative participation, or where the budget demands substantial foreign equity.

It acknowledges that some of the stories which Australian program-makers wish to tell do not fit neatly into existing categories, that some are entirely set overseas, some require foreign casts, and others demand the insights of a native speaking director. The program allows film and program-makers to form partnerships with those from other countries to tell stories together, while recognising the difficulty of raising the whole budget for feature film, high quality television dramas and documentaries through sales in the Australian market alone.

An official co-production status allows an Australian producer to seek finance from the Australian Film Finance Corporation (AFFC) and the AFC and tax deductibility under Division 10BA of the Income Tax Assessment Act and gives rise to assistance with the temporary importation of personnel and equipment. Each of the projects is assessed for the purposes of the Australian Broadcasting Tribunal's quotas for Australian programs according to the same test as other programs.

In the early years of the program, the AFC entered into memoranda of understanding or administrative arrangements of less than treaty status with the Centre Nationale de la Cinematographie (France),

the Corporation for Public Broadcasting (US), the New Zealand Film Commission, Channel 4 and the BBC (UK) and the Bundesamt für Wirtschaft (West Germany). These agreements were based upon a November 1985 accord between the AFC and industry unions and associations. Such arrangements allowed five mini-series and seven feature films to proceed as official co-productions with another three feature films currently being formally considered. This represents around \$100 million in combined production costs.

These agreements limited potential partnerships, however, to the participating organisations and to the AFC. By contrast, the treaties provide access to all available co-producers in the respective countries, a familiar, understandable and continuing framework for producers, governments and authorities and a process which is enforceable through government to government treaty obligations.

The arrangements with France and New Zealand will continue until it seems appropriate for a treaty to replace them. Negotiations over a treaty are beginning with West Germany, Israel, Sweden, Italy and the Soviet Union.

Rules

The qualification rules for the program require an official international co-production to be made under the terms of either a treaty between Australia and another country or an arrangement of "less-than-treaty" status between appropriate authorities of those countries. Such projects are formally included in definitions of "Australian film" in the Income Tax Assessment Act (the Tax Act section 124ZAA(1)) and "Australian program" in the Australian Film Commission Act (section 3(1)).

The treaties and other less than treaty status agreements (memoranda of understanding) require a producer from each of the two countries. There also must be a balance between the Australian financial equity in the project and the Australian creative components (minimum 30% under the treaties, 40% under less-than-treaty arrangements). Creative equity is determined by combined schemes of a point system for key cast and crew and an equivalent percentage of other cast and crew, an equivalent percentage in the amount of money spent in Australia or on Australian elements within

the production budget.

In addition, both the UK treaty and less than treaty status arrangements require that an overall balance of elements between the respective countries be maintained across co-production over a period of time. It is therefore possible that a proposal, eligible under the conditions listed above, might not qualify if it contributes to an imbalance within a series of co-productions approved under a given treaty or arrangement.

Procedures

The procedure for obtaining official co-production status requires that the Australian co-producer apply to the AFC. The foreign co-producer must make a separate application to the equivalent foreign competent authority. The AFC makes a preliminary assessment of each proposed official co-production taking into consideration the recommendation of an Industry Advisory Panel consisting of representatives of various industry bodies such as Actors' Equity and the Screen Producers' Association of Australia. Consultation then takes place between the AFC and its equivalent foreign competent authority. Final approval cannot be given until both the AFC and the foreign competent authority have both approved the production as eligible.

Once the project is approved the AFC countersigns the producer's application to the Department of the Arts, Sport, the Environment, Tourism and Territories. The Department then issues the project with a provisional Division 10BA certificate provided it is satisfied that the project is a "qualifying Australia film" (ie feature film, telemovie, documentary or television mini-series). This certificate allows the producers to make application to the AFFC or to the AFC for financial assistance for the project, and/or private Australian investors in the production interested in obtaining tax benefits under Division 10BA once a final certificate for the film or program is obtained after its completion.

It should be noted, however, that approval as an official co-production does not guarantee financing from either the AFFC or the AFC. These bodies continue to apply existing policies in making investment decisions.

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