

CAMLA - Production Law Seminar - 21/6/18

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When a legal seminar commences with a sizzle reel for some of Australia's most popular screen productions, featuring couples meeting for the first time on their wedding day, and a group of complete strangers living out their very own 'Lord of the Flies', it's safe to say that you are in for a lively evening of discussion. That certainly proved to be the case at CAMLA's recent Production Law seminar, attended by a large and enthusiastic audience, and hosted by HWL Ebsworth on 21 June 2018.

Moderated by Felicity Harrison, Senior Business Affairs Manager from Matchbox Pictures, the seminar's panel featured the combined expertise of Scott Howard, Commercial Director at Endemol Shine Australia, John Butt, Head of Business and Legal Affairs at Endemol Shine Australia, Julia Pincus Senior Business Affairs Manager, ABC Business Affairs (Entertainment & Specialist), and Debra Richards Chief Executive Officer at Ausfilm.

Scott Howard was first to take the floor, drawing the room's attention to the significant contribution independent production makes to the national economy, with 2017 data indicating that the sector generated 1665 hours of program content, 22 500 jobs, \$M163 in export revenue and \$B1.2 in revenue overall.

Endemol Shine Australia is a significant player in that landscape, evolving as it did from the merging of Australian production companies Southern Star and Shine, prior to its merger with global powerhouse Endemol. The company's current slate is up to 95% unscripted content, and they hold significant expertise in reinventing formats to popular acclaim. Notably, reality cooking program Masterchef is a UK



format, however it is the Australian incarnation produced by Endemol Shine that provides the template for the production model globally. The company's achievements in producing content are only part of its skill set however; it is also very much a rights company, with format licensing and distribution a core part of its business.

Head of Business and Legal Affairs at Endemol Shine Australia, John Butt, was next to speak, highlighting that the bedrock of the company is most certainly its IP, and of course the creative talent that generates it. John also touched on the point that while program formats are certainly tradeable commodities, that is not to say that producing them in local markets is an exercise in cookie cutting, as the talent of local producers is critical to what eventually appears on screen.

John then provided an overview of the life cycle of a production and associated legal documentation, including the development phase with its focus on securing chain of title and rights acquisition,

the commissioning period and associated financing agreements, through to pre-production, production and post-production, and of course the distribution phase with its focus on sales and rights management. John also spoke of the duty of care that producers hold in relation to program participants. In addition to black letter law, he said good emotional intelligence and the capacity to manage personal relationships was equally relevant in-house.

The baton was then passed to Julia Pincus Senior Business Affairs Manager at the ABC, who informed the audience of the three broad realms into which the ABC is now divided, the first being News, Analysis and Investigations, the second Entertainment and Specialist, and the third Regional and Local. Ms Pincus agreed with the notion that lawyers in the production space must have a diverse skill set, with her role extending well into the terrain of project management.

Ms Pincus addressed the three core styles of programming deals

the ABC enters into: acquired content, in which a programming arrangement is licensed into; ABC internally produced content 100% owned by the ABC in most cases; and commissioned content, which is partially or fully funded by the ABC, in the form of a licensing and /or equity position.

Ms Pincus spoke to the way programming deals have evolved since the mass expansion of VOD services, with rights arrangements evolving from a limited number of broadcast runs with a 30 day online catch up, to a far more comprehensive online delivery component. Similarly, the converged media environment has impacted significantly on the traditional windows associated with FTA/ FVOD, Pay TV, DVD, SVOD, and TVOD, with greater pressure to reduce the holdback periods. She mentioned however that it would be inappropriate to see these changes as a rights grab by licensees, rather it is a case of simply keeping up with changing consumer viewing practice.

Clearly though, the ABC is doing a great deal right in terms of online delivery, with its iview platform performing very favourably in a crowded market, dominated by the behemoth which is Netflix. Tellingly, Ms Pincus finished with

the interesting point that reports of the death of broadcast TV may indeed be greatly exaggerated. The broadcast audience for its surprise Australian drama hit 'Mystery Road' swamped its online audience by a factor of ten.

Ausfilm Chief Executive Officer Debra Richards was next to take the floor. Ausfilm is a combined industry/ government organisation whose remit is to encourage international film productions to spend in Australia, thereby adding value to the local economy and building the industry generally. Its members are made up of the state and commonwealth film funding organisations, major studios located in Australia and major Australian post production houses. The organisation has a staff of five in Sydney, with another three officers based in Los Angeles. While major U.S. film production is conducted all around the world, the major decisions are still made in Los Angeles, so a presence in that city is vital.

Ms Richards spoke directly to the highly competitive nature of the film incentive business, with major U.S. studios often producing up to seven different budgets in accordance with the different incentives offered by countries around the world. Australia was one of the first countries to offer

an incentive program, with a 12.5% refundable tax offset in 2001, followed in 2007 with the Australian Screen Production Incentive Scheme which is now a 40% Producer Offset, a 30% Post, Visual and Digital Effects Offset (PDV), a 16.5% Location Offset, and a 20% Producer Offset for television. By 2009 however the Australian dollar was reaching above parity with the U.S., and with many other countries having introduced incentives Australia found itself in a very competitive playing field indeed. By way of example, with inclusion of its province based incentives, Canada currently offers an offset of 43.7%. The United Kingdom also offers extremely attractive incentives, with international production spend recently increasing in that territory by 400%.

Given U.S. footloose production is reportedly worth US\$B 4.6 annually, with Amazon further committing to spending US\$B 6 on original content, and Netflix committing to another US\$B 8, it is not surprising that territories around the world are looking for a piece of the action. Ms Richards spoke in glowing terms of Australia's capacity to attract those funds, citing our highly skilled and internationally recognised crews, competitive incentives, film friendly policies and excellent infrastructure.

Ms Richards also spoke to the significance of the Location Offset, given this rebate is available to foreign productions without having to satisfy Australian content requirements. While the standard Location Offset is only 16.5%, topping this up to 30% creates a very attractive proposition for international producers contemplating shooting in Australia. In July 2018, the federal government committed \$M 140 over four years to topping up the location offset for large scale international productions. Guidelines for this funding have been very recently released, and are available for review at the Australian Government's Grant Connect website.

