



Equity Section

Offshore Commercials Agreement Strike Ballot 2009



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What is this ballot about?

On June 23 the Screen Producers' Association of Australia (SPAA) terminated the Equity/SPAA Agreement that protects the pay and conditions of performers working on offshore television commercials (commercials produced in Australia for use overseas) without any warning or consultation. That termination will take effect from 7 August 2009.

This ballot is to decide whether Equity should call a strike of all performers on offshore television commercials (Offshore TVCs) on and from 7 August 2009.

National Performers Committee recommends you vote in favour of a strike.

What are Offshore Television Commercials?

Offshore TVCs are commercials which come from outside Australia (predominantly USA and Europe but also from Asia) to be made in Australia and are produced by Australian producers.

If Equity members decide on strike action will any other areas of work be affected?

No other work would be affected if a strike is called on offshore TVCs.

Specifically, commercials made for the *Australian* market, television programs, feature and all other offshore productions (for example feature film and television productions) would not be affected by a strike on offshore TVCs.

Why is this important for all performers?

Equity has agreements with producers for all aspects of performers' work. Whether it is theatre, film, television, opera, dance, television commercials, voiceovers, video games, webisodes etc Equity has an agreement.

If producers think they can walk away from this agreement then what is to stop them from walking away from agreements in any or indeed all the other areas?

If this were to occur there would be no minimum pay or conditions of employment for performers in this country. No standard contracts. We only need to look to New Zealand to see what this would look like.

How did we get to this position?

On 23 June the Screen Producers Association of Australia (SPAA) delivered a letter to Equity terminating the "Offshore Commercials Agreement" effective from Friday 7 August 2009.

The current Offshore Commercials Agreement was entered into between Equity and SPAA in 2005. It sets

the minimum rates of pay and use fees for release of commercials in different countries of the world, in different media and for different lengths of time.

Prior to this letter there had been no discussion between SPAA and Equity or between any of SPAA's members and Equity expressing concerns about the agreement or seeking amendments to the agreement. The letter came out of the blue.

What is the history of the Offshore Commercials Agreement?

In the late 1980s Equity introduced Offshore Agreements for offshore feature film productions (for example *The Matrix*) for offshore television productions (for example *The Pacific*) and for offshore television commercials.

The terms of all of these agreements were equivalent to those in the Screen Actors Guild Agreement.

These agreements were introduced to acknowledge the fact that the financing and distribution of a US production like *The Matrix* was completely different to the financing and distribution of an Australian film and the Australian agreements were not appropriate for use on such films.

Similarly, a TVC produced for worldwide release in multiple media for Coca-Cola is different in terms of budget and exploitation to a TVC produced in Australia for Coles.

While the Australian standard contract may be appropriate for a TVC to be released only in Australia it is not appropriate for TVCs produced for release primarily in the US market or for worldwide exploitation.

In the early 1990s SPAA asked Equity to move away from the insistence on SAG parity in TVCs. As a result, Equity and SPAA negotiated an agreement specifically for offshore TVCs produced in Australia.

That agreement has been adapted and modified from time to time.

Most recently the agreement was renegotiated in 2004/5. At that time SPAA also terminated the agreement but in that instance SPAA and Equity were negotiating for new terms to apply to this work.

What protections does the agreement provide?

The Offshore Commercials Agreement:

- Sets the minimum rates of pay for various categories of performers including Lead Performers in a TVC, non-talking (visual only) performers, featured extras and extras.

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- Sets the minimum use fees to be paid for release of commercials in free television, pay television, cinema, inflight use, industrial use (ie trade shows).
- Differentiates the fee to be paid based on the market into which the TVC is to be released (eg Worldwide, USA/Canada, Europe, UK etc).
- Requires that the performers voice may not be dubbed in the English language.
- Provides protection against the use of stills without the performers consent.
- Does not permit the use of the performers name to promote the product or service without the performers' consent.
- Provides 10% superannuation rather than 9% required by law.
- Provides minimum protections for auditions and use of audition material.
- Sets minimum standards for facilities to be provided to performers on set and location.
- Sets meal breaks and rest periods between work.
- Provides minimum entitlements if the producer requires the performer to travel for work (eg transport and accommodation).
- Sets safety standards.
- Obliges the producer to make payment if you are postponed or cancelled in certain circumstances.

A copy of the agreement is available at:
www.alliance.org.au/resources/download/offshore_commercials_agreement/

How have producers said they will contract performers after 7 August 2009?

In their letter to Equity the head of SPAA, Geoff Brown has advised that after the agreement is terminated:

"SPAA members will determine the conditions to be offered to employees..."

Why has SPAA done this?

SPAA is arguing that the agreement is a barrier to offshore TVCs being made in Australia.

SPAA has not said in what way they believe the agreement is a barrier or identified particular terms that are of concern.

Equity believes the most significant inhibitors to offshore commercials being made in Australia are:

- The ascent of the Australian dollar against the US dollar. It cannot be expected that the level of production will be the same when the Australian dollar is 0.50 to the US dollar as it is when the Australian dollar is at parity (as it was mid last year) or even at 0.80 as it is now.
- Increased competition from countries in Eastern Europe, South America and Southern Africa for this work. It cannot be expected that the level of work coming to Australia will be the same now that the number of countries competing for this work has grown exponentially.

Is it expensive to shoot commercials in Australia?

Not according to advertising executives.

In the Sydney Morning Herald as recently as 2 July 2009 Cannes Do: Aussie ads make a pitch for global stage the Chief Executive of BWM, Paul Williams, one of Australia's leading ad agencies, was quoted as follows:

"We have very clever talent down here and we know it costs five times as much for a major brand to make an ad with a US agency as it does in the UK. And in the UK they're paying up to three times more than in Australia."

On those figures the cost of shooting an ad in Australia is 6.67% of shooting the same ad in the US.

What choices do performers have at this time?

Unfortunately, SPAA has left Equity with few choices. SPAA has indicated it does not want to negotiate an agreement with Equity at this time.

Performers really have two choices only.

First, accept the SPAA position and agree to work, as SPAA says where:

"SPAA members will determine the conditions of to be offered to employees..."

In other words all work will be done as the producers say and solely on their terms.

The only other alternative is for performers to withhold their labour, in other words to strike. The intention of striking would be to:

- Encourage producers to talk to Equity in an endeavour to reach an agreement.
- Show producers that performers will not accept producers disrespecting performers rights.



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What happens if producers get what they want?

After 7 August 2009 if the producers get what they want then producers alone will write the rule book with respect to this area of work. But will it stop there?

If producers are successful in this endeavour what would stop them doing the same on feature films, television programs, theatre and indeed all other types of productions in which performers work.

It should be remembered Equity is due to commence negotiations with the very same producers body, SPAA, to renew the film agreement by the end of this year and with the live theatre producers (Live Performance Australia) in the same timeframe.

Australian performers have never sought to distinguish themselves because they were cheap. Australian performers have always sought to distinguish themselves because of the quality of their performance.

But we only need to look to New Zealand and see how our colleagues there are disadvantaged with no standard terms or minimum rates of pay or residuals on any productions to know how hard that can be.

How could we move forward?

Equity should seek to build a bridge back to producers and SPAA with a view to trying to reach an agreement with SPAA with respect to this work. We can either do this from a position of weakness or a position of strength. A strong vote in favour of strike action will put Equity in a strong position to talk with producers.

The more Equity performers who get behind the issue the better we will be placed to ensure a positive outcome.

What happens if we vote for strike action and an agreement is not reached?

If Equity members endorse strike action and no agreement is reached with SPAA then:

- Unless an agreement is reached between Equity and SPAA, performers will not be able to accept work on offshore TVCs which are to be produced after 7 August and to instruct your agents accordingly.
- Equity will be calling on performers to be involved in a campaign to ensure that performers rights are protected. This may include picket lines and protest action.

National Performers Committee has recommended strike action

Your elected National Performers Committee comprising: Patricia Amphlett, Robyn Arthur, Roy Billing, Paul Blackwell, Simon Burke, Carol Burns, Tina Bursill, Mitchell Butel, Caroline Craig, Monica Main, Chloe Dallimore, Helen Dallimore, Jack Finsterer, Alan Fletcher, Kym Ford, Patrick Frost, Corinne Grant, Stuart Halusz, Kevin Harrington, Abbe Holmes, Tony Llewellyn-Jones, Lorna Lesley, Jonathan Mill, Neil Pigot, Angela Punch-McGregor, Brooke Satchwell, Queenie Van de Zandt, Kerry Walker, Simon Whipp, has met considered the issues and unanimously endorses the strike action proposed and recommends members vote in favour of strike action in this ballot.

Want to know more?

The union will be holding information meetings around the country. Please keep an eye on the weekly email bulletin for details. If we don't have your current email address please advise the Alliance Membership Centre on members@alliance.org.au or by phoning 1300 65 65 13.

Want to get involved?

To be successful we will need performers to be actively involved in this campaign. If you would like to be involved please email suzanne.culph@alliance.org.au.

Questions?

If you have any questions or comments please contact the Alliance Information Desk on mail@alliance.org.au or call 1300 65 65 12