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Dear Ms Glenn,

UK Australia Co-production treaty

The Alliance welcomes the opportunity to comment upon the proposed UK *Parameters for determining whether a third country director or writer would be allowed under the UK/ Australia treaty "where script or financing dictates"*.

General Comments

The Alliance does not support the proposed amendments to allow a third country director or writer to work on a UK/Australia co-production. The Alliance is concerned that there remains no clear reasoning or examples as to why such changes are necessary. The Alliance has trouble with any proposal that potentially allows replacement of UK or Australian directors and writers on UK/Australian co-productions – practitioners that the treaty was designed to support. Further, the proposal would undermine the cultural object of federal government assistance to the industry since writers and directors (along with performers) provide key cultural inputs into a project.

As previously stated, if a non-Party Director and/or Writer were allowed to take part in a co-production there is a significant risk that Australian performers will be overlooked during the casting process by non-Party directors. This is because it is highly likely that they will be both unfamiliar with the breadth of talent in Australia and would potentially seek to use non-Party performers with which they are familiar as opposed to Australians.

Furthermore, the Alliance is concerned that the inclusion of a third party director will enable subject matter to be produced that bears no cultural relevance to Australia nor the UK. One of the key aims of the treaty is to "enable creative interchange" between the partner countries. By involving a third party Director this objective would potentially be undermined. Allowing non-Party writers and directors to be involved in official co-productions increases the likelihood of potential rorting by non-party productions seeking to massage projects to fall within the co-production guidelines.

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The Alliance takes the view that where there are strong reasons for a project to involve both Australian and the UK practitioners *and* use a high profile third party director or writer then the film would seek to base itself in Australia and the UK as an unofficial co-production.

The Alliance supports productions taking a greater international perspective involving citizens in key creative positions from multiple countries. However these should be with countries that Australia has co-production treaties with (and therefore should be recognised as a three way co-production) or these should be unofficial co-productions that do not necessarily draw upon the benefits that official co-production status bestows.

Specific comments regarding the proposal re: Directors

The UK is proposing to allow a third party director in the following circumstances:

If a director has been on board a project since its development, this would be a reason to allow them under the treaty. Their involvement would be subject to providing evidence such as a development deal to show their formal, creative involvement from an early stage.

The Alliance argues that if evidence is provided that demonstrates that the director has been on board from the beginning and through development then this is in fact evidence that the project was not intended to be a co-production between the UK and Australia. It is clear that such a project is attempting to gain access to the benefits of official co-production status which the program was not set up to include.

In the case of “*evidence of the Director’s pre-existing relationship with the writer*” the Alliance takes the view that the industry is essentially freelance in nature and directors and writers collaborate with different people all the time. The Alliance reiterates that the UK still have not provided any evidence that there have been or will be any projects that will fall down because of this issue.

With regards to the cases where financing dictates that a third party director be used, the Alliance takes the view that if a production’s financing is truly dependent on a non-party director’s ability to pull in financing then it would follow that it does not require taxpayer funding as well as it would presumably be of such a nature to be commercially viable without it. If it does require taxpayer funding then the third party director is not in actuality important enough to pull in additional financing, at least to the extent that a profile UK or Australian director could also pull in additional financing.

Furthermore the Alliance believes that if this clause is included the discretionary power of the co-production authorities would be, for all intents and purposes, removed. That is, a producer will be able to simply assert that a director (or writer) is required for financing reasons, deliver a letter from a compliant investor and the Authorities will not be in a position to question this, making any and every application a *fait accompli*. This will increase the risk that productions will seek to use non-Party directors and writers and therefore further impact upon the opportunities provided to

Australian and UK directors and writers.

Specific comments regarding the proposal re: Writers

The Alliance notes the AWG's submission and the two circumstances put forward in which they conceive that it could be appropriate to include a third party writer. These are:

- 1. Where a pre-existing script written by a non-Party national is picked up on the basis of its cultural relevance to the Party nations; or*
- 2. Where a script is written by a national of one of the treaty signatories and subsequently, prior to production, becomes a national of a non-Party country.*

In the case of the pre-existing work, in the case where it required adaptation or translation in order to make it culturally relevant, that adaptation or translation must, if possible, be carried out by a writer who is a national of one of the signatories.

The Alliance is concerned that point one and its subsequent clarification could lead potentially lead to rorting. The Alliance believes that if such an exception were implemented then a mechanism to ensure that the arrangement were genuine would be essential. At a minimum the Alliance would require that the Australian or UK writer demonstrate that they in fact were a bona fide writer, be experienced and have a resume that could be confirmed independently.

The Alliance supports the AWG's viewpoint with regards to the writer's role in financing, international reputation and box office success – that is, that writers are rarely if ever seen as a lynchpin to the financing a project. Again the assertion that this would be the case would have to be accepted on face value by the co-production authorities and agreement yet again a fait accompli, impacting negatively upon opportunities for Australian and UK writers and directors.

Yours sincerely



Simon Whipp
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