

SUBMISSION
BY
MEDIA ENTERTAINMENT AND ARTS ALLIANCE
TO
DEPARTMENT OF ENVIRONMENT, WATER, HERITAGE AND THE ARTS
REGARDING
PROPOSED BILATERAL FILM CO-PRODUCTION AGREEMENT
BETWEEN AUSTRALIA AND DENMARK

NOVEMBER 2008

The Media Entertainment and Arts Alliance

The Media Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media Entertainment and Arts Alliance understands that the Department of Environment, Water, Heritage and the Arts (DEWHA) has been asked to investigate the possibility of Australia negotiating a bilateral Film Co-production Treaty with Denmark.

The Alliance understands that the some representations have been to the Department suggesting that such a Treaty should be negotiated.

The Alliance is aware of only one such possible production, the New Holland Pictures Pty Limited M&M Productions A.S. co-venture *At Worlds End (Ved Verdens Ende)* currently in production. The Alliance understands that this production has now been granted conditional provisional certification by Screen Australia as an official Australian German film co-production. The Alliance also understands that had the production not been granted provision co-production certification the film would have proceeded in any event with the funding from the Producer Offset and state agency funding being replaced with financing from Europe.

In the early 1990s, Australia pursued an aggressive strategy to secure a number of co-production treaties and memoranda of understanding under Australia's International Co-production Program. A number did not eventuate, including those with the Ukraine, Russia and Japan. Others have resulted in little activity, such as the treaties with Italy and Israel, whereas the Treaties with the United Kingdom and Canada have resulted in a number of productions being realised that might not otherwise have been produced.

In 2007, co-production treaties were negotiated and subsequently signed with Singapore and China, the former now in force. A further treaty is being negotiated with South Africa, and treaties with India and Malaysia are under consideration.

Co-production treaties are resource intensive to negotiate and administer. The Alliance understands that in recent years applications to the then Australian Film Commission (AFC) for provisional certification for proposed co-productions increased dramatically and yet, despite the cost of assessing such applications, few have proceeded to production.

At the behest of the Department of Communications Information Technology and the Arts (DCITA), in January 2004, the AFC released its *Policy for entering new Film Co-production arrangements and the review of existing arrangements* in respect of the International Co-production Program. The Alliance believes it set out appropriate criteria for the selection of new co-production partners and identifies the resources required to negotiate treaties. It was approved and adopted by DCITA.

This year, that document has been reviewed by DEWHA and a new set of guidelines, *International Film Co-production Program: Guidelines for entering film co-production arrangements*, was approved by the Minister for the Environment Heritage and the Arts.

The Alliance considers the new guidelines compromise the principles that underpin co-production programs. Specifically, the new guidelines no longer see national treatment as central, and the need for reciprocal benefits is no longer an essential precondition. The tacit acknowledgment that working conditions in potential partner countries might not in future arrangements be comparable allows the program to facilitate shifting employment from Australia to lower wage countries to no demonstrable benefit to the development of an Australian industry.

As the Alliance has pointed out in other submissions, the preconditions of the earlier guidelines were not satisfied with respect to a treaty with China nor with the proposed treaties with South Africa and India.

For the first time in a very long time, a proposed treaty – the one proposed with Denmark – would meet the criteria set out in the 2004 guidelines other than in one regard.

The history of the industries in the two countries has much in common.

Film production started early in both countries and found ready audiences.

Despite the small size of its native market and its relatively limited resources, Denmark reigned supreme for several years (1909-14) as Europe's most prosperous film centre. Its films rivalled those of Hollywood, for popularity on the screens of Paris, London, Berlin and New York

Efraim Katz, *Film Encyclopedia*, 1998, Collins¹

The industry started earlier and lasted longer in Australia, but in both countries, feature film production increasingly suffered from international competition and the introduction and ensuing dominance of foreign distribution and exhibition companies squeezing out indigenous productions – from the time of World War I in the case of Denmark and from the middles of the 1920s in the case of Australia. Film production languished for decades in both countries until the introduction of government mechanisms to support local content.

The Danish Film Institute (Det Danske Filminstitut) was established in 1972 and is the authority through which government subsidy is provided for the film industry. In a merger in 1997, it absorbed the former National Film Board of Denmark, the Danish Film Museum and the Danish National Cultural Heritage Agency. The Media Council for Children and Young People was also established replacing the National Film Censorship Board, the agency responsible for censoring films and videos aimed at children and young people following the abolition of adult censorship in 1969.

According to the Council of Europe/ERICarts *Compendium of Cultural Policies and Trends in Europe*:

“The Danish Film Institute is responsible for promoting the art and culture of film in Denmark by granting financial support to film production and other initiatives. It supports the development of film as an art form and Danish film and cinema culture.

“Support granted to feature films is two-pronged: (1) the Consultant Scheme, which supports the development and production of films, based on an evaluation of the artistic merits of the individual project; and (2) the 60-40 scheme, which allows the Film Institute to grant subsidies of up to 60 per cent without the necessity of the foregoing consultancy. The Film Institute also supports short and documentary films that promote educational, artistic and cultural activities.”²

Like Australia, Denmark has a highly acclaimed film school. The alumni of the National Film School of Denmark include Gabriel Axel – whose *Babettes Goestebud* won the Oscar for Best Foreign Film in 1987 – and Bille August – who won the Oscar for Best Foreign Film the following year with *Pelle Erobreren*.

Although a smaller industry, with a population of 5.4 million compared with Australia's 21 million that is hardly surprising. However, like Australia, Denmark has often punched above its weight.

Arguably the best known Danish cinema is that spearheaded by the Dogme 95 Collective whose output eschewed big budget stunts and special effects, producing low budget films abiding by self-imposed “purity of cinema” principles – concentrating on performance and narrative, often using hand-held cameras. Internationally, Dogme's Lars von Trier is Denmark's highest profile director although possibly best known in Australia for *Dogville* which starred Nicole Kidman.

Lars von Trier's company Zentropa became the world's first mainstream company to produce what in many countries would be called hard core pornography. Aimed principally at women – sex with a narrative – films like *Constance*, *Pink Prison* and *All About Anna* have been hugely successful in Europe.

However, in the past five years a number of films with high profile directors have failed to find audiences and, mirroring what is happening in Australia, a change of leadership at the Danish Film Institute late last year has prompted the same kind of industry soul-searching currently underway here.

¹ Cited in Wikipedia, see online at http://en.wikipedia.org/wiki/Cinema_of_Denmark

² *Compendium of Cultural Policies and Trends in Europe*, 9th Edition, 2008, Council of Europe/ERICarts, see online at <http://www.culturalpolicies.net/web/index.php>

The television industry in Denmark started before the industry in Australia – in 1951 – with television broadcasting commencing five years later in Australia. In Denmark, unlike Australia, the early years of television were confined to public broadcasting and today the public broadcasters continue to capture a relatively high viewing share compared with other European countries. Today, the broadcast landscape is a mixed ecology of public and commercial broadcasters – local, regional and national, terrestrial, cable, satellite and internet based channels.

Must-carry rules apply that require all cable, satellite and IPTV operators to carry the Danish Broadcast Corporation channels and the state owned national TV2. They operate on a mixed system of access to licence fees and advertising. Public service obligations are imposed on the public broadcasters including in respect of Danish language programs, Danish culture, Danish news and current affairs, Danish drama and Danish children's programming. There are no specific quotas as such other than the need to comply with European Union directives regarding quotas for European programming. It appears that data is not consistently collected on the number of Danish produced programs that are broadcast. However, in 2005, Danish programs occupied 64% of overall transmission time on TV1, 60% on TV2 and 31% on TV Danmark – the latter not being a public broadcaster, it does not have the same local content obligations. TV2 is being privatised but will apparently still be required to honour local content obligations in respect to news and current affairs.³

Industry employment standards are not dissimilar to those in Australia with the exception that much of the industry works 40 hour weeks.

Thus Denmark does satisfy many of the preconditions usually considered essential to entering into a film co-production agreement.

The Alliance has not been able to establish how many official co-production treaties Denmark has signed. However, in addition to a formal treaty signed with Canada in 1995, it does have a number of co-producing arrangements with other countries. Certainly, foreign investment is important for film financing. Further, the Danish Film Institute is able to provide funding to a limited number of foreign language feature films and documentaries, presumably in co-ventures if not in official co-productions. It appears that the Danish Film Institute has jointly funded productions with agencies like Eurimage and the Nordic Film and Television Fund.

Thus what is at issue in considering whether Australia should contemplate an official film co-production treaty with Denmark is whether there is any interest on the part of the Danish government and whether there are any productions that could realistically only be produced were such a treaty to be negotiated.

The Alliance is not aware of any productions that would fall into this category and does not believe that the resources necessary to negotiate a treaty would be warranted in the circumstances. Demonstrable need should drive the negotiation of treaties rather than speculation. The extremely small amount of production that has been driven by some of the treaties currently in place should make that clear.

³ *Compendium of Cultural Policies and Trends in Europe*, 9th Edition, 2008, Council of Europe/ERICarts, see online at <http://www.culturalpolicies.net/web/index.php>