

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

NOVEMBER 2008

The Media Entertainment & Arts Alliance

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

Although the Alliance is not aware of any interest from Malaysian producers seeking to enter into co-productions with Australian producers, the Alliance understands that DEWHA was advised by the former Film Finance Corporation that a number of Australian animation producers – particularly those working in children’s animation – were interested in partnering with producers across Asia, including with producers in Malaysia.

It would appear that the reason for so doing is to access lower wage countries to minimise the costs of producing labour intensive productions. However, notwithstanding the fact that offshoring work to lower wage countries has never been and should never be an objective of Australia’s co-production program, an official co-production arrangement is not required to offshore work from Australia to Malaysia.

The Alliance does not believe that the industries in Australia and Malaysia are sufficiently comparable – other than in respect of government ambition to foster vibrant local industries – to warrant the resources required to negotiate a film co-production treaty.

While support mechanisms exist for the industry in Malaysia, they are structured very differently. Wages and conditions afforded to those working in the industry are far from comparable.

There is no evidence that Malaysian producers consider co-productions with Australia to be important to the development of their industry, let alone being a priority.

There has been next to no inbound drama production from Malaysia. The only drama of which the Alliance is aware was the television mini-series *36 Hours to Paradise* that filmed in Australia for one week, 8–13 September, in 1997.

The Alliance has not been able to establish that there are any productions – emanating from either Malaysia or Australia – that could not be produced in the absence of a treaty between the two countries.

On balance, the Alliance is of the view that the criteria set out in the *International Film Co-production Program: Guidelines for entering film co-production arrangements* have not been satisfied and without evidence that the absence of a treaty is preventing production from occurring there can be no basis on which to proceed to negotiating an arrangement with Malaysia.

Background to Malaysia's support for cultural industries

Malaysia's population of 27.5 million comprises a number of ethnic groups with Malays accounting for 53.3% of the population, Chinese 26.0%, Indigenous peoples 11.8%, Indians 7.7%, and others at 1.2%.¹ Collectively, ethnic Malays and other Indigenous peoples are known as "bumiputera". Malaysia's New Economic Policy (NEP), established in 1971, sought to eliminate poverty, end the identification of economic function with ethnicity and was specifically designed to enhance the economic standing of bumiputera. Rapid growth, especially through the 1990s prior to the 'Asian meltdown', made it possible to expand the share of the economy for bumiputera at no expense to other sectors of the community.

In 1991, when the NEP expired, it was replaced by the national Development Policy which broadly mirrored the goals of the NEP but without specific ethnic targets and timetables. In 2001, the Government released the National Vision Policy to guide development over the first decade of this century.² The focus on the bumiputera during the latter part of the 20th century is reflected in the broadcasting content standards mandating levels of local programs produced in Bahasa Melayu.

Although Malaysia is rapidly changing from a primary producing country overly reliant on two commodities – rubber and tin – to a diversified industrialised country producing, on the one hand, goods from agricultural materials and, on the other, electronics like semi-conductors and chips, the Government nonetheless actively fosters cultural cottage industries like batik design, songket weaving, pottery, and basket and mat weaving. The Government also fosters the maintenance of traditional songs, music and poetry.³

Following racial riots in May 1969, the Government introduced Rukunegara (Malaysian nationhood) in an attempt to articulate the philosophy that would underpin the nation. It was officially declared on 31 August 1970 in the hope it would strengthen national unity in a multicultural society. It declares that Malaysia is dedicated to "achieving a greater unity for all her peoples, maintaining a democratic way of life, creating a just society in which the wealth of the nation shall be equitably distributed, ensuring a liberal approach to her rich and diverse cultural traditions, and building a progressive society which shall be oriented to modern science and technology".⁴

Rukunegara is guided by five principles:

1. *Kepercayaan kepada Tuhan* (Belief in God)
2. *Kesetiaan kepada Raja dan Negara* (Loyalty to King and Country)
3. *Keluhuran Perlembagaan* (Supremacy of the Constitution)
4. *Kedaulatan Undang-undang* (Rule of Law)
5. *Kesopanan dan Kesusilaan* (Mutual Respect and Morality)⁵

Along with the NEP, the National Cultural Policy was formulated in 1971. It comprises three elements: place emphasis on cultural programs that enhance national identity, promote national integration and unity, and maintain racial harmony.

In 1996, Malaysia launched Vision 2020 which sets out the Government's ambitions to be a developed country by 2020, a strategy articulated by former Prime Minister Dr Mahathir Mohamad in the following terms: "Malaysia should not be developed only in the economic sense. It must be a nation that is fully developed along all the dimensions: economically, politically, socially, spiritually, psychologically and culturally. We must be fully developed in terms of national unity and social

¹ Source: *Background Note: Malaysia*, US Department of State, Bureau of East Asian and Pacific Affairs, January 2005, page 1, available online at www.state.gov/r/pa/ei/bgn/2777.htm

² Ibid, page 5.

³ Source: *Malaysia*, APRCCN – Cultural Policy and Law, see online at www.culturelink.or.kr

⁴ Source: *Rukunegara*, All Malaysia Info, see online at http://allmalaysia.info/msiaknow/malaysiana/symbols_rukunegara.asp

⁵ Ibid.

cohesion, in terms of our economy, in terms of social justice, political stability, system of government, quality of life, social and spiritual values, national pride and confidence.”⁶

According to Mahathir Mohamad, “Malaysia entered year 2000, the first year of the 21st century and third millennium, determined to achieve its objective of becoming a fully developed country by the year 2020.” He went on to say, “Some have wondered why 2020 and not some other year. As a doctor I am attracted to the optometrist measurement of vision; 2020 indicates 100 per cent good vision in both eyes. Our Vision 2020 for Malaysia implies this clear vision of where we want to go and what we want to be.”⁷

Vision 2020 is the blueprint for building a fully developed, knowledge-rich society “through the development of the ICT sector and the use of ICT to increase global competitiveness. The intent behind Malaysia’s Multimedia Super Corridor (MSC) has been to create a high-tech environment and infrastructure that can attract national and international investors and create spill-over effects in the rest of the Malaysian economy.”⁸ The MSC “is designed to create an ideal environment for ICT-related production as well as provide the backbone for an information superhighway. The network contains a high-speed link (10Gb/s network) that connects the MSC to Japan, ASEAN, the US and Europe”.⁹ The Demonstrator Application Grant Scheme provides funds for multimedia program development. In 1999, the contribution of the ICT sector to GNP was approximately 36.5%. The government provides a range of financial incentives including zero income tax for ten years, research and development grants and a 100% investment tax allowance on new investment in the MSC.

Malaysia is experiencing skilled labour shortages especially in ICT. Consequently, the Malaysian Government is investing in high quality comprehensive education. In March 1997, the Cabinet instructed Telekom Malaysia Berhad to set up the Multimedia University in Cyberjaya. It opened two years later. Established to become “a world class university that leads in learning and research within the broad sphere of multimedia and information technology”¹⁰ it offers degrees in multimedia covering film, animation and games. The Computer in Education (CIE) Program equipped schools with computers and trained teachers to conduct CIE. Computer Aided Design and Computer Aided Manufacturing were added to the curricula of secondary technical schools. The National Information Technology Agenda (NITA), launched in December 1996 by the National Information Technology Council, provides the framework for using ICT to transform Malaysia into a developed country. “The NITA vision is to use ICT to transform Malaysia, across all sector, into an information society, then a knowledge society, and finally a ‘values-based’ knowledge society.”¹¹

Financing of cultural activity

As is the case in Australia, all three levels of government – federal, state and local – participate in financing the promotion of Malaysia’s cultural industries.

At the federal level, financial commitment to the cultural industries has been in place ever since the first Five Year Development Plan of 1966-1970.

Malaysia seeks to foster private sector participation in the arts and provides tax deductions for those making cash contributions to the Ministry of Culture, Arts and Tourism to sponsor orchestral, theatrical and other cultural performances. “To increase the quality of cultural performances, artists such as writers, actors, dancers, singers, musicians, composers and lyricists participating in performances

⁶ *The Way Forward*, a speech presented by His Excellency YAB Dato’ Seri Dr Mahathir Mohamad at the Malaysian Business Council, available online at www.pmo.gov.my

⁷ *Malaysia on Track for 2020 Vision*, Mahathir Mohamad, available online at the United Nations Online Network in Public Administration and Finance, <http://unpan1.un.org>

⁸ *Creating a Development Dynamic, Final Report of the Digital Opportunity Initiative*, Accenture, Markle Foundation and United Nations Development Programme, July 2001, Appendix 3, available online at www.opt-init.org

⁹ Ibid.

¹⁰ Vision Statement, Multimedia University, see online at www.mmu.edu.my

¹¹ *Creating a Development Dynamic, Final Report of the Digital Opportunity Initiative*, Accenture, Markle Foundation and United Nations Development Programme, July 2001, Appendix 3, available online at www.opt-init.org

recognised as national culture are given tax exemption on the income so derived. Tax exemptions are also given to stage plays organised by local theatre companies.”¹²

Malaysians are encouraged to develop a deep respect for moral values and ethical behaviour, principles that underpin the Rakan Muda programs – youth friendship programs – designed to foster healthy lifestyles and to instill positive values. To encourage public involvement in cultural activities, the Culture Division of the Ministry of Culture, Arts and Tourism organises or sponsors activities like the Socio-Cultural Youth Camp “which is intended to create and develop a generation of cultural leadership who are creative and innovative in the field of culture and art.”¹³

Key film institutions

- **Filem Negara Malaysia** – established in 1946, it is the media arm of Government, producing documentaries, trailers and animated films and recording events of socio-cultural and historical importance.
- **National Film Development Corporation (FINAS)** – established under the Perbadanan Kemajuan Filem Nasional Malaysia Act, 1981 (Act 244) to promote, nurture and facilitate the development of the Malaysian film industry. Its functions include making recommendations to the Minister regarding policies, methods and measures to be adopted to nurture and support the local film industry; to stimulate the industry’s growth and to enhance standards including by way of the provision of research and advisory services; to regulate industry; and to promote the industry within Malaysia and internationally.
- **Radio and Television Malaysia (RTM)** – provides services through domestic and overseas broadcasts known as Voice of Malaysia. Its key objectives are “to explain and provide widespread and in-depth coverage on government policies and programmes so that they would be fully understood by the people; to stimulate interest and promote the way of thinking of the people in line with government policies and aspirations; to develop civic consciousness and promote the development of Malaysian arts and culture; and to provide suitable materials for general information, education and entertainment purposes.”¹⁴

Relevant legislation¹⁵

- Broadcasting Act 1988 (Act 338), Broadcasting (Amendment) Act, 1997 (Act A977)
- Radio Communications Regulation (Advertising) 1985
- Cinematography Film - Hire Duty Act 1965 (Revised 1990), (Act 434)
- Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 (Act 244), Perbadanan Kemajuan Filem Nasional Malaysia (Amendment) Act, 1984 (Act 589) (Malaysian National Film Development Corporation FINAS Act)
- Theatres & Places of Public Amusement (Federal Territory) Act 1988 (Act 182)
- Bernama Act, 1967 (Revised 1990), (Act 449)
- Entertainment Duty Act 1953 (Revised 1973) (Act 103)
- Copyright Act 1987; Copyright (Amendment) Act 1997
- Computer Crimes Act 1997
- Digital Signature Act 1998

¹² Source: *Malaysia*, APRCCN – Cultural Policy and Law, see online at www.culturelink.or.kr

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Sources: Lawyerment, The Malaysian Online Legal Resources, see www.lawyerment.com.my; Malaysia, APRCCN Cultural Policy and Law, www.culturelink.or.kr and Malaysia Culture and Information – Legislation, see online at www.kempen.gov.my.

The audiovisual industry in Malaysia

“Venerable Malaysian film critic Hamzah Hussin once crammed the historical origins of his country’s native cinema into the following nutshell: ‘The Malaysian film industry was founded on Chinese money, Indian imagination, and Malay labor.’”¹⁶

Screen Digest 2004 listed Malaysia as one of the top 20 countries by government production investment in feature films, coming in at number 18, ahead of Australia at 22. Nonetheless, the structure of assistance differs from that provided in Australia.

Feature film production in Malaysia has been increasing in recent years, from nine features in 1997 to 26 in 2003.

22 features were produced in 2004, 20 in 2005 and 28 in 2006.

The Alliance understands that FINAS is setting its policy parameters on the basis of building the industry to an annual output of 50 films.¹⁷

While production has been growing annually, when measured by the number of films produced, production budgets are heading in the opposite direction with the average production budget in 2007 below that of 2003, following a peak in 2004.

The data provided to the Australian High Commission by the FINAS Research and Development Unit and circulated by DEWHA shows the following:

Average Feature Film Budgets

Year	2003	2004	2005	2006	2007
RM	1,480,000	1,960,000	1,290,000	1,390,000	1,270,000
AUD	632,505	837,642	551,305	594,042	542,758

While the above are averages across the output for the year, the Alliance understands that at the upper end of the range a handful of films have been produced for as much as A\$2.5 million but the majority of productions are produced for well under \$500,000.¹⁸

As can be seen from the data for 2008, during that year all films for which information is available had production budgets between \$195,000 and A\$800,000. Gross revenue for films for which data is available ranged from A\$4,000 to A\$2,000,000, with all but two films grossing less than A\$1,000,000.

¹⁶ Cited in *Fleurs de Malaysia*, Chuck Stephens, San Francisco Bay Guardian Online, see at http://www.sfbg.com/39/29/cover_filmfest_malaysia.html

¹⁷ *The Global Film Industry*, David Hancock, prepared for the October 2007 UNI-MEI Conference

¹⁸ Ibid.

Malaysia Feature Film Screening in 2008

FILM TITLE	PRODUCTION COST	GENRE	SCREENING DATE	GROSS COLLECTION (RM)	NO OF CINEMAS
Jarum Halus		DRAMA	10/01/08	8,197 K	4
Kala Malam Bulan Mengambang	1.40 mil	HORROR / COMEDY	10/01/08	0.554 mil	38
Cuci	1.50 mil	COMEDY	24/01/08	2.043 mil	30
Dunia Baru The Movie	800 thousand	DRAMA	07/02/08	2.296 mil	33
Anak	1.00 mil	DRAMA	21/02/08	1.245 mil	33
Duyung	1.80 mil	ROMANCE	06/03/08	4.679 mil	56
Akhirat	1.215 mil	DRAMA	20/03/08	0.329 mil	47
Evolusi KL Drift	1.63 mil	ACTION	03/04/08	3.901 mil	42
Congkak	1.72 mil	HORROR	17/04/08	3.802 mil	50
Cinta U-Turn	1.50 mil	ROMANCE	01/05/08	1.124 mil	46
Apa Kata Hati?	1.40 mil	COMEDY	29/05/08	0.992 mil	39
Pensil	450 thousand	DRAMA	12/06/08	0.036 mil	29
Sepi	1.50 mil	DRAMA	26/06/08	0.844 mil	38
I'm Not Single		COMEDY/ROMANCE	24/07/08	1.391 mil	48
Susuk	1.23 mil	HORROR	07/08/08	2.066 mil	39
Kami The Movie		DRAMA	01/10/08	1.245 mil	41
Senario The Movie - Episod 1		COMEDY	01/10/08	4.259 mil	55
Tipu Kanan Tipu Kiri	1.87 mil	COMEDY	16/10/08	0.539 mil	46
Budak Kelantan		DRAMA	30/10/08	0.574 mil	30
Wayang		DRAMA	13/11/08		45
Selamat Pagi Cinta		DRAMA/ROMANCE	20/11/08		43
Antoo Fighter	1.38 mil	HORROR / COMEDY	27/11/08		55
Los & Faun	1.86 mil	COMEDY	04/12/08		53
Cicakman 2 - Planet Hitam		ACTION/COMEDY	11/12/08		60
Histeria		SERAM	18/12/08		43
Brainscan		FANTASI	25/12/08		56

Source: FINAS, see online at

<http://www.finas.gov.my/index.php?mod=industry&sub=cereka&p=Filem2008>

Note: Exchange rate as at 17 November 2008: MYR 1 = AUD .42530

Interestingly, the above statistics include no co-productions. Indeed, it seems co-productions are virtually unknown in Malaysia.

Apparently, FINAS showed some interest in co-productions in the context of the negotiations for the Australia Malaysia Free Trade Agreement but policy changes in 2005 subsequently led to FINAS concentrating on accessing overseas markets for Malaysian films, in particular Indonesia. Given the similarity of Bahasa Melayu to Bahasa Indonesia and given the population of Indonesia, this strategy is an obvious one.¹⁹

FINAS provides funding for short videos (less than 30 minutes) to a maximum of RM20,000 and for documentaries and animated programs (less than 60 minutes) to a maximum of RM50,000 under its Film Art and Multimedia Development Fund.²⁰

Under its Feature Film Loan Scheme, FINAS provides loans for feature films to a maximum of RM1.5 million or 90 per cent of the production budget whichever is the lower. Such loans attract four per cent interest per annum and must be repaid within 36 months of the date on which the film is given its Certificate of Censorship by the Film Censorship Board.²¹

In 2005 the Fiction Loan Scheme was introduced, providing a revolving fund of RM50 million as working capital for local producers. This facility is jointly administered by FINAS, the Ministry of Culture and the SME Bank.²²

According to the BBC, "Malaysia has some of the toughest censorship laws in the world. The authorities exert substantial control over the media and restrictions may be imposed in the name of national security.

"The government is keen to insulate the largely-Muslim population from what it considers harmful foreign influences on TV. News is subject to censorship, entertainment shows and music videos regularly fall foul of the censors, and scenes featuring swearing and kissing are routinely removed from TV programmes and films."²³

However, in the past four or five years the censors have been showing signs of being slightly more accommodating. According to filmmaker Saw Teong Hin, filmmakers are now able to present their case when they feel their work has been unjustly censored. Nonetheless, "It is a restrictive and arbitrary system that needs to be improved on."²⁴ In one concession made by the censors, filmmaker Amir Muhammad noted, "The horror genre was banned for 30 years when a regulation banning violence, horror and sex in movies was introduced. Horror movies came back to local screen last year [2004] with *Pontianak Harum Sundal Malam*, directed by Shuhaimi Baba, a woman director. It was a big hit."²⁵ (It was not quite so generously reviewed.)

There are no restrictions on importing English language films. However, strong censorship guidelines act to deter a number of titles achieving theatrical release in Malaysia that achieve distribution elsewhere.

Access to exhibition is a contentious issue for Malaysian producers.

¹⁹ *The Global Film Industry*, David Hancock, prepared for the October 2007 UNI-MEI Conference

²⁰ Film Art and Multimedia Development Fund, FINAS, see online at http://www.finas.gov.my/index.php?mod=dana&sub=pembangunan_seni

²¹ Feature Film Loan Scheme, FINAS, see online at <http://www.finas.gov.my/index.php?mod=dana&sub=pinjaman>

²² *The Global Film Industry*, David Hancock, prepared for the October 2007 UNI-MEI Conference

²³ *Country profile – Malaysia*, BBC, last updated 22 October 2008, see online at http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1304569.stm

²⁴ Saw Teong Hin, cited in *Local films stir interest abroad*, New Straits Times, 10 May 2005, available online at www.nst.com.my.

²⁵ Amir Muhammad, cited in *Local films stir interest abroad*, New Straits Times, 10 May 2005, available online at www.nst.com.my.

FINAS requires the mandatory screening of all films it certifies as Malaysian filmed in Bahasa Melayu. Syarat Wajib Tayang requires exhibitors to screen certified films for a minimum of seven consecutive days, after which time the exhibitor is able to make a commercial determination about whether to extend the season.²⁶ In 2005, this Compulsory Screening Regulation was amended to increase the minimum number of days to 14 consecutive days.²⁷ FINAS also determines the release dates for certified films in order to ensure that they are spread throughout the year and to avoid too many competing for audiences simultaneously.

Malaysian producers of FINAS certified productions benefit from the refund of entertainment duties levied by local and state governments – worth approximately RM2.97 million for the 22 films exhibited in 2005.²⁸

A Government entertainment tax of 25 per cent also applied to cinema tickets. Producers of certified Bahasa Melayu language feature films were able to benefit from a rebate from funds raised by the tax. For every Malaysian Ringgit cinema tax raised from the release of certified films, 25 per cent is retained by the Government and the balance is split 50 per cent to the exhibitor and 50 per cent to the producer.²⁹ However, it is unclear whether this tax remains in place.³⁰

Cinema admissions grew by 145 per cent off a low base in 2001 to 27.1 million in 2006 attributed to the growth in new screens. By 2006 screens totalled 287 of which 32 per cent were housed in multiplexes. Films from Hollywood, India and Hong Kong dominate the box office. It is estimated that “only 250,000 Malaysian people are active consumers of local movies, and these are concentrated in major urban areas.”³¹

Notwithstanding their small box office share, Government policy continues to be one of support for the development, production and marketing of local films.

As a condition for obtaining a license to operate, video rental establishments are required to have 30 per cent local content in their inventories.³²

The state owned Radio Television Malaysia (RTM) operates two television networks – TV1 and TV2. TV3, ntv7 and 8TV are commercial television networks.

The government sets local content quotas. “Eighty per cent of television programming is required to originate from local production companies owned by ethnic Malays (an increase from the previous limit of 60 per cent).”³³ However, it is understood that at present the increased quota has not been rigorously enforced where lack of compliance can be demonstrated to be attributable to a lack of local programming availability.

As with film, strict censorship mitigates against many overseas television programs being broadcast on television. Consequently, the combination of local content regulation and censorship ensures that Malaysian content dominates television. As in Australia, programming ranges over news and current affairs, children’s programs, light entertainment, variety, infotainment, soaps and drama. Reality television has taken hold as it has done around the world, including the local version of the ubiquitous franchise, *Malaysian Idol*.

²⁶ Sources: FINAS, see www.finas.gov.my and *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters’ Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians’ and Creators’ Conference, Bangkok, October 2004.

²⁷ *The Global Film Industry*, David Hancock, prepared for the October 2007 UNI-MEI Conference

²⁸ *Ibid.*

²⁹ *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters’ Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians’ and Creators’ Conference, Bangkok, October 2004.

³⁰ *The Global Film Industry*, David Hancock, prepared for the October 2007 UNI-MEI Conference

³¹ *Ibid.*

³² *2003 National Trade Estimate Report on Foreign Trade Barriers*, United States Trade Representative, page 269, available online at www.ustr.gov

³³ *Ibid.*

Unlike Australia, commercials are allowed on the public broadcasters. “Commercials are restricted to a maximum of 20 per cent foreign film content and only Malaysian actors may be used in commercials shown in Malaysia. The Government of Malaysia has an informal and vague guideline that commercials cannot ‘promote a foreign lifestyle.’”³⁴

According to Nielsen Media Research Malaysia, advertising expenditure in the sector during 2004 was RM4.4 billion (US\$1.16 billion) up 17% from 2003. The increase was in large part due to the launch of two new television stations – 8TV and the relaunched Channel 9 which subsequently fell over. However, industry commentators believe growth in the advertising sector will continue notwithstanding Channel 9 “temporarily” going off air, a mere 18 months after its relaunch.³⁵

As is the case in Australia, Malaysian production companies and postproduction houses have been looking offshore for work. Increasingly, companies are reporting reliance on offshore work for up to 50% of turnover. Many companies share views expressed by Justin Woon of Twisted Media about the need “to strike a fine balance between servicing the local and foreign markets. The foreign work will ultimately be more demanding and would require both greater resources and quality, so we have to ensure that we do not overburden ourselves and ultimately limit our availability to handle existing local clients.”³⁶

Lucrative markets for Malaysia are Indonesia, Thailand and, increasingly, China. Thailand, for instance, is said to be worth US\$500 million in advertising work. According to Nielsen Media Research figures, the advertising spend in 2004 across twelve Asia Pacific markets hit a record US\$62 billion. Securing cross border work has been particularly important for production houses that specialise in television commercials. Some companies report working with clients from the United States, Pakistan and Japan.

mfx’s Peter Coleman reports, “Our foreign market ranges from the Middle East, India, Africa through Southeast Asia and China. We have also been quoting for Australia and the US, as more people realise that distance is no longer a major issue, what with communication via the Internet being so efficient.”³⁷ By way of example, a Tusker Beer commercial was shot in Kenya, produced in Dubai, using an Australian director and director of photography, then edited and postproduced in Malaysia at mfx.³⁸

Not only are Malaysian companies seeking to augment domestic work with overseas work but, in the wake of two recessions during the 1990s, are also seeking to balance the kind of work they undertake. Rather than specialising, for instance, in television commercials production, they are increasingly seeking to work in television drama as well, thus enhancing survival chances in the event of another economic downturn.

As is the case in many other markets, including Australia, television commercials budgets have yet to recover from the downturns of the 1990s. The average budget in Malaysia is reported to be around RM150,000 (A\$65,000). While budgets are not moving, advertising expenditure in Malaysia is predicted to continue to increase during 2005 by RM400 million to RM4.8 billion.

Piracy

Piracy is an ongoing issue with Malaysia considered to be the most significant producer/exporter of pirate optical disc entertainment software in the world.

³⁴ 2003 National Trade Estimate Report on Foreign Trade Barriers, United States Trade Representative, page 269, available online at www.ustr.gov

³⁵ *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com; *Malaysia’s Channel 9 to go off air ‘temporarily’*, Asia Pacific Broadcasting Union, 11 January 2005, see online at www.abu.org.my.

³⁶ Justin Woon, Twisted Media, cited in *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com.

³⁷ Peter Coleman, mfx, cited in *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com.

³⁸ *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com.

The International Intellectual Property Alliance 2005 Special 301 Report on Malaysia recommended that Malaysia remain on the United States Watch List but noted “cooperation from the government in Malaysia in 2004 in the form of continued raids, including against optic disc plants, retail stores, copy shops, and companies suspected of using illegal software ... The overall effects of these developments [raids, successful prosecutions, severe criminal penalties] is, for some industries, lowered piracy levels (e.g., 50% for motion pictures, down from 75% in 2002), and increased revenues for motion pictures and recorded music.”³⁹ Despite these improvements, the Report warned of “what is certain to be a more than doubling of pirate DVD exports leading all around the globe” and noted “[e]stimated losses to the U.S. copyright industries in 2004 due to piracy in Malaysia were US\$188.4 million.”⁴⁰

On 29 April 2005, the Integrity Institute Malaysia (IIM) and the United Nations Development Programme (UNDP) signed a Memorandum of Understanding under which the two organisations will work on a program focusing on implementing the 2004 National Integrity Plan. According to UNDP representative Dr Richard Leete, it is designed to combat corruption and “help to improve efficiency and contribute to greater public and investor confidence.”⁴¹

In any event, Malaysia appears to be continuing to take the matter seriously and the latest data available for business software and music and records shows piracy rates dropping between 2006 and 2007.⁴²

Wages and working conditions

There is a television union – Kesatuan Sekerja Kakitangan Sistem Televisyen (M) Bhd – which is an affiliate of the Malaysian Trade Union Congress (MTUC). The Alliance has not been able to ascertain its coverage, nor whether it covers only in-house television staff.

The MTUC was founded in 1949 and represents approximately half a million of Malaysia’s 9.9 million workers (2001). It has three main objectives:

- improve the economic and social conditions of workers’
- urge the implementation of policies to achieve full employment, a minimum wage (there is no minimum wage) and a maximum 44 hours week (currently it is a maximum 48 hour week with provisions for overtime above 48 hours)
- achieve social security measures including retirement, sickness, unemployment and injury benefits.⁴³

Under the Promotion of Investments Act 1986, the government bans the formation of unions in so-called “pioneer” industries during their first ten years – the film industry and the manufacture of photographic, cinematographic, video and optical goods are two of the 25 “pioneer” industries. The Alliance has been unable to establish when the ten year period comes into effect and how it might be terminated. Certainly, the banning of the formation of national trade unions in the electronics sector – Malaysia’s largest industry – was still in operation in 2001.⁴⁴

Other than the provisions in respect of “pioneer” industries, Malaysians have the right to organise and bargain collectively. In 2001, approximately 2,000 collective agreements covered slightly less than one

³⁹ *2005 Special 301 Report: Malaysia*, International Intellectual Property Alliance, 2005, page 357 available online at www.iipa.com.

⁴⁰ *Ibid.*

⁴¹ *The Integrity Institute Malaysia and United Nations Development Programme Launch ‘Anti-Corruption’ project – 29 April 2005*, UN Development Programme, available online at www.undp.org.my

⁴² 2008 “Special 301” USTR Decisions – IIPA’s 2006 and 2007 Estimated Trade Losses Due to Copyright Piracy and 2006-2007 Estimated Levels of Copyright Piracy, IIPA, see online at <http://www.iipa.com/pdf/USTRdecisions2008Special301TableofEstimatedLossesandPiracyLevels2007Final061708.pdf>

⁴³ *Foreign Labor Trends: Malaysia*, US Bureau of International Affairs, United States Department of Labor, 2002, see online at http://digitalcommons.ilr.cornell.edu/key_workplace/104

⁴⁴ *Ibid.*

tenth of workers. However, matters relating to transfer, dismissal and reinstatement are precluded from collective agreements.⁴⁵

Malaysia also has some industry associations that cover writers and directors, including the Scriptwriters' Association of Malaysia.

Although the Alliance is not aware of any data covering film and television industry rates of pay, in general rates of pay in Malaysia are very low by comparison with Australia. The most recent data the Alliance has been able to access is for 2001.

Comparison of Average Monthly Wages for White Collar Workers in Malaysia and Other Southeast Asian States 2001

Position	Monthly Salary (in US\$)				
	Hong Kong	Singapore	Malaysia	Thailand	Philippines
CEO	15,975	11,131	7,127	5,075	5,916
Factory/Plant Manager	7,044	4,639	2,033	1,931	1,623
Sales Manager	6,628	3,962	1,945	1,699	1,465
Lawyer	7,712	4,053	1,579	530	979
Systems Engineer	3,774	2,290	1,171	927	547
Software Developer	3,774	2,792	864	927	547
Secretary	1,781	1,326	366	446	309

Certainly, the budget levels for feature films for 2007 indicate that rates of pay in the Malaysian film industry must, of necessity, be low by comparison with Australian rates of pay.

⁴⁵ *Foreign Labor Trends: Malaysia*, US Bureau of International Affairs, United States Department of Labor, 2002, see online at http://digitalcommons.ilr.cornell.edu/key_workplace/104