

SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE
TO
DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ART
REGARDING
POTENTIAL CO-PRODUCTION TREATY WITH INDIA
FEBRUARY 2007



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 and Arts Alliance (the Alliance) welcomes the opportunity to make a submission to the Department of Communications, Information Technology and the Arts (DCITA) regarding a potential co-production treaty with India.

In March 2006, the Alliance made a submission to the Australian Film Commission (AFC) regarding a proposed bilateral film co-production agreement between India and Australia. A copy of that submission can be found at Attachment A. This submission builds on the submission to the AFC and looks at the evidence in support of utilising co-production treaties to foster the development and growth of local film and television industries.

The Alliance is unconvinced that co-production agreements are sufficiently efficacious to be a government priority.

At the behest of DCITA, in January 2004, the AFC released its *Policy for entering new Film Co-production arrangements and the review of existing arrangements* (AFC Co-production policy) in respect of the International Co-production Program. The Alliance believes it sets out appropriate criteria for the selection of new co-production partners and understands it was approved by DCITA. The Policy also identifies the resources required to negotiate Treaties.

In the submission to the AFC last year (and attached), the Alliance considered the proposal for a treaty with India against the criteria set out in the AFC Co-production Policy and concluded that the criteria could not be satisfied. The Alliance remains of this view.

The Alliance is aware that some producers encounter considerable bureaucratic resistance when working in India and proposed a co-operation agreement in its place.

However, the Alliance is now aware that the Department of Foreign Affairs and Trade is not supportive of a new cultural agreement nor to amending the existing Cultural Agreement between Australia and India to enable it to cover film and television co-productions given the difficulties they have experienced implementing the existing cultural agreement. Given there are difficulties with the existing agreement, the Alliance is unsure why negotiating a treaty would be easier than implementing an existing agreement or amending it to capture audiovisual industries.

The Indian filmmaker Govind Nihalani, speaking at the FICCI Frames Conference held in India in 2005 noted that pundits claim that films that explore universal themes, whatever that means (his aside), will work globally, and then observed that the universal arises from the particular and that for Indian films to succeed – in India or abroad – they must be deeply rooted in Indian soil.

Certainly, the Indian industry has thrived and prospered, built on a long history of films that are deeply rooted in Indian soil.

The Indian film industry is the largest in the world in terms of the numbers of films produced and the numbers of cinema admissions. In 2004, admissions reached 3.1 billion with the United States in second place back at 1.5 billion. The total for the Middle East, Africa and Europe combined was 1.2 billion and the rest of Asia/Pacific around 1 billion. While cinema admissions in India grew three per cent in 2004, lower admission prices (averaging Rp15 or 45 Australian cents) meant box office totals cannot be compared in the same way as admissions can. With 1.5 billion admissions, the American box office nudged \$US10 billion whereas the 3.1 billion admissions in India realised box office of about \$US3 billion. Top grossing films for 2004 were Indian ranging from *Mian Hoon Na*, an action thriller, to *Hum Tum*, a romantic comedy, *Veer Zaara*, a romance and *Dhoom*, another action film. Niche audience films are also increasingly finding audiences, a trend considered to be facilitated by the emergence of multiplexes. A film like *Black* released in Australia in 2005 is typical.

In 2004, India produced 934 films, 50 more than the year before. Hindi language films continue to dominate with 245 films, followed closely by the South Indian language films of Telugu at 208 and Tamil at 130 films. India is home to 23 languages along with a number of dialects.

With an exceptionally long, consistent and robust history, the Indian industry is undergoing some considerable changes. Long financed by family funds, the Indian industry is looking at other avenues of finance. In the past few years, there has been a trend for production and exhibition companies to venture into distribution and vice versa. For instance, PVR Cinemas which started as an exhibition company established PVR Pictures as a distribution arm and formed a joint venture with Ram Gopal Verma to produce films. Shringar Cinemas, the other big exhibition company also entered film production and many of the big production companies, such as Yash Raj Films, are now distributing their own productions. And distributors are increasingly seeking to lock in content early by financing production. Thus a strong trend towards vertically integrated companies is underway. Corporatisation is the buzz word in the Indian industry – by which it is generally meant a shift from family financed undertakings (and the use of black market finance) to business models that would be more familiar in the west.

Indian producers have in recent years started to look to the international market and whilst they are yet to produce a real cross over film, cross over films have emerged from the diaspora, for instance *Bend it like Beckham* and *Bride and Prejudice* performed well in India.

India has built a strong industry and from all indicators is only going from strength to strength. It has been able to do this without the use of co-productions although the Government is investigating the possibilities. In 2005, the Minister for Information and Broadcast Jaipal Reddy announced that co-production treaties with Italy and Canada were considered a priority. Consideration was also being given to treaties with the United Kingdom, China, Germany, Croatia, Hungary, Brazil and France. However, progress to date has been delayed by the need for approval from other relevant ministries including Home Affairs, External Affairs, Tourism and Finance. Nonetheless, the treaties with the United Kingdom and Italy have now been negotiated although many of the terms in the treaty with the United Kingdom have yet to be agreed. The Alliance is not aware of any films having been produced under either treaty.

Thus co-productions will be an add-on to the Indian industry rather than a major driver for financing production underpinning or crucial to the industry's viability.

In considering the value of co-production treaties in building local industries, another industry is worth considering.

Korea's film industry is a very recent success story.

Despite government support from the early 1950s, it often struggled, ironically in the face of that government support, coming as it did more often than not with government interference. Notwithstanding censorship and government interference, Korea nonetheless had years of success interspersed with fallow years.

In the late 1980s, Korea opened its market to overseas distributors and was flooded with American films. The local industry, just getting to its feet after decades of dictatorship, all but collapsed. In 1993, the industry called on the government to enforce long standing quotas that provided for all cinemas to screen local films for 146 days a year (under certain circumstances it was possible for the threshold to be lowered to 106 days). Catastrophe was averted. In 1993, a Korean film *Sopyonje* (*Im Kwon-taek*) broke all box office records for a local film helping to restore Koreans' faith in their own work. And the chaebol, Korea's business conglomerates, turned their attention to the industry, keen to produce content for the VCRs being produced by their electronics divisions. In time these conglomerates transformed the structure of the industry, introducing a vertically integrated system wherein financing, production, distribution, exhibition and video release were controlled by a single company. Although some dropped out after the 1997 financial crisis, major conglomerates like CJ, Lotte and the Orion Group remain the most powerful players today.

1999 was a turning point. Box office for local films jumped and Kang Je-gye's *Shiri* broke the box office record held by *Titanic* and was followed by others. Embraced by audiences, their success emboldened production companies, giving them confidence to take risks and to mount big budget genre films previously not produced in Korea. Sales companies like Mirovision and Cineclick Asia took Korean films to international markets opening up new revenue streams for investors. However, the term "big" needs defining. *Shiri's* big budget was US\$5 million, hardly big by comparison with the productions it outgrossed like *The Matrix*, *Titanic*, *Star Wars* and *Toy Story*. With domestic box office receipts exceeding US\$60 million, it was hugely successful for Samsung Entertainment and whetted investors' appetites for more.

The success of 1999 was matched in the following years with a healthy output of genre blockbusters alongside a raft of critically acclaimed low budget art house films. By 2002, Korean films captured the lion's share of the local market, outperforming American imports. And in 2004, *Silmido* and *Taegukgi* both broke the previously only dreamed about barrier of ten million admissions, while Park Chan-wook won the Palme D'or at the Cannes Film Festival for *Old Boy*.

So, finally freed from Japanese colonisation, prohibitive censorship, distorting film regulation and government intervention, it was not until the late 1990s that Korea was able to demonstrate that, with a stable economic environment, a supportive government and sensible supportive government film policy, it could produce films that would appeal to local audiences, capable of outperforming imported films from the United States. A combination of enforced cinema quotas, tax concessions, public sector investment, cinema ticket levies, government support for both project development and the development of careers have allowed the Korean industry to achieve the critical mass necessary for an industry to flourish. Like cinema industries around the world, only a minority of feature films make profits for their investors. Yet Korea has been able to demonstrate that where an industry can operate within a framework that allows it to build production to a critical mass the industry is able to sustain itself and compete successfully with American films.

Despite the successes of recent years, the road ahead is not necessarily secure.

Negotiations for a Korea-United States Bilateral Investment Treaty were suspended in 1999 when the United States could not persuade the Korean Government to repeal the screen quotas. In January 1999 and December 2000 the National Assembly passed resolutions stating that a relaxation would not be considered unless Korean films achieved a market share above 40%. Since 2001, Korean films have consistently maintained a market share just under 50% and, in 2003, the Roh Moo-hyun government indicated it was prepared to consider resolving the stalemate with the United States. Still meeting strong opposition to repealing the quota, during the first half of 2004 the United States amended its request to a reduction from 146 days to 73 days.

In early 2006, during negotiations for a free trade agreement with the United States, Korean officials finally caved in and agreed to halve the quota. However, the United States has subsequently sought to

exempt films distributed in digital form from the quota which, over time, would completely erode the value of the quota, something Korea is understood to be resisting.

Hugely controversial, it is just one of many contentious aspects of the free trade agreement negotiations, which currently teeter on the edge of collapse.

The United States argues “the quota discourages trade, cinema construction and the expansion of theatrical distribution in Korea.”¹ However, in the face of evidence to the contrary, the United States also argues that the quota “hurts the competitiveness of the Korean film industry.”² Since the screen quotas were rigorously enforced, not only has the Korean industry’s share of its local market increased to hover around 50%, its export performance has also increased. In 2003, of the 240 films released in Korea, 65 were local. Yet those 65 films captured 53.3% of the box office. And Korean films have since captured more than 60% of the box office. Similarly foreign box office has risen from nothing in the mid 90s to US\$60 million in 2004. With these results, it is difficult to see how the quotas can be argued to be damaging for the Korean industry. What is certain is that prior to enforcement of the quotas, the industry was in a parlous state.

The other potential threat to the highly successful feature film industry is that pundits who speculate the industry’s trajectory is mirroring that of another successful industry might be right.

“At the peak of its Golden Era between the mid-80s and the early-90s Hong Kong cinema was defending nearly half its domestic box office turf against Hollywood imports, thanks to an unusual concentration of mega-talents like John Woo, Chow Yun-Fat, Jackie Chan and Tsui Hark ... What’s more, some Hong Kong kung-fu and gangster [films] outdrew Hollywood thrillers in many international markets.

“Hollywood’s strategy for coping with the Hong Kong threat? Simple and devastatingly effective – buy up the biggest box-office draws. The result has been an epic shift: the top HK talents have been reduced mostly to coolie-ing on Hollywood formulaics while HK cinema has become a parched gulch with bounding tumbleweeds and half-hinged screen doors banging forlornly with every hot gust.”³

What the Hong Kong industry did not have was a robust framework of government regulation and support underpinning the industry, as is the case in Korea. When the most successful directors working in the industry departed, it collapsed. In the late nineties, the government established a film fund to support local production, but the industry is currently a shadow of its former self.

Although it is too early to determine whether Hollywood will seek to contract the stars of the Korean industry, most industries have not been immune to the attraction of work in major American films offers as Australia well knows.

However, if Korea is able to resist United States’ pressure to dismantle their quota system and keep the rest of the government industry support mechanisms in place, it will stand a far better chance of surviving the lure of the dollar and the challenge and opportunities offered on large scale Hollywood productions that precipitated the collapse of the Hong Kong industry.

Along with the United States, which has no co-production treaties, the Indian and Korean industries are examples of industries that did not need co-production treaties to underpin their industry or to drive an increase in production.

The industry that has most utilised this form of finance is Canada. Canada has 55 co-production agreements with 53 countries (3 are with France, one for features, one for television and one for animation) and is seeking one with India. Yet, like the Australian industry, the Canadian industry is not exactly thriving at the moment. In 2003, Canadian films earned \$33 million at the Canadian box office, or 3.5% of the box office, an increase of 25.7% on the previous year. That year Australian films also

¹ Foreign Trade Barriers – Korea, United States Trade Representative, page 305, available online at www.ustr.gov.

² Ibid.

³ *Corean (Korean) Cinema the New HK Cinema?* © 1999-2005 GoldSea, see online at <http://goldsea.com>

only captured 3.5% of the Australian box office representing takings of \$30.3 million. However, this represented a downturn from the previous year when Australian films captured 5% of the box office. The trend continued in 2004, with Australian box office share slumping to 1.3%, in large part a reflection of the reduced number of films released, but recovered somewhat by 2006 when Australian films captured 4.6% of the box office.

Canada however is a more complex story than Australia. In Quebec the mood is positive – in 2003 Canadian films earned \$24.7 million – 36.5% of the French language market. Making the statistics for the English language industry even more gloomy – \$8.5 million representing 1% of the English language market, a decrease of 4.5% on the previous year.

In Canada, the producers' organisation's strategy for inducing a turnaround is to build the corporate strength of the independent sector, simplify and streamline finance to that sector and align the cultural and regulatory agencies into a coherent results oriented unity. The evidence is not yet available that would suggest this three pronged strategy has worked.

Not surprisingly given the number of treaties, co-productions are a major part of Canadian output. Also not surprisingly Quebec accounts for 45% of all co-production activity by budget. Between 1996 and 2003, the annual number of Canadian treaty co-productions grew from 38 to 106 (figures for film and television are not disaggregated as far the Alliance has been able to ascertain, rather they are broken down by genre – animation, children's, fiction, and so on). In 2003, the average project budget was \$6.9 million, considerably less than Australian drama co-productions. What is less clear is to what extent these co-productions are recognisable by Canadians as Canadian films. However, with cable television talking of the imminent collapse of the Canadian Television Fund, co-production treaties in the absence of funding mechanisms will be of no assistance to Canada's struggling television drama production industry.⁴

Certainly, Australia does not produce anything like the number of co-productions that are produced in Canada. Since 1997-98, in only two years have three feature film co-productions been produced, with two in each of three years, one in each of three years and none at all in 1998-99, a year in which 29 local Australian films were produced.

The country to most recently comprehensively review its co-production treaties was the United Kingdom which reviewed its treaties with English speaking partners, because it was concerned that the benefits supposed to accrue from treaties were not manifestly evident. Yet the United Kingdom is the country that produces more hours of audio visual programming per capita than any other country in the world – not underpinned by co-productions but underpinned by government subsidy and tax incentives. It is an industry that has achieved this level of output built principally upon public broadcasting, and its feature film industry has recently been bolstered by amendments to the tax incentives available to qualifying British films. In 2006, with films like *Harry Potter and the Order of the Phoenix*, *Atonement*, *His Dark Materials: The Golden Compass* (with Nicole Kidman) and *The Golden Age* (with Cate Blanchett) the amount of money spent on making films in the UK increased by 48% to £840.1 million making it the second best year ever for the industry.

What is clear is that a strong industry is one that is deeply rooted in its own soil. If a local industry intends to continue to draw on tax payer funds to support development and production, it is beholden on the industry to produce work that is identifiably Australian, culturally relevant and speaking firstly to Australian audiences.

Not only do many co-productions not appear Australian to Australian audiences, but the benefit to the industry in Australia is significantly less than the benefit that is derived from local productions. The AFC notes that, over the years from July 1994 to June 2006, local features spent 95 per cent of their total production budgets in Australia, whereas co-productions spent 51 per cent.⁵ Even foreign features, at 53 per cent, spend more of their total production budgets in Australia than co-productions. That this

⁴ *Cable firms declare CTF 'dead,' while NDP wants hearings*, CBC Canada, 1 February, 2007, see online at <http://www.cbc.ca/arts/tv/story/2007/02/01/ctf-hearings.html>

⁵ *Get the Picture*, Australian Film Commission, see online at <http://www.afc.gov.au/gtp/mpfeatures.html>.

should be the case is, however, not surprising given that co-production programs are intended to deliver balance over time.

Of course, Australians should be free to produce whatever programs they wish to providing they are able to secure the necessary finance. However, programs that are not essentially Australian should not be able to call on Australian taxpayer finance to underpin their endeavours to the same extent as is possible for Australian productions. That is why the private sector – distributors and financiers – here and abroad are in business. Their business is then to determine whether the production is a commercial proposition or not. However, as both the Indian and Korean industries are demonstrating, industries deeply rooted in national soil are likely to be able to resonate with wider audiences.

A co-production treaty requires balance over time. That naturally means some productions may be majority Australian while others will necessarily be minority Australian. The Alliance does not, however, consider that it is an appropriate use of Australian government film industry subsidy and support mechanism to invest in productions that might be minority Australian particularly when reciprocal benefits will not accrue but will flow one way as would be the case were a treaty to be negotiated with India.

As noted in the Alliance submission to the AFC, government subsidy available for productions in India is not comparable with that available in Australia. There is no content regulation on television in India. During 2006, there were some moves to introduce a 15 per cent content quota but it is unclear whether this has been implemented or not. In any event, other than in respect of children's animation programs it seems that Indian content well and truly exceeds 15 per cent and it is unclear what setting such a low threshold was intended to do, albeit that it is welcomed by the animation sector. With highly differentiated rates of pay between leading cast, choreographers, directors and some other key technicians and supporting cast, extras and most technicians, the industry itself is not comparable with Australia in respect of rates of pay and conditions of employment. The Indian industry is for the most part an extremely low wage industry.

The Alliance continues to be of the view that an Australian-Indian Film Co-production Treaty would not comply with the AFC's Co-production Policy and therefore should not be pursued.

Indian productions continue to come to Australia and the current trend is for them to film in Australia for longer than was the case prior to Yash Raj's *Salaam Namaste* which filmed for 14 weeks in 2005. In 2006, *July Katril* filmed for three weeks, *Chak de India* for two months, *Love Story 2050* for a month and *Heyy Babby!* filmed for a month in January this year.

If the difficulties faced by Australian producers endeavouring to work in India is the difficulty of establishing their bona fides and difficulties in negotiating the relevant bureaucracies, the Alliance considers that a co-operation agreement is the more appropriate path to pursue than an official film co-production treaty.

ATTACHMENT A

SUBMISSION
BY
MEDIA ENTERTAINMENT AND ARTS ALLIANCE
TO
AUSTRALIAN FILM COMMISSION
REGARDING
PROPOSED BILATERAL FILM CO-PRODUCTION AGREEMENT
BETWEEN AUSTRALIA AND INDIA

MARCH 2006

The Media Entertainment and Arts Alliance

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Executive Summary

The Media Entertainment and Arts Alliance understands that the Minister for Communications, Information Technology and the Arts, Senator Coonan, has asked the Department of Communications, Information Technology and the Arts (DCITA) to investigate the possibility of Australia negotiating a bilateral Film Co-production Treaty with India.

The Alliance understands that the some representations have been to the Australian Film Commission (AFC) by the Screen Producers Association of Australia (SPAA) and by individual independent Australian producers suggesting that such a Treaty should be negotiated, citing productions currently in development that could benefit in the event a Treaty is negotiated.

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 Treaty with Italy, whereas the Treaties with the United Kingdom and Canada have resulted in a number of productions, that might not otherwise have been produced, being realised.

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

The Alliance understands that, in a break with past practice, all future bilateral Film Co-production Treaties will be negotiated by DCITA, rather than the AFC as the Government's designated competent authority.

At the behest of 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 sets out appropriate criteria for the selection of new co-production partners and understands it was approved by DCITA. The Policy also identifies the resources required to negotiate Treaties.

This submission considers the proposal for entering into a Treaty or Administrative Arrangement with India against the criteria set out in the Policy.

In summary, the Alliance is of the view that the criteria set out in the Policy cannot be satisfied. Reciprocity of benefit is unlikely to occur, given that India does not have content regulation on television such as those in Australia, and does not have alternative support mechanisms such as content quotas applying to cinema exhibition. While the National Film Development Corporation of India (NFDC) does provide limited government subsidy it is not commensurate with the levels of subsidy that can be sought in Australia, either from the Film Finance Corporation Australia (FFC) or available under Division 10BA of the Income Tax Assessment Act. Additionally, the structure of the industry and rates of pay and conditions are substantially different between the two industries.

The Alliance understands that the principal attraction of a Treaty or Administrative Arrangement is the credibility and authority it would give to Australian producers wishing to film in the sub-continent. To that end, the Alliance considers that another mechanism, such as a Memorandum of Co-operation or an approved form of letter of support for the production from DCITA might be more appropriate than the negotiation of a Treaty in facilitating the ambitions of Australian producers wishing to film in India.

Industry Interest and Potential for Projects

It is important that the film industries of the co-producing countries each have a strong interest in co-producing films together.

To warrant the time and resources of negotiating a Treaty or Administrative Arrangement, there should be significant potential for co-production projects, and not just in the short term.

The Alliance is aware of only one substantial Australian feature film that has filmed in India, namely Jane Campion's *Holy Smoke*. That production was fully financed by Miramax and did not require an official co-production arrangement to be in place. Indeed, it is unlikely the production would have sought or benefited from such an arrangement. A handful of other productions have been developed (including productions developed by Tom Cowan and Clytie Jessop) over the past two decades that assumed production would be undertaken, at least in part, in India. None have been realised, principally given the inability to raise finance. There is no evidence that the absence of a formal co-production arrangement was an impediment.

The Alliance is aware of at least two productions currently in development where the producers are hoping to film in India.

Conversely, a number of Indian productions have utilised Australia as a filming location in recent years. Whilst most have involved the filming of a limited number of song and dance sequences in a one or two week time frame, a substantial proportion of principal photography has been undertaken in Australia on only a few productions, most notably and recently in the case of Yash Chopra's *Salaam Namaste* and in the case of Anil Sharma's forthcoming production of *Apne* (See Attachment A). Whilst these productions have not been eligible to access government subsidy (Division 10BA, the FFC) and, given their budget size and spend in Australia, have not been eligible for the tax offset rebate, many have nonetheless secured financial and in-kind support including from government instrumentalities such as state and federal tourism commissions.

The level of interest displayed by Indian producers in Australia has to date been underpinned by Australia's locations rather than by any strong interest in co-producing films with Australian producers. Specifically, the diversity of locations in Australia has enabled Indian producers to enhance production values. Typically, sequences filmed in Australia for Indian feature films have been song and dance sequences.

Law number one [of filmmaking] is the simplest and, says Ashutosh Gowariker, the young director of *Lagaan*, is taught to all Indians in their infancy. 'Our mothers lean over us in the cot,' he tells me with a chuckle, 'and whispers in our ears, "All movies shall have songs and dances."'

Salaam Bombay, Neil Spencer, *The Observer*, 7 April 2002⁶

With increases in production budgets for so-called Bollywood films from the mid 1990s, many Indian productions have filmed sequences overseas. Switzerland was an early destination and has become a favourite destination. It came about and continues, as often than not, because it can provide locations that "substitute for predominantly Muslim Kashmir, which is the Indian idea of a honeymoon paradise but where filming would be too risky because of the continuing conflict that has riven the region since partition".⁷ Yash Chopra of Yash Raj was one of the pioneers in filming sequences overseas, initially and consistently in Switzerland but subsequently elsewhere in the United Kingdom and Europe and, last year, in Australia.

Dubai offers glamorous sophisticated cityscapes, resorts and nearby deserts.

Australia offers a range of locations from the Stockton sand dunes to the Pinnacles in Western Australia, the Barossa Valley, the Great Ocean Road, the Hunter Valley, orchards in the

⁶ Available online at <http://observer.guardian.co.uk/life/story/0,6903,679966,00.html>

⁷ *Welcome to Bollywood*, Suketu Mehta, National Geographic Magazine, available online at <http://magma.nationalgeographic.com/ngm/0502/feature3/>

Murrumbidgee, waterways like Port Stephens and Sydney icons like the Harbour Bridge and the Opera House.

New Zealand offers an alternative to Switzerland for producers recreating Kashmir along with a diverse range of locations that add colour to song and dance sequences.

A few large budget (by Indian industry standards) have also ventured as far as New York.

The occasions on which Indian productions have located more than song and dance sequences in Australia are few. Notably they include the Priety Zinta vehicles *Soldier*, *Dil Chahta Hai* and, last year, the Yash Raj production *Salaam Namaste*.

Thus, whilst interested in utilising Australia as an offshore location, typically to enhance production values of song and dance sequences, the Alliance is not aware of any active interest on the part of Indian producers to co-produce with Australian producers.

On the other hand, the Alliance is aware that there exists a handful of Australian initiated productions that wish to film in India and whose producers consider that the negotiation of a Treaty might assist their production. However, the benefits that those producers see as the result of a Treaty appear to be principally matters of style over substance. Some producers have advised that the notorious red tape that typifies Indian bureaucracy can usually be reduced if a producer is seen to have the backing of both their own government and the government of India.

It might therefore be appropriate to consider another mechanism to assist Australian producers in this regard such as a Memorandum of Co-operation. Australia has entered into a number of such arrangements, for instance, the memorandum of Understanding concerning Cooperation on Standards and Conformance between ASEAN and Australia and New Zealand. A number of memoranda of cooperation and/or understanding have been negotiated at a government to government and government department to government department level, particularly in respect of cooperation in areas of science and technology. Alternatively, consideration could be given to the provision of formal letters of introduction and/or support by DCITA.

It is difficult to ascertain to what extent either the Indian industry or the Indian government is interested in pursuing official co-production treaties.

In early 2005, the Information and Broadcast Minister, Jaipal Reddy, announced that treaties with Italy and Canada were a priority and the Indian Government was interested in negotiating treaties with the United Kingdom, China, Germany, Croatia, Hungary, Brazil and France. According to the Ministry, delays in doing so were attributable to the need to secure approvals from other relevant ministries, including Home Affairs, External Affairs, Tourism and Finance.⁸

It is interesting that the Department of Culture, Media and Sport in the United Kingdom noted the benefits of negotiating a treaty with India were as follows: "A co-production treaty would encourage Indian film makers to invest in British talent and UK locations. In return they would benefit from UK film making expertise and the films could be eligible for UK film tax incentives, which are designed to encourage investment in our domestic industry."⁹ No mention was made of any government mechanisms of support that British producers might be able to access in India.

The Alliance is not aware of any Indian government statements advising interest in negotiating a Treaty with Australia. When commenting on the signing of a treaty with Italy and announcing that the treaty

⁸ *The Indian Entertainment Industry – An Unfolding Opportunity*, PriceWaterhouseCoopers and FICCI, March 2005, page 21.

⁹ *UK Film Industry To Join Forces With Bollywood*, Department of Culture, Media and Sport, 30 March 2005, see online at http://www.culture.gov.uk/cgi-bin/MsmGo.exe?grab_id=313&page_id=11668480&query=Coproductiontreaty&hiword=Coproduction+COPRODUCTIONS+TREAT+TREATED+TREATIES+TREATING+treaty+

with the UK would be signed on 5 December 2005, Minister S. Jaipal Reddy made reference to the negotiations with Germany, China and Canada. No reference was made to Australia.¹⁰

India is increasingly home to animation offshoring – television commercials, animated television series and corporate work – from the United Kingdom, the United States, Europe and the Middle East. The animation production services sector in India in 2004 was estimated as being between US\$200 and US\$300 million and is expected to grow exponentially.¹¹ Indian animation companies see co-productions as the likely way of the future. However, there appears little agreement on how that might best be achieved. Many recognise that out-sourcing “is the low-end activity in the value chain [and the] next step is co-production, which is an agreement wherein IPR is jointly shared depending on the terms”¹².

Nonetheless, like Indian’s feature film directors, many animation producers are also of the view that that “When people look for content, they look for content that is authentic to a certain culture.”¹³ Kireet Khurana, Creative Director and CEO of 2NZ Animation, considers, “The reason why we don’t come up with characters that become global brands is because we go for crossover appeals. How can we go for crossover appeals without getting bonafied success in India?”¹⁴

Indian producers and directors continue to stress cultural specificity as being crucial to producing successful films. Karan Johar, whose latest film was partly shot in New York, says “Earlier, Bollywood films have been dismissed as all ‘song and dance’, but this is precisely what is working for us today. If a film is true to its native audience, it will make an impact with viewers irrespective of ethnicity. The minute you lose that unique selling point, it just wouldn’t work.”¹⁵ Speaking at the FICCI FRAMES Conference on 5 April 2005, Govind Nihalani observed that the universal arises from the particular and that for Indian films to succeed in India or abroad they must be deeply rooted in Indian soil.

Rather than seeing co-productions as the answer for the Indian industry, many in the industry consider it is marketing that needs to be tackled. Karan Johar compared the international box office success of the Oscar nominated *Lagaan* with the *Dil Chahta Hai*. Whilst hugely successful in India, *Dil Chahta Hai* (sequences for which were filmed in Australia), “did not find much of an audience abroad primarily because it wasn’t marketed well enough.”¹⁶

Box office for Bollywood films derives 70% from national release and 30% from overseas markets. However, “After all the money that’s poured into exotic locales and scenery, barely 5-10 per cent investment goes into marketing the film on foreign shores.”¹⁷

In an interview with Anushree Madan Mohan, producer Boney Kapoor identified the biggest issues confronting the Indian film industry in 2005: “Apart from rampant sting operations ... Film financing is one. The high entertainment tax on cinema is another. The third biggest is of course piracy. The icing on the cake is that inspite of all these issues before our industry, we are not able to present a united front and devise ways and means of tackling these problems.”

¹⁰ *India to sign co-production treaty with foreign countries*, indiainfo.com, 24 November 2005, see online at <http://movies.indiainfo.com/newsbytes/india-cinema-foreign-241105.html>.

¹¹ *Animation Industry Shines*, Malini Menon, *exchange4media.com*, FICCI FRAMES, 4 April, 2005, page 4.

¹² Sumeet Gupta, cited in *Animation Industry Shines*, Malini Menon, *exchange4media.com*, FICCI FRAMES, 4 April, 2005, page 4.

¹³ Sachin Naik, Bursiness Director, Milestone Interactive, cited in *Animation Industry Shines*, Malini Menon, *exchange4media.com*, FICCI FRAMES, 4 April, 2005, page 4.

¹⁴ Cited in *Animation Industry Shines*, Malini Menon, *exchange4media.com*, FICCI FRAMES, 4 April, 2005, page 4.

¹⁵ Cited in *Helping Bollywood cross over*, Anushree Madan Mohan, *exchange4media.com*, FICCI FRAMES, 6 April 2005, page 1.

¹⁶ *Ibid.*

¹⁷ *Helping Bollywood cross over*, Anushree Madan Mohan, *exchange4media.com*, FICCI FRAMES, 6 April 2005, page 1.

In summary, the Alliance is not aware of any specific momentum nor commitment from the Indian industry that would give rise to believing that the Indian industry has a strong interest in co-producing films with Australia as required by the Co-Production Policy.

There should exist benefits to each co-producer pursuant to an official arrangement which would not be available if the co-producers produced the project outside the official arrangement.

An underlying principle in official co-production treaties is that of national treatment. For national treatment to be valuable, there must exist mechanisms of support that the co-producers could not otherwise access in the respective co-producing countries.

The Alliance understands that there exist benefits in India that are available to qualifying overseas producers in the absence of a co-production arrangement but that those benefits are small by comparison with those available to eligible productions in Australia.

Currently, according to its website, the National Film Development Corporation Ltd of India (NFDC) provides loans and, in certain circumstances, finances Indian productions. Currently, the maximum the NFDC makes available by way of loan is R 20,00,000/- (approximately A\$61,500). The 100% Finance and Co-production Scheme sets the threshold for feature films at R 35,00,000/- (approximately A\$108,000). The quantum of NFDC investment in foreign co-productions is set by the NFDC Board, having regard to the merits of the production in question (see Attachment B). However, given the low thresholds of financial participation generally, it is unlikely that the NFDC would consider providing funds at a level comparable to that which the Film Finance Corporation Australia (FFC) is able to commit to individual co-productions.

The Alliance understands that foreign capital investment is possible in projects, production house, film and television studios and facilities, including in postproduction, distribution and exhibition. A UK Film Council report on the India industry, "Foreign investors will no longer have to seek clearances from the Foreign Investment Promotion Board or permission from the Reserve Bank of India. The current major investors in the sector are Rupert Murdoch's News International, Universal and Sony."¹⁸ The same report states that the Federation of Indian Chambers of Commerce and Industry (FICCI), the Confederation of Indian Industry (CII) and the investment bank Ambit have given consideration a Rupee Fund. If established it appears it could offer opportunities for non-resident Indians to become equity investors in the fund, thus enabling individuals to buy shares in film and television companies, invest in projects for profit and in education and training institutions for philanthropic reasons. The Alliance cannot find any evidence that this endeavour has come to fruition.

The Alliance also understands that the Indian government has been looking at various mechanisms of support available around the world, including those measures in place in Canada and Australia. However, the Alliance has been unable to identify any such measures being introduced (other than in respect to entertainment tax and the funds available through the NFDC).

Unlike Australia, India does not have local content television quotas. Nor does it have cinema quotas such as those in the Republic of Korea.

As a result, a co-production arrangement with India is likely to result in the benefits of national treatment flowing unequally to Indian producers.

Currently, Indian productions that film sequences in Australia often avail themselves of the assistance that various federal, state and regional entities provide, in particular and most commonly provided by state and federal tourist commissions. Budget size and the size of their spend in Australia precludes access to the Film Tax Offset Rebate.

¹⁸ *The Indian Media and Entertainment Industry, A Report based on a UK Film Council Fact Finding Visit to India*, Parminder Vir, John Woodward, Neil Watson, UK Film Council, April 2002, page 2. See online at [http://www.ukfilmcouncil.org.uk/film industry/India/](http://www.ukfilmcouncil.org.uk/film%20industry/India/)

The Alliance is not aware of any benefits for Australian producers that might potentially accrue in the event a Treaty were negotiated, other than, as indicated above, the status that certification under a Treaty might afford in easing a production's passage through India's various bureaucracies.

Further, the government of the proposed treaty partner must be willing to pursue an official co-production arrangement with Australia.

As indicated above, although the Indian government has expressed an interest in negotiating treaties with a number of countries, the Alliance is not aware that the Indian government has shown any interest in doing so with Australia.

Similar Film Industries

In order to facilitate production opportunities, the film industries in Australia and the other co-producing country should have similar infrastructures. For example, there should be an established film and television industry and a public sector entity which will administer the official co-production program. Further, there must be government support and subsidy of the local film industry by way of (for example) tax concessions, direct investment in film and television productions and local content quotas.

“The Indian entertainment industry at the beginning of the twenty-first century is worth three and a half billion dollars, a minor part of the global 300 billion dollar entertainment industry. But it is the world's biggest movie industry when it comes to production and viewership. The 1,000 feature films and 40,000 hours of TV programming and 5,000 music titles that the country produces are exported to seventy countries. Every day fourteen million Indians see a movie in one of 13,000 theatres; worldwide, a billion more people a year buy tickets to Indian movies than to Hollywood ones. Television is galloping in; the country has sixty million homes with TV, of which twenty-eight million are cabled, bringing to city and hamlet alike a choice of around a hundred channels. ...

“India is one of the few territories in which Hollywood has been unable to make more than a dent; Hollywood films make up barely five per cent of the country's market. Resourceful saboteurs, the Hindi moviemakers. When every other country's cinema had fallen before Hollywood, India met Hollywood the Hindu way. It welcomed it, swallowed it whole and regurgitated it. What went in blended with everything that had existed before and came back out with ten new heads.”¹⁹

Suketu Mehta

The history of India and Australia in the 20th century has resulted in indigenous film and television industries in the two countries developing along very different trajectories.

Film has long been the most popular form of entertainment in India, although television has been catching up in the past five or six years.

Since 1931, when talkies were first introduced in India, more than 67,000 films in more than 30 different languages and dialects have been produced.²⁰

In 2004, 934 feature films were certified for release. Hindi language films accounted for 245 titles, followed by south Indian language films with 208 titles in Telugu and 130 in Tamil. In 2004, India continued to have the highest number of box office admissions in the world – 3,100 million compared with 1,500 million in the United States and 1,200 million in Europe, the Middle East and Africa

¹⁹ *Maximum City – Bombay Lost and Found*, Suketu Mehta, Review, 2004, page 321. [Suketu Mehta is also the co-writer of *Mission Kashmir* and *Move 5 – aka Chess* – both of which were directed by Vidhu Vinod Chopra.

²⁰ *UK Film Industry To Join Forces With Bollywood*, Department for Culture, Media and Sport, United Kingdom, 30 March 2005, see online at http://www.culture.gov.uk/cgi-bin/MsmGo.exe?grab_id=313&page_id=11668480&query=Coproductiontreaty&hiword=Coproduction+COPRODUCTIONS+TREAT+TREATED+TREATIES+TREATING+treaty+

combined. However, given the average admission price is R 15, judged by box office takings the picture is very different.²¹

The structure of the Indian film industry has been substantially different to that of the Australian industry. Last year, PriceWaterhouseCoopers explained the industry – rather quaintly – as follows: “Though the segment has primarily been in the hands of unorganised sector till late, several development in terms of corporatisation and other initiatives have changed the face of the film industry.”²²

The film industry in India for most of the 20th century was underpinned by privately owned family businesses like Yash Raj and Dharma Productions relying “on traditional financing through a network of ‘friends’ and ‘private financiers’”.²³

Until recently there were no public sector support mechanisms. Despite its size and profile, until 2000 the industry was not even afforded industry status by the Ministry of Industry. Since being afforded that status, things have begun to change. “In the last five to six years, a quiet revolution has been sweeping the film industry. The journey to corporatisation began post-2000, when industry status was given to Bollywood. Following this, funding from financial institutions like IDBI [Industrial Development Bank of India] and banks began to trickle into the showbiz kitty in 2001-02.”²⁴

Last century, given that Bollywood did not have so-called industry status and access to legitimate financing was often difficult, many producers resorted to finance from dubious sources at usurious interest rates. In an instance cited by Suketu Mehta in *Maximum City* of a Bollywood producer who suffered heart attacks following scheduling delays triggered by unreliable star actors, the interest rate on his finance was 36%. The debts that mounted effectively destroyed him.²⁵ Mehta quotes the producer’s son, “‘I hate the film line; it’s a dirty business. I swore that when I grew up I would be a man in a position of power over these people who ruined by father.’ So he became a police officer, rather than a lawyer or a doctor or a businessman; rather than a movie producer. ‘In the uniform, there is power.’”²⁶ In his current line of work, despite his loathing for the industry, he assists Bollywood stars – “he helps them out, makes the calls that need to be made and rounds up the extortionists that need to be rounded up, so the stars can sleep easy.”²⁷

According to the UK Film Council, interest rates on finance during the 20th century as ranging between 36% and 48%, compared with the 16% charged by the IDBI.²⁸

Suketu Mehta explained film financing in Bombay: “Most Bollywood productions do not get bank loans, they are funded privately. The banks do not understand or trust Bollywood. The funds required for a production are huge, and a family in the industry may be working on several projects. The time between investment and return can be years if the film doesn’t do well. Who would have that amount of cash lying around? Only the underworld. The gangs are very happy to see black money turn into Technicolor dreams. A hit film can bring in a fourfold return on investment within the first four weeks of its release. So for the underworld, investing in films is one of the quickest ways to get a return on illegal investment. Without underworld financing, the Hindi film industry would collapse overnight.”²⁹

²¹ *The Indian Entertainment Industry – An Unfolding Opportunity*, PriceWaterhouseCoopers and FICCI, March 2005, page 25.

²² *Ibid*, page 16.

²³ *The Indian Media and Entertainment Industry, A Report based on a UK Film Council Fact Finding Visit to India*, Parminder Vir, John Woodward, Neil Watson, UK Film Council, April 2002, page 4. See online at [http://www.ukfilmcouncil.org.uk/film industry/India/](http://www.ukfilmcouncil.org.uk/film%20industry/India/)

²⁴ Film industry yet to become marketing savvy, Malini Menon, exchange4media.com, FICCI FRAMES, 4 April 2005, page 2.

²⁵ *Maximum city – Bombay Lost and Found*, Suketu Mehta, Review, 2004, page 143.

²⁶ *Ibid* .

²⁷ *Ibid*, page 136.

²⁸ *The Indian Media and Entertainment Industry, A Report based on a UK Film Council Fact Finding Visit to India*, Parminder Vir, John Woodward, Neil Watson, UK Film Council, April 2002, page 6. See online at [http://www.ukfilmcouncil.org.uk/film industry/India/](http://www.ukfilmcouncil.org.uk/film%20industry/India/)

²⁹ *Maximum city – Bombay Lost and Found*, Suketu Mehta, Review, 2004, page 387.

Rakesh Roshan directed *Kaho Na Pyaar Hai* which starred his son Hrithik Roshan and launched the latter's meteoric rise to megastar status. In January 2000, he was shot by hit men after refusing to allow Hrithik to be cast in an underworld financed film.

Notwithstanding the industry status granted in 2000, and the resultant opening of access to legitimate finance from banks, extortion continues to be a serious issue. Mehtu notes that "In business, so entrenched has extortion become that the Bombay High Court recently ruled that extortion payments are tax-deductible as a legitimate business expense. Extortion is a form of tax. Since there is a parallel justice system, there have to be parallel taxes."³⁰

As noted above, many Indian producers consider film financing and "rampant sting operations" to be the most important issue facing the industry today.

With many film production companies being family businesses, much production continues to be structured in a manner unchanged from last century. Budgets are often exclusive of producer fees and production company overheads. These costs, typically included in Australian budgets, are simply recouped from box office takings.

Contracts are rarely entered into prior to production and where they do exist are usually entered into after the completion of production. (The Alliance has yet to see a contract for any actor, technician or director on an Indian film shooting in Australia. Rather the best that can be expected is a spreadsheet detailing the weekly rate of pay for each person coming to Australia.) As Suketu Mehta observes, "There's a reason Hollywood is unable to produce Indian films: negotiating contracts in Bollywood would make any Wall Street entertainment lawyer jump out of his twenty-sixth floor suite at the Oberoi."³¹

In *Maximum City*, Suketu Mehta reproduces the contract for Sanjay Dutt who played the lead role in *Mission Kashmir* from the reputable producer Vidhu Vinod Chopra. Other than the figures, the contracts for the co-leads, Preity Zinta and the megastar Hrithik Roshan were, according to Mehta, identical. The key paragraph is as follows: "Much as I would like to pay you what you would be getting outside, but keeping in mind that I do not take recourse to the normal ugly channels of finances, I would be paying you Rs twenty-five lakhs. However, please bear in mind that if the film does not do well, I would only pay you a token sum of Rs 0. I hope this finds your approval."³²

Productions are not usually scheduled in the manner in which they are in Australia. Often, the producer schedules principal photography at times when lead cast are available. Thus principal photography might be staggered over a number of months.

Insurances and completion bonds have only been introduced to the industry since 2000.

Film Finances, together with an Indian based production company, Kaleidoscope Films, established Film Completion Services India the first completion bond company to operate in India, relaunched as Film Finance India last December. According to *Variety*, the "three-year-old Film Completion Services India has had limited success, bonding fewer than 10 Bollywood films."³³ The rebadged company is to go guarantor on Ram Gopal Varma's slate of 12 films being financed by Manmohan Shetty's Entertainment One.

Indian productions generally think of distribution as comprising five markets – West (Bombay), South (Madras), East (Kolkata) and the North and North-East. The fifth market is the world – targeting the Indian diaspora with the United States, the United Kingdom and Canada being the most lucrative. However, Japan, South Africa, Mauritius, Australia, New Zealand and the Middle East are becoming increasingly important territories.

³⁰ *Maximum city – Bombay Lost and Found*, Suketu Mehta, Review, 2004, page 136.

³¹ *Ibid*, page 339.

³² *Ibid*, page 341.

³³ India film finance firm makes changes, Shilpa Bharatan Iyer, *Variety*, 4 December 2005, see online at <http://www.variety.com/article/VR1117933882?categoryid=13&cs=1>.

So whilst India has a film and television industry quantitatively far larger than the industry in Australia, it has operated on a very different model. Whilst the granting of industry status has changed much, there remains much in the manner in which the industry operates that would be unfamiliar to Australian producers and investors. Just how quickly “corporatisation” will turn the industry around – in respect of financing, distribution and contracting – and free it from its ties to the underworld remains to be seen.

Finally, as noted above, there are no content regulations on Indian television, no quotas in cinema, no tax concessions and very little by way of public sector finance. However, the NFDC could be identified as an authority that could administer a co-production arrangement in the event one is negotiated.

Benefit Reciprocity with Partner Nations – National Treatment

It is crucial that co-production projects will be granted national status in the co-producing country and be eligible for current industry assistance in that country and be able to access the benefits available to the local film and television industries.

The principle of “national treatment” would require that films made under a Treaty or Administrative Arrangement must be treated as Australian films and also as national films of the other country. The necessary implication of this is that there is some benefit in a film being a national film of the other country. That is, there is government assistance available, and the co-producers are able to bring comparable benefits to the project.

As noted above, under the Co-production Policy guideline “There should exist benefits to each co-producer pursuant to an official arrangement which would not be available if the co-producers produced the project outside the official arrangement”, the Alliance does not consider that, in the event a Treaty is negotiated, the co-producers would be able to bring comparable benefits to co-production projects.

Over-Riding Balance Over Time of Financial and Creative Participation and of Reciprocity

Australia’s existing Treaty and Administrative arrangements require that there be a balance over time of financial and creative participation of the co-producers.

In assessing potential Treaty partners, there is a need to look at the likelihood of whether co-productions with the proposed Treaty partner will achieve balance in regard to financial and creative participation so that the Treaty will be of benefit to both nations and will not work in favour of one of them disproportionately.

There is also a need to look at the likelihood of a balance over time in regard to the use of subsidy and support provided by each co-producer’s Government to ensure that projects made under the official co-production arrangement are not likely to be accessing government subsidy in one country only.

The Alliance considers, for the reasons outlined above, that with productions produced under an Australia – India Treaty, there would be little likelihood of a balance over time in respect of the use of government subsidy and support. Rather, given the subsidy and support mechanisms available, productions made under such an arrangement will overwhelmingly be accessing that available in Australia.

Comparable Employment Conditions

Note that it is a requirement of Australia’s current Treaty arrangements that “conditions of work ... in each co-producing country are in broad terms comparable.” For this reason, it is important to be aware of work conditions of cast and film crew in the proposed co-producing country to ensure that this comparability can be met.

Note that Australia’s Administrative Arrangements with France and New Zealand do not require this comparability but such criteria should be assessed in any new administrative arrangement which Australia enters.

India is currently cost competitive with Australia because rates of pay for technicians, support cast and extras, along with other production expenditure items, result in production costs typically being substantially lower in India. Increasing budget sizes in recent years has not necessarily resulted in increases in wages. Rather enhanced budgets have allowed for more sophisticated production processes including increasing use of special effects and CGI.

While “mega-star” cast members can attract rates of pay that are well above the average rates of pay that support cast in Australia can attract, overall rates of pay are lower than those in Australia and for some classes of technicians, dramatically lower than in Australia.

Unionisation varies across the country with some sectors, choreographers for instance, being strongly unionised whereas in parts of the country some technicians are not unionised at all. Even where workers are organised, it does not follow that collective agreements have been negotiated nor does it follow that rates of pay are sufficient to support a reasonable life style.

Real estate in Mumbai is among the most expensive anywhere in the world. It has a population of approximately 20 million, of whom 10 million do not have shelter with water or electricity. As a result, for those technicians who earn as little as \$10 a day (or even less), formal housing is out of reach, as it is for many other Indians in full time employment. Many of those working at Film City live in shanties that have grown up outside its perimeter fences, living without access to sanitation, running water or electricity. The same is true for technicians in many of the other major film centres, such as Hyderabad and Chennai.

Such is the plight of some technicians that the AP Film Directors’ Association lobbied the government of Andhra Pradesh for adequate housing. The government subsequently made 67 acres available. By last October, successful further lobbying had resulted in sufficient funds being raised to see the construction of housing for 4,800 technicians 30% completed. For the work to be completed additional funds are being sought. Lobbying also resulted in the government of Andhra Pradesh providing a mobile dispensary that attends all major film and television work sites in Hyderabad to attend the medical needs of technicians. However, the Association makes available medicines not available from the dispensary.³⁴

A similar effort is underway in Bangalore, spearheaded by the Karnataka Film Workers Artists Technicians Federation – an organisation so lacking in funds that an actor runs it pro bono.

Working conditions appear to vary between film production and television production. It appears that conditions are often worse in the television industry than in the film industry.

Long hours and low rates of pay are usually cited as the biggest problems confronting technicians. Take this example: “The cine worker has to leave his home by 6 o’clock in the morning and report at the unit office or production office, collect the equipments [sic] and reach the location around 8.30am and should be ready for shoot by 9.00am. The shooting will be packed up by 9 or 9.30pm in the night. The cine worker has to pack up all his equipments, report back to the unit office or production office and by the time he returns home it will be 11pm or even midnight. The cine worker hardly gets 6 to 7 hours for his sleep, family and other activities.”³⁵ Clearly, taking equipment home, rather than back to the production office, is not an option if home is a shanty with no locks.

In the film industry in Mumbai, technicians can be required to work seven day weeks with one day off in every 28.

Although not often cited as a threshold concern, occupational health and safety standards need urgent attention. It is not uncommon to see cables on film sets that are not earthed. Career expectancy for stunt performers is said to be as short as five years before death or disability. While Film City is a massive site in terms of acres, there is little else there that would be recognisable as one of the country’s major

³⁴ Report by G. Neelakanta and PS Krishnamohan Reddy, of the AP Film Directors’ Association, delivered at the UNI-MEI Conference held in Mumbai in October 2005.

³⁵ Paper presented by Mr Ashok representing the Karnataka Film Workers Arts Technicians Federation at the UNI-MEI Conference held in Mumbai in October 2005.

studio facilities. Film City allows, because of its size, for sets to be constructed and then dismantled at the end of production. Sound stages as known in Australia do not exist. The flooring, the access and egress, the wiring for the standing set for *Who Wants to be a Millionaire*, hosted by the legendary megastar Amitabh Bachchan would likely result in it being shut down a WorkCover authority were it in Australia.

Finally, although India is home to enormously successful filmmakers and artists, the UK Film Council has identified “a dearth of technical and creative talent in India” with “the industry facing an acute shortage of trained personnel”.³⁶

With the exception of the Film Institute in Pune, there is a desperate need for profession training in all aspects of film and television, an opportunity that could prove attractive for the Australian Film Television and Radio School.

Cultural Exchange

Issues of cultural exchange should be considered. For example, will the Treaty or Administrative Arrangement open up a new market for Australian films. Will films which have resonance in both cultures be produced?

The Alliance is unaware of any structural impediments to the release of Australian films not faced by other industries.

Access to screens is a problem regardless of the nationality of the production. Despite having a population of 1 billion and film being one of the most popular forms of entertainment in India, the country only has 13,000 screens.

High entertainment taxes imposed on cinemas have resulted in exhibitors not investing in upgrading of single screen cinemas – the highest in the world and ranging between 50% and 60%. However, the growth of multiplexes, exempted in some states from entertainment tax, are replacing single screens, a growth that has been enhanced by the advent of malls and a boom in the organised retail market. Multiplexes are considered “one of the anchor tenants to large format malls, as they provide assured footfalls.”³⁷ Despite admission prices to multiplex cinemas being premium priced, they attract patrons because of better projection and better cleaner facilities.

The generally low admission prices have not deterred producers from other countries, including the United States, from seeking to exploit the Indian market.

Despite obvious differences, there are many significant cultural commonalities between India and Australia – British colonial heritage, membership of the Commonwealth, a legal system inherited from England, English as a national and widely spoken language, a significant Indian diaspora in Australia and so on, not to mention cricket – there is reason to believe that films made in Australia could have resonance in India. However, it is not clear how a Treaty would increase access to Australian films more generally by Indian audiences.

Is the Treaty in the National Interest?

This criteria is applicable to all Treaties entered into by the Australian Government and is not specific to Films Co-production Treaties.

A National Interest Analysis (“NIA”) must be carried out in regard to a proposed Films Co-production Treaty and tabled in Parliament. A NIA is essentially a cost-benefit analysis which requires that the proposed Treaty has an overall national benefit.

³⁶ *The Indian Media and Entertainment Industry, A Report based on a UK Film Council Fact Finding Visit to India*, Parminder Vir, John Woodward, Neil Watson, UK Film Council, April 2002, page 5. See online at [http://www.ukfilmcouncil.org.uk/film industry/India/](http://www.ukfilmcouncil.org.uk/film%20industry/India/)

³⁷ *The Indian Entertainment Industry – An Unfolding Opportunity*, PriceWaterhouseCoopers and FICCI, March 2005, page 22.

The NIA will note why Australia should become a party to the Treaty. The NIA looks at foreseeable environmental, economic, social and cultural effects of the Treaty; the obligations it imposes; its direct financial costs to Australia; and the consultation which has occurred with relevant stakeholders.

In addition, if the Treaty could have the effect of a reduction in competition, a Regulatory Impact Statement must be prepared.

In the case of a Films Co-production Treaty, the Parliamentary Committee assessing the NIA is likely to require benefits such as the following:

- *Australian consumers will have increased choice as there is more diverse product available to them;*
- *The Australian film industry will make films which would not otherwise be made;*
- *There will be an increase in employment of Australians;*
- *There will be an increase in audiences overseas for Australian film;*
- *There will be an interchange of film personnel and actors between the co-producing countries;*
- *The Australian Government will benefit from strengthening of diplomatic ties with the proposed treaty partner.*

For the reasons outlined earlier in this submission, the Alliance does not believe the evidence exists to demonstrate that the criteria that would be considered in an RIS would be satisfied.

Australians already have access to Indian films. Some recent films like *Black*, *Lagaan* and *Salaam Namaste* (the latter outgrossing most films in the Australian market at the time of its release) have had mainstream releases in Australia.

Given the very limited government support mechanisms available to films in India, it is doubtful whether a Treaty would result in films being made which would not otherwise be made.

Australians, in limited numbers, have been enjoying employment on Indian productions filming in Australia in the absence of a Treaty.

A Treaty will not in and of itself increase audiences for Australian films in India.

Finally, as suggested earlier in this submission, it is likely the difficulties Australian filmmakers are facing in working in India might be more easily addressed by another mechanism, such as the negotiation of a memorandum of co-operation or by DCITA developing a mechanism whereby it can, at an Australian government level, advise of the reputation and bona fides of the filmmaker to ease their dealing with bureaucracies in India.

ATTACHMENT A

INBOUND FEATURE FILMS FROM INDIA TO AUSTRALIA

1997:

Des Pardes, Alpha International, in Australia for one month
Daud, Varma Corporation Limited, in Australia for two weeks
Soldier, producer Ramesh S. Taurani (starring Priety Zinta), in Australia for six weeks

2000:

Production No 27 (working title), Padmalaya Studios, in Australia for three weeks
Neelambari, in Australia for six weeks

2001:

Production No 6 (working title), MKD Films, in Australia for three weeks
Untitled feature film, Rose Movies Combine, in Australia for two weeks
Aap Mujha Ache Lagne Lag, Emkay Films Pvt Ltd (India), in Australia for four weeks
Citizen, Nic Arts, in Australia for two weeks
Untitled feature film, Sri Lakshmi Narashimha, in Australia for ten days
Kitne Door Kitne Paas, MK Pictures, in Australia for two weeks
Production No 1 (working title), GSK Melodies, in Australia for two weeks
Jaani Dushman, Shankar Movies, in Australia for three weeks
Dil Chahta Hai, producer Ritesh Sidhwani, in Australia for

2002:

Hollywood, producer Ramanna Kodigihalli, in Australia for four weeks
Bhagavathi, Lakshimi Movie Makers, in Australia for three weeks
Road, Varma Corporation, in Australia for ten days
Janasheen, FK Film Pvt Ltd, in Australia for five weeks

2003:

Boys, Sri Surya Movies, in Australia for three weeks
Campus, Dreamworld Movies, in Australia for ten days
Nala Damayanthi, Raajkamal Films International, in Australia for two weeks
Satha, Sharmatha Productions, in Australia for two weeks

2004:

Kahani Garkii, Balaji Telefilms Ltd, television series, in Australia for ten days
Touch, Shri Sai Ram Arts, in Australia for two weeks
Untitled feature film produced for Jyothirmayi Cinema, in Australia for one week
Production No. 1 (working title), Balaji Telefilms Ltd, a feature film spin off from a television series, in Australia for two weeks

2005:

Salaam Namaste, Yash Raj Films, in Australia for 14 weeks

2006:

Apne, Glamour Entertainment, likely to come to film in Australia for five weeks commencing in May

ATTACHMENT B

NATIONAL FILM DEVELOPMENT CORPORATION LTD

BYE LAWS & REGULATIONS

In exercise of the powers conferred by Article 80(16) of Articles of Association the Board of Directors of the National Film Development Corporation Ltd., has at its meeting held on 18th Sept., 1997 amended the following Bye-laws and Regulations for the regulation of the business of Film Financing of Corporation:

1. Definitions:

In these Bye-laws and schedules unless it be repugnant to the subject or context.

- i) 'CORPORATION' means the National Film Development Corporation Limited.
- ii) 'PERSON' includes firm, Corporation and company as well as individual.
- iii) 'APPLICANT' means a person, who has applied for a loan from the Corporation.
- iv) 'BORROWER' means a person, who has obtained a loan from the Corporation.
- v) 'BOARD OF DIRECTORS' or 'BOARD' means a meeting of the Directors duly called and constituted or as the case may be the Directors assembled at a Board Meeting or acting by Circular under the Articles of Association of the Corporation.
- vi) 'THE CHAIRMAN' means the Chairman of the Board of Directors.
- vii) 'THE DIRECTORS' means the Directors for the time being of the Corporation as the case may be Directors assembled at a Board Meeting.
- viii) 'MANAGING DIRECTOR' means the Managing Director of the Corporation.
- ix) 'GENERAL MANAGER' means the General Manager of the Corporation.
- x) 'SECRETARY' means the Secretary of the Corporation.
- xi) 'PROJECT' means the feature film, documentary film, featurette, film production equipment or any other objects for which an application for loan is made to the Corporation.
Words imparting the singular number include, where the context admits or requires the plural number and Vice versa and words imparting the masculine gender also include the feminine and neutral genders.

Terms and conditions for sanction of loans and production of films by the Corporation.

2. Submission of forms :

Loan application for production of feature films/documentary short films, featurettes, purchase of film production equipment, dubbing of films into various languages (other than the original language), para dubbing and subtitling, should be submitted in duplicate on the printed forms, as prescribed by the Corporation.

The forms are available at the Corporation's office at Mumbai, Chennai, Calcutta, New Delhi and its Branch Offices at Trivandrum, Bangalore, Secunderabad and Cuttack on payment of Rs.30/- for three forms. Outstation requests for forms should include Rs 10/- extra to cover postage charges. Loan application for feature films and featurettes should be accompanied by nine copies of the script in

English or in the language in which the film is to be made and nine copies of detailed synopsis in English

For documentary/short films, application should be accompanied by two copies of the script in English and two copies of the synopsis in English approved by the Sponsors.

For purchase of film production equipment the application should be accompanied by six copies of the proforma invoices in original and project viability report.

For dubbing, para dubbing and sub-titling the application should be accompanied by two copies of translated script in the language in which the film is to be dubbed along with two copies of the original script and two copies of the synopsis in English.

3. Processing Fees:

Each application should be submitted along with processing fee as given below:

i) For amount exceeding Rs.1.00 lakh but upto Rs 3.00 lakhs	Rs1000/-
ii) For amount exceeding Rs.3.00 lakhs but upto but upto Rs. 10.00 lakhs	Rs.2000/-
iii) For amount exceeding Rs.10.00 lakhs	Rs.5000/-

4. Procedure for disposal of applications:

a) Normal only applications for loans for production of films and proposals under NFDC-DDK Co-production Scheme will be received by the Corporation.

As far as the production of films under 100% financing Scheme is concerned, only the Board will take a decision to invite film makers for making the film under this Scheme.

b) The Board of Directors may appoint a Panel of Members consisting of persons distinguished in the fields of art, culture, education and/or who have background of film production/direction/criticism or appreciation among whom the following Committees shall be constituted to advice the Corporation on loan application or any other project.

i) **SCRIPT COMMITTEE** : For going through the applications and Script in case of feature films and featurettes.

ii) **TECHNICAL COMMITTEE** : For going through the Project details in case of loan applications for film production equipment.

iii) **SPECIAL COMMITTEE** : For other projects.

iv) Committee for any other purpose not covered by the above.

c) The Chairman of the Corporation shall be the Chairman of the Committee. Meeting of each of the Committees as and when necessary will be called by the Chairman who will also preside at the Meetings. Managing Director of the Corporation shall be a member of all the Committees. In the absence of the Chairman, the Managing Director/local Board of Directors of the Corporation will preside.

In the absence of the Chairman, Managing Director/Directors of the Board, the members present will elect from among themselves, a person who will preside at the meeting.

d) The Chairman, may in his own discretion reject an application without forwarding it to the Script Committee/Board, if on scrutiny of the application and the script and in the light of the report on it, he is of the opinion that it is a case which does not deserve any grant of loan or consideration by the Script Committee/Board. He will subsequently inform the Board.

e) Upon recommendation of a proposal by the Script Committee the applicant will furnish 15 copies of the detailed synopsis in English. in case of regional language films and/or 15 copies of script in case of Hindi films for circulation to the Board Members along with additional information of the Project in FORM 'B'.

f) The Managing Director in consultation with the Chairman may place all the applications for decision except these rejected by the Chairman along with a report on the application and recommendations of the concerned committee before the Board for its consideration.

g) The Board may In its discretion sanction or reject a project and prescribed terms and conditions for giving financial assistance or may authorise the Managing Director to finalise the same in consultation with the Chairman.

h) Deposit Upon sanction of a project by the Board, an applicant has to pay a deposit of Rs. 2,000/-. The deposit will be adjusted towards repayment of loan, If the application is withdrawn after sanction of the projector if the applicant does not start production of the film within one year after sanction of the project, the deposit amount will be forfeited.

I) If the applicant does not comply with the requirements as provided in the loan agreement and fails to draw the first installment of loan or does not start the production of film under 100% financing or NFDC-Doordarshan Co production scheme within a period of one year from the date of sanction of the loan or within such extended period or as may be approved by the Chairman., the loan may be cancelled and deposit received from the applicant may be forfeited.

5. Limits for Loans. 100% Finance. NFDC-Doordarshan Co-production and Foreign Co-production Scheme

The amount of financial assistance for feature/documentary/short films, featurettes, dubbing, para dubbing or films, subtitling of films and purchase of film production equipments will be decided in each case by the Board of Directors of the Corporation but it will not exceed 75% of the budgeted cost subject to the following limit:

I) Loans

Rs. 20,00,000/-	for production of feature films,
Rs. 05,00,000/-	for production of featurettes
Rs. 01,50,000/-	for production of documentary/short films which are sponsored by a Govt. dept. or a Public Sector Organisation.
Rs. 01,00,000/-	for dubbing/para dubbing of films,
Rs. 00,40,000/-	for subtitling of films
As. 05,00,000/-	for purchase of film production equipment's.

ii) 100% Finance & NFDC-DDK Co-production Scheme

Rs. 35,00,000/- for production of feature films.

iii) Foreign or any other Co-production

The quantum of NFDC investment will be fixed by the Board, depending on the merit of the case.

5B. The limits may in deserving case be increased/decreased by the Board depending on the merits of each case.

6. Time taken for processing of application

If an application for loan is submitted together with all the information required, a decision on it will be taken within a period of four months after its receipt.

7. Disbursement of loan

Loans will be disbursed at such intervals and in such installments as may be decided by the Corporation. The first installment of loan will however be paid only after the borrower's share of investment has been expended by him to the satisfaction of the Corporation and after he had complied with all the requirements provided in the loan agreement. In case of cash investment, Chartered Accountant's Certificates and in case of credit investment credit letters stating that the person/(s) giving credit to the applicant will claim the credit amount only after the Corporation's loan with interest has been repaid, should be furnished by the Applicant before release of the first installment.

In addition to the above, a letter from the laboratory authorising the Corporation to own and handle negatives, rush prints, all photographic and magnetic sound tapes, etc. of the proposed film and a letter of 'NO OBJECTION' from the Story/Script writer in the form prescribed by the Corporation should be submitted before availing of the loan.

8. The Corporation will have first charges and par-amount lien on the film and all its properties. The Corporation's charge will extend to all rights of the film.

9. The Corporation may also act as world Rights Controller of the film for commercial, non-commercial sales and distribution of the film in all gauges and formats which are existing or may come into force in future.

10. Repayment of loan with interest

A) For feature film:- On expiry of two years from the date of advancement of the first installment of loan or on the day of delivery of print for the first release of the film anywhere, whichever is earlier.

B) For Documentary/Short films:- On expiry of one year from the date of advancement of the first installment of loan or on the thirtieth day of delivery of documentary/short film to its sponsors, whichever is earlier.

C) Dubbing/par dubbing/sub-titling of film:- On expiry of six months from the date of advancement of first installment of loan.

D) For film Production Equipment :- Loan with interest are repayable in 36 equal monthly installments commencing on the expiry of six months after the purchase of equipment's or six months after the release of first loan installment, whichever is earlier.

In respect of all loan agreement covering financing of films entered into by the Corporation, all repayments by loanees will first be adjusted against the interest amount and thereafter against the principal due and payable.

In case of default in payment of any two installments, the entire loan will normally become due and payable unless otherwise specified by the Board.

11 **Interest or Loans:** Simple interest at the fixed rate of 17% per annum will be charged on all loans. A rebate of 2% is offered if the loan is repaid within one year from the date of advancement of the first loan installment in case of feature films.

No rebate however will be admissible in the case of loans for purchase of film production equipments and loans for dubbing para dubbing and sub-titling of films.

12. Miscellaneous

a) The Producer is required to arrange screening of the film during a various stages of production of the film and completed film for the Chairman/Managing Director or a representative of the Corporation before submitting the film for Censor. The producer is also required to submit a 16mm/35mm print of the film and a video cassette for the library of the Corporation for which the Corporation will bear the cost.

b) Loans for production of 35mm and 16mm feature films will be given only against adequate collateral security. In exceptional cases, the Board may waive the collateral security and the Corporation will be entitled to co ordinate the sale/distribution of the film and the Corporation will charge 25% share in profits for the services rendered.

c) Both the applicant and guaranters if any should provide the latest income-tax clearance certificate

before sanction of the loan.

d) The Corporation may not sanction a second loan to a defaulter. Those Directors in 100% financing scheme who have exceeded the budget and also those exceeding hereafter the original budget without adequate justification and prior sanction may also be treated as defaulter for this purpose.

e) Those Directors whose liability is dissolved by taking over the film by the Corporation would still be treated as defaulter unless otherwise decided by the Board.

13. Production and Co-production films by Corporation

A) The Corporation undertakes production of feature film under its 100% financing scheme and will have all rights over the film, The application has to be submitted on Corporation's prescribed forms together with application fee as indicated in Sr.No.3 above.

B) The Script will be evaluated by a Script Committee.

C) The proposal with the recommendation of the Script Committee will be put up to the Board of Directors for their consideration and approval/rejection.

D) The Board may nominate a Sub-committee of its members to go through the details of the project.

E) For each approved production, the Corporation will appoint a production Controller,

F) All disbursements will be made according to the requirements as decided by the Corporation or the Production Controller appointed by the Corporation.

G) Commission not exceeding 7 of the total net profit may be paid to the Director of the film and commission not exceeding 2 1/2% may be paid to the Script writer only in case of production of films by the Corporation. There is no such profit sharing in case of Co-production.

H) The Corporation may commission its own director and Production Unit for the Production of the film on a Script approved by the Board.

I) The rushes, may be seen by the Board members at various stages of film production, to assess the progress of work.

Available online at <http://www.nfdcindia.com>