

International co-production treaties -v- Television Standard 14

Jane Innes examines the background to the recently announced inquiry into international co-productions and local content requirements imposed by the ABT

In 1990 Australia entered its first film and television co-production treaties with the UK and Canada to promote creative and financial collaboration on film and television projects. Other co-production treaties are currently being negotiated with the Soviet Union, Germany and Italy.

The Minister for Transport and Communications, Kim Beazley, has recently identified several benefits resulting from such treaties, including the opening up of new markets for Australian films, greater creative and technical exchange, and an increased output of high quality productions through the sharing of equity investment.

These co-production treaty agreements provide a strong impetus to the official co-production program administered by the Australian Film Commission (AFC).

The AFC's co-production program aims to assist Australian co-productions made under the terms of recognised treaties between Australia and other countries. The program also extends official co-production status to agreements entered into in accordance with administrative arrangements of 'less than treaty status'. These latter arrangements relate to selected participating organisations in a specified group of countries including France, New Zealand and Germany.

'Official co-production status' for a film has two important consequences: eligibility for tax relief under Division 10BA of the *Income Tax Assessment Act*; and qualification under the funding guidelines of the Australian Film Finance Corporation.

Australian content standards

Overseas and local industry concern has been expressed that the benefits conferred by 'official co-production status' do not satisfy the requirements established by the Australian Broadcasting Tribunal's (ABT) Television Program Standard 14 (TPS 14).

TPS 14 is designed to encourage programs which are identifiably Australian and which are produced with Australian creative control. The Standard provides a scoring system by which a minimum level of Australian content is set. A licensee is obliged to achieve a minimum of 1320 points for drama/diversity programs in each year over

a three year period commencing from 1 January 1990. This point score is established by multiplying the 'Australian Factor' by the 'Quality Factor' and the number of hours screened. To qualify for the drama/diversity score drama must have an 'Australian Factor' of 3 or 1.5. Where there is involvement of a foreign director or writer, a ceiling of 1.5 is applied to the 'Australian Factor'. This ceiling was imposed due to the ABT's assessment that the director and writer have the strongest impact on the look of a film.

Several industry groups have argued that this ceiling unreasonably results in a reduced licence fee from Australian networks seeking to satisfy their TPS 14 quota requirements.

Section 18 Inquiry

In response to international and local industry demands to resolve the perceived restrictiveness of Australian local content rules in commercial television regulation, a two-part inquiry was announced by the Minister on 18 March 1991 under section 18 of the *Broadcasting Act*.

The first part of the inquiry, to be completed by 30 June 1991, will examine the constraints existing in arrangements for the regulation of commercial television services which may affect benefits to the Australian film and television industry from productions made under official film co-production treaties, or foreign productions made in Australia with Australian participation. Its terms require the ABT to assess the effect of arrangements for the regulation of commercial television services in relation to:

- access for Australian producers to foreign equity;
- access for official co-productions to government provided assistance in other countries;
- interaction of Australian technical and creative production personnel with foreign expertise; and
- price and diversity of programming available to Australian television services.

The second part of the inquiry, to be completed by 30 September 1991, aims to identify the appropriate means to balance an Australian complexion for television programs with the Government's objectives for the development of a competitive and viable Australian film and television industry.

Its terms require the ABT to have regard to:

- the Government's objectives for the development of more internationally competitive and export oriented industries in Australia;
- Australia's obligations under international treaties; and
- the importance of the Australian film and television production industry as a supplier of television programming in Australia and for the development of the video and broadcasting services.

Legislative change and beyond

In the course of the ABT's inquiry the desirability of legislative amendment to implement the terms of Australia's co-production treaty obligations can be expected to receive some consideration.

Until the terms of an international treaty are expressly incorporated within Australia's domestic law, their legal effect is limited. Although Australia's treaty arrangements seek to give overseas producers the same benefits available to Australian productions, access to these benefits remains subject to existing Australian law. This law includes the provisions of the *Broadcasting Act*. The duties imposed on the ABT as an independent statutory authority do not presently include the development of programming standards which reflect Australia's treaty obligations. Legislative change may be necessary if full effect is to be given to the terms of Australia's co-production treaties.

The ABT's decision of November 1989 which established TPS 14 plainly expressed a view that cultural arguments are central to the promotion of program content which is identifiably Australian. In the event that legislative reforms were enacted to secure greater benefits to co-productions with foreign participation, the ABT may consider any resulting dilution in the total Australian look of programming offered by licensees should be compensated for by lifting the annual Australian content points threshold required to be met.

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