

MEMORANDUM OF UNDERSTANDING REGARDING

THE CO-PRODUCTION OF FILMS

The AUSTRALIAN FILM COMMISSION ("AFC") being an authority of the Government of Australia;

and the NEW ZEALAND FILM COMMISSION ("NZFC") being an authority of the Government of New Zealand;

both considering that it would be in the interests of the film industries of their respective countries to encourage the co-production of films;

and wishing to record their intentions in respect of the co-production of films, without binding each party to implement these intentions;

have recorded their understanding on these matters as follows:

PARAGRAPH 1 : FINANCIAL, ARTISTIC AND TECHNICAL CONTRIBUTION

- (1) The AFC and the NZFC undertake, on the terms and subject to the conditions set out in this Memorandum and in accordance with their respective policies on the international co-production of films, from time to time to approve as films to which the benefits and provisions of this Memorandum apply ("co-production films") films which are proposed to be jointly made by Australian and New Zealand producers which are:
 - (a) feature films (including animated films);
 - (b) films of a like nature to feature films produced for exhibition by way of television broadcasting;
 - (c) documentaries; or
 - (d) mini-series of television drama.
- (2) Any proposal made by a producer for a co-production film must be approved by the AFC and the NZFC to be accorded the benefits of co-production pursuant to this Memorandum. Each party will inform the other of receipt by it of an application to which this Memorandum relates and neither party will

signify to any applicant its approval of an application made to it without first receiving the other party's confirmation that it approves the project.

- (3) Participation by each co-producer (a "co-producer") of co-production films is to consist of financial, artistic and technical contributions.
- (4) The proportion of Australian and New Zealand financial and creative equity may vary from one co-production to another under this Agreement but, overall and over time, there shall be a balance of both financial and creative elements so as to ensure that co-productions made under this Agreement are of significant benefit to the film industries of both countries.
- (5) The key creative components for estimating relative levels of creative participation are:
 - (a) Screenwriter
 - (b) Director
 - (c) Producer
 - (d) Principal artists (Lead and major supporting cast)
 - (e) Director of Photography
 - (f) Editor
 - (g) Composer
 - (h) Production Designer
- (6) There will be no common management or control (other than to the extent that is inherent in the making of the co-production film) between the Australian and New Zealand co-producers.

PARAGRAPH 2 : PARTICIPATION IN CO-PRODUCTIONS

- (1) The creative and technical participants in the co-production film will, subject to sub-paragraph (2), be Nationals or Residents of Australia or New Zealand.
- (2) Should the co-production film so require, the participation of persons other than those provided for in the preceding sub-paragraph may be permitted, subject to the approval of each competent authority.

- (3) "Resident" means, in each country:
- (a) a person whose principal place of residence has been in that country for not less than the previous two calendar years;
 - (b) a company which is incorporated in that country, carries on business in that country and has its central management and control in that country.

PARAGRAPH 3 : MULTI-PARTY INVOLVEMENT IN CO-PRODUCTIONS

The AFC and the NZFC will, where possible, be willing to consider recognition of co-productions undertaken by producers of Australia, New Zealand and countries to which either:

- (a) the Government of Australia or the AFC; or
- (b) the Government of New Zealand or the NZFC,

are bound by Co-production Agreements.

PARAGRAPH 4 : DOCUMENTATION

- (1) the AFC and the NZFC may enter into agreements with national co-producers relating to the production of the co-production films. Any such agreement shall be on terms consistent with those of this Memorandum.
- (2) Applications made by producers for projects to be accorded the benefits of the arrangements embodied in this Memorandum shall be made in accordance with the relevant authority's application procedures from time to time. A schedule of the application procedure is annexed to this arrangement,

PARAGRAPH 5 : COPYRIGHT

Copyright in co-production films will be divided as the co-producers agree but so that each investor will be a first owner of a share of the copyright subsisting throughout the world in the relevant co-production film as a tenant-in-common with all other investors.

PARAGRAPH 6 : TREATMENT AS QUALIFYING FILM

- (1) It is the intention of the parties that co-production films will be eligible to be considered:
 - (a) in the case of Australia, as qualifying Australian films within the meaning of Division 10BA of the Income Tax Assessment Act 1936, if made according to this Memorandum; and
 - (b) in the case of New Zealand, as qualifying New Zealand films within the meaning of Section 224D of the Income Tax Act.
- (2) Any subsidies or other financial benefits which may be granted within either country in relation to the co-production film shall accrue to the co-producer who is permitted to claim those subsidies or benefits in accordance with the legislation of that country.
- (3) The AFC and the NZFC will endeavour to have each co-production film accorded the status of a national film in their respective countries, including under their respective broadcasting laws and regulations.

PARAGRAPH 7 : IMMIGRATION AND IMPORTATION REQUIREMENTS

The AFC and the NZFC will endeavour to facilitate the entry into and temporary residence in their respective countries, of residents of the other's country and any other persons participating in making or exploiting a co-production film, subject to the requirement that they comply with the laws and regulations relating to entry and residence.

PARAGRAPH 8 : DISCLOSURE

The AFC and the NZFC will inform each other of all material and relevant matters concerning a co-production film promptly upon becoming aware of them.

PARAGRAPH 9 : PUBLIC EXHIBITION

- (1) Neither approval of a co-production film by the parties nor the completion of a co-production film in pursuance of this Memorandum gives the co-producers any right to have the co-production film, when completed, exhibited in public in either Australia or New Zealand.
- (2) Where a co-production film is entered at film festivals it will be entered by the majority co-producer, though acknowledged as a co-production between Australia and New Zealand.

PARAGRAPH 10 : CREDITS

A single frame shared credit in the end titles, all substantial promotion for each co-production film and any prospectuses or public offer documents to invite investment in a co-production film, will indicate that the film is a co-production made possible by the co-operation of the Australian Film Commission and the New Zealand Film Commission.

PARAGRAPH 11 : JOINT COMMITTEE

A joint committee may be established at the request of either authority, consisting of two nominees of each of the parties, to examine the implementation of this Memorandum and to resolve any difficulties arising out of its application.

PARAGRAPH 12 : EXPORT

Where any co-production film is exported to a third country which imposes a quota on the import of foreign films, the parties will endeavour to ensure that:

- (a) where one only of the co-producing countries enjoys unrestricted entry of its productions into the importing country, the co-production film is included in the quota of that country;
- (b) otherwise, the co-production film is included in the quota of the country of the majority co-producer.

PARAGRAPH 13 - DURATION AND EFFECT

- (1) This Memorandum of Understanding comes into effect the day on which the representatives of each competent authority have signed below.
- (2) This Memorandum will continue in effect until 1 January 1995 and thereafter will be automatically renewed for successive periods of two (2) years unless either party has given notice in writing to the other not later than three (3) months before any renewal date requiring its termination
- (3) Termination of this Memorandum shall not effect co-production films which have been approved by both parties before service of notice under sub-paragraph (2), in respect of which this Memorandum shall continue in effect.

PARAGRAPH 14:

Both parties recognise that this document records an understanding of mutual intention and creates no rights or obligations between the parties.

This Memorandum of Understanding is executed in duplicate on the day of 199 and replaces the Memorandum of Understanding dated 7th September 1990.

Signed:

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for AUSTRALIAN FILM COMMISSION

for NEW ZEALAND FILM COMMISSION

ANNEX

Application Procedure

Intending co-producers must make application to their respective authorities in the form and under the terms and conditions required by the authority. Each authority may specify the documentation required, which may include any or all of the following:

1. Documentary evidence as to the acquisition of authors' rights.
2. A detailed summary of the project and copies of the proposed script.
3. The names of all key technical and artistic personnel, indicating their nationalities and the roles assigned to key cast.
4. A budget and proposed method of financing.
5. A preliminary shooting schedule for the film.
6. The proposed terms of contract between the co-producing companies.

In the case of New Zealand, producers will be required to complete and submit to the New Zealand Film Commission an application for certification as a qualifying New Zealand film. In the case of Australia, the application for certification as a qualifying Australian film must be submitted to the Minister for Communications and Arts.