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AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
CONCERNING THE CO-PRODUCTION OF FILMS

Wellington, 9 February 2005
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Presented to the House of Representatives

AGREEMENT
BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF
THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE CO-PRODUCTION
OF FILMS

The Government of New Zealand and the Federal Republic of Germany ("the Contracting Parties") -

Seeking to enhance cooperation between their two countries in the area of film;

Desirous of expanding and facilitating the co-production of films which may be conducive to the film industries of both countries and to the development of their cultural and economic exchanges;

Convinced that these exchanges will contribute to the enhancement of relations between the two countries;

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement

1. "competent authority" means the authority designated as such in the Annex by each Contracting Party.
2. "co-producer" means one or more Germans nationals or one or more New Zealand nationals involved in the making of a co-production film.
3. "co-production film" means a film made by one or more nationals of one Contracting Party in cooperation with one or more nationals of the other Contracting Party under a project approved jointly by the competent authorities.
4. "film" means an aggregate of images, or of images and sounds, embodied in any material, and includes television and video recordings, animations and digital format productions.
5. "nationals" means:
 - (a) for the Federal Republic of Germany,
 - Germans within the meaning of the Basic Law;
 - persons who are part of the German culture and have their permanent residence in the Federal Republic of Germany;
 - nationals of a Member State of the European Union; or
 - nationals of another Contracting State of the Agreement on the European Economic Area of 2 May 1992 (EEA Agreement); and

- (b) for New Zealand,
- citizens of New Zealand; or
 - permanent residents of New Zealand.

Article 2

RECOGNITION AS A NATIONAL FILM AND ENTITLEMENT TO BENEFITS

1. A co-production film shall be fully entitled to all the benefits which are or may be accorded to national films by each of the Contracting Parties under their respective national laws.
2. Any benefits which may be granted within either country in relation to a co-production film shall accrue to the co-producer who is permitted to claim those benefits in accordance with the legislation of that Contracting Party, subject to any other relevant international obligations.

Article 3

APPROVAL OF PROJECTS

1. Co-production films shall require, prior to the commencement of shooting, joint approval of the competent authorities. Approvals shall be in writing and shall specify the conditions upon which approval is granted. None of the co-producers shall be linked by common management, ownership or control, save to the extent that it is inherent in the making of the co-production film itself.
2. In considering proposals for the making of a co-production film, the competent authorities, acting jointly and with due regard for their respective policies and guidelines, shall apply the rules set out in the Annex to this Agreement.
3. Approval of a proposal to make a co-production film shall not bind the relevant authorities of either Contracting Party to grant a license for the exhibition or broadcast of the completed co-production film.

Article 4

CONTRIBUTIONS

1. For each co-production film:
 - (a) the performing, technical, artistic and creative participation of the co-producers; and
 - (b) production expenditure of the co-producer in the Federal Republic of Germany or in another Member State of the European Union, or in another Contracting State of the Agreement on the European Economic Area, or in New Zealandshall be in reasonable proportion to their respective financial contributions.

2. Both the financial contribution, and the performing, technical, artistic and creative participation of each co-producer shall account for at least 20% (twenty per cent) of the total effort in making the co-production film.
3. Notwithstanding the contribution rules set out in paragraphs 1 and 2 of this Article, in exceptional cases competent authorities may approve jointly films where:
 - (a) the contribution by one co-producer is limited to the provision of finance only, in which case the proposed finance-only contribution shall be 20% (twenty per cent) or more of the total costs of the film; or
 - (b) despite falling outside the contribution rules, the competent authorities consider that the project would further the objectives of this Agreement and should be approved accordingly.

Article 5

THIRD COUNTRY CO-PRODUCTIONS

1. Where either the Federal Republic of Germany or New Zealand maintains with a third country a film co-production agreement, the competent authorities may approve a project for a co-production film under this Agreement that is to be made in conjunction with a co-producer from that third country.
2. Approvals under this Article shall be limited to proposals in which the contribution of the third country co-producer is no greater than the lesser of the individual contributions of the German and New Zealand co-producers.

Article 6

PARTICIPATION

1. Persons participating in a co-production film shall be nationals of the Federal Republic of Germany, or of another Member State of the European Union, or of another Contracting State of the Agreement on the European Economic Area, and nationals of New Zealand and, where there is a third co-producer, nationals of the third co-producer's country.
2. Subject to the approval of the competent authorities:
 - (a) where script or financing dictates, restricted numbers of performers from other countries may be engaged; and
 - (b) in exceptional circumstances, restricted numbers of technical personnel from other countries may be engaged.

Article 7

MAKING UP TO FIRST-RELEASE PRINT

1. Co-production films shall be made and processed up to the manufacture of the first release print in the Federal Republic of Germany, in another Member State of the European Union, in another Contracting State of the Agreement on the European Economic Area,

in New Zealand and/or, where there is a third co-producer, in that third co-producer's country.

2. At least 90% (ninety per cent) of the footage included in a co-production film shall be specially shot or created for the film unless otherwise approved by the competent authorities.

Article 8

LOCATION FILMING

1. Competent authorities may approve location filming in a country other than those of the participating co-producers.
2. Notwithstanding Article 6, where location filming is approved in accordance with this Article, citizens of the country in which location filming takes place may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.

Article 9

SOUNDTRACK

1. The original sound track of each co-production film shall be made in one of the official languages of either the Federal Republic of Germany or New Zealand, or in any combination of those permitted languages.
2. Narration, dubbing or subtitling in any other commonly used language or dialect of the Federal Republic of Germany or New Zealand shall be permitted.
3. Post-release print dubbing into any other language may be carried out in third countries.
4. The soundtrack may contain sections of dialogue in any language in so far as is required by the script.

Article 10

ACKNOWLEDGMENTS, CREDITS

A co-production film and the promotional material associated with it shall include either a credit title indicating that the film is an "Official German - New Zealand Co-Production" or an "Official New Zealand - German Co-Production" or, where relevant, a credit which reflects the participation of the Federal Republic of Germany, New Zealand and the country of a third co-producer.

Article 11

IMMIGRATION FACILITATION

Within the framework of their respective national legislation and for the purpose of making or promoting a co-production film, each Contracting Party shall permit, including through the

granting of work permits, the entry and residence or temporary residence of the nationals of the other Contracting Party, and of citizens of the country of any third co-producer approved under Article 5.

Article 12

IMPORT OF EQUIPMENT

Within the framework of their respective national legislation, each Contracting Party shall facilitate, free of import duties and taxes, the temporary import, and re-export, of technical equipment for the making of co-production films.

Article 13

MIXED COMMISSION

1. A Mixed Commission shall be composed of representatives from Government from the film, television and video industries of both Contracting Parties.
2. The role of the Mixed Commission shall be to supervise and review the implementation and operation of this Agreement and to make any proposals considered necessary to improve the effect of the Agreement.
3. The Mixed Commission shall be convened, whether by meeting or otherwise, at the request of either of the Parties within six months of such a request.

Article 14

STATUS OF ANNEX

The Annex shall form an integral part of this Agreement.

Article 15

ENTRY INTO FORCE

This Agreement will enter into force on the day on which the Government of the Federal Republic of Germany is notified by the Government of New Zealand that the national requirements for the entry into force of the Agreement have been fulfilled. That day shall be the day on which such notification is received.

Article 16

AMENDMENT

1. Subject to paragraph 2 of this Article, this Agreement may be amended by written agreement between the two Parties through an exchange of diplomatic notes. Amendments shall take effect on the date specified in the notes.
2. Either Contracting Party may by diplomatic note notify the other of a change in its competent authority. The change shall take effect on the date specified in the note.

Article 17*DURATION AND TERMINATION*

1. The term of this Agreement shall be for a period of three years from the date it enters into force and thereafter automatically renewed for further periods of three years. Either Party may terminate the Agreement at the conclusion of a three-year period by giving six months' notice in writing through diplomatic channels, in which case the Agreement shall terminate at the expiry of that six-month period.
2. Notwithstanding paragraph 1 of this Article, this Agreement shall continue to apply after its termination to co-production films until their completion.
3. The registration of this Agreement with the Secretariat of the United Nations under Article 102 of the United Nations Charter shall be carried out by the Government of New Zealand immediately following the Agreement's entry into force. The other Contracting Party will be advised of this registration and provided with a UN-registration number, as soon as this is confirmed by the Secretariat of the United Nations.

DONE AT Wellington on this ninth day of February, in duplicate in the German and English languages, both texts being equally authentic.

For the Government of
New Zealand

For the Government of the
Federal Republic of Germany

[Signatures not reproduced]

ANNEX

1. The competent authorities for this Agreement are the Bundesamt für Wirtschaft (Federal Office of Economics and Export Control, BAFA) in the Federal Republic of Germany and the New Zealand Film Commission (NZFC) in New Zealand.
2. The approval process under Article 2 of the Agreement shall comprise two stages: Provisional Approval upon application, and Final Approval upon completion of the film and prior to distribution.
3. There shall be a contract between the co-producers governing the making of a co-production film which shall:
 - (a) provide that a co-producer may not assign or dispose of benefits referred to in Article 4 except to or for the benefit of a national of that co-producer's country;
 - (b)
 - (i) assign, as between the co-producers, ownership of all intellectual property rights arising from the making of the co-production film; and
 - (ii) set out the arrangements between the co-producers regarding the exercise of rights of access to and use of copyright works created in the making of the co-production film;
 - (c) set out the financial liability of each co-producer for costs incurred:
 - in preparing a co-production project which is refused approval as a co-production film by the competent authorities;
 - in making a film which has been given such approval and fails to comply with the conditions of such approval;
 - in making a co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;
 - (d) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the co-production film including those from export markets;
 - (e) specify dates by which the respective contributions of the co-producers to the production of the film shall have been completed;
 - (f) specify whether the co-production film shall be shown in film festivals as a national film of the majority co-producer or as a national film of all the co-producers; and
 - (g) specify any other conditions of approval that the competent authorities jointly agree.