

International Co-production Program – guidelines for entering into audiovisual co-production arrangements

The Australian Government's International Co-production Program:

- facilitates cultural and creative exchange between partner countries;
- aims to increase the output of high-quality screen productions; and
- allows partner countries to share the risk and cost of screen production.

Audiovisual co-production arrangements offer both cultural and economic benefits to partner countries. Co-productions have the ability to engage new international audiences and enhance existing relationships between partner countries. Screen productions that have been approved as official co-productions are treated as 'national' productions in each partner country, whereby the co-producers are eligible to apply for any available government benefits.

In Australia, co-producers are eligible to apply for government support in the form of tax concessions and direct investment. Co-productions are considered to be Australian content for the purposes of Australia's broadcast content quotas.

Potential partner countries for new co-production arrangements come to the Government's attention in various ways. The Australian screen industry, through the Trade and Co-production Forum, may suggest potential partner countries because of existing screen production-making relationships (unofficial co-productions), or because a co-production arrangement with the partner country is likely to benefit the industry.

The Australian Government may seek a co-production arrangement with a partner country to fulfil broader cultural and foreign policy objectives.

Other countries may also approach the Australian Government about possible co-production arrangements.

Criteria for entering into new audiovisual co-production arrangements

The following criteria are applied to all potential co-production partner countries when assessing their suitability. While potential partner countries may not satisfy every criterion, there is an overarching requirement that any co-production arrangement entered into will be, on balance, in Australia's national interest.

National interest

The 'national interest' criterion applies to all treaties entered into by the Australian Government and is of primary importance when considering a potential partner country for an audiovisual co-production arrangement. Any new co-production arrangement must be considered in the broader context of

the Australian Government's foreign policy and trade objectives. The national interest criterion also places importance on how much the Australian screen production industry will benefit from the new arrangement.

Any audiovisual co-production arrangement entered into by Australia must be in the national interest, bringing economic, social and cultural benefits such as:

- an increased choice of diverse screen productions for Australian consumers;
- opportunities for the Australian screen industry to make screen productions which would otherwise not have been made;
- an increase in the employment of Australians;
- an increase in international audiences for Australian screen productions;
- an interchange of production personnel between partner countries; and
- stronger diplomatic ties between the Australian Government and the partner country.

For all treaties to which Australia wishes to become a party, the treaty and an accompanying national interest analysis are to be tabled in Parliament.

The national interest analysis covers:

- the purpose of the arrangement and Australia's reason for entering into it;
- the overall benefit to Australia;
- Australia's obligations under the arrangement and any related costs;
- how the arrangement will be implemented and how it can be amended in the future if necessary; and
- provision for Australia's withdrawal from the arrangement if necessary.

It is important for these issues to be assessed early when considering a new co-production arrangement.

National treatment

An official co-production arrangement should provide benefits to each co-producer that would not be available if the project was produced outside the arrangement.

Co-production projects made under any arrangement should be granted 'national' treatment in each partner country. The principle of national treatment requires that screen productions made under an official co-production arrangement should be treated as wholly Australian productions in Australia. Likewise, they will also be treated as wholly national productions of the partner country within that partner country.

Under an official co-production arrangement, co-producers should be eligible to apply for all forms of government support and subsidy available to the local

screen production industry in each country, as if they were making national productions of that country. Government support in partner countries might include investment, tax concessions or treatment as local content for broadcast or theatrical release quotas.

In Australia, co-productions are eligible to apply for government support in the form of tax concessions and direct investment and they are also considered to be Australian content for the purposes of Australia's broadcast content quotas.

Foreign policy

Cultural and creative links are important in Australia's diplomatic activities and trade relationships. Potential new co-production arrangements are assessed against Australian Government foreign policy objectives, such as building existing international relations and facilitating cooperation with priority countries and world regions.

The foreign policy priorities of the potential partner country are also assessed before seeking a ministerial mandate to begin negotiations. This is to ensure that the country's government will support a co-production arrangement with Australia.

It may not be possible to begin negotiations with another country because of things that affect the relationship, like sanctions, internal disturbance in that country or other bilateral (or multilateral) relations considerations.

These factors need to be taken into account along with Australia's current foreign policy objectives when assessing whether an arrangement is feasible.

Industry interest

It is important that the screen industries in Australia and the potential partner country have a strong interest in producing screen productions together. Interest in a co-production arrangement in Australia and the potential partner country is assessed before seeking a ministerial mandate to begin negotiations.

Interest could be demonstrated by existing joint projects, or by establishing that there is significant potential for co-production projects into the future.

To assess the level of interest within Australia for a co-production arrangement with a potential partner country, the Australian Government consults with the local screen production industry, chiefly via the Australian competent authority.

Consultations may also be done through the Trade and Co-production Forum, which convenes as required to discuss screen production issues relating to the Australian Government's bilateral and multilateral arrangements.

The Trade and Co-production Forum includes representatives of the Australian Government and competent authority, as well as non-government organisations representing screen producers, writers, directors, composers, performers,

distributors, film exhibitors, entertainment workers and interactive media producers.

Partner country's screen industry

Measuring the size, maturity, strengths, output and international standing of the partner country's screen industry is an important way of assessing where the opportunities lie for Australian screen producers and how a co-production arrangement would be in the national interest.

One of the aims of a co-production arrangement is to make it easier for producers from Australia to work in a partner country by gaining access to government information, services and benefits available in that country. To facilitate co-production opportunities, potential partner countries should have a recognised screen production industry and a public sector entity – a competent authority – which can administer the arrangement and help co-producers to access government services and benefits.

Partner countries should be in a position to offer government support and subsidy to the local screen industry by way of (for example) tax concessions, direct investment in screen productions, and local broadcast content quotas available to 'national' productions under any new co-production arrangement.

If government support and subsidy are not available to the local screen industry in the partner country to a level that is comparable with Australia, there should be significant opportunity for Australian co-producers to access other forms of support, such as access to new markets, private investment and pre-sales to broadcasters or distributors. The potential for this kind of support will need to be demonstrated with industry examples before a mandate to commence negotiations can be sought.

It is important that any new co-production arrangement has the potential to benefit the economies, industry personnel and the production studios and laboratories of both partner countries in an equitable way.

Cultural exchange

The potential for cultural exchange should also be considered when assessing potential partner countries.

Co-production arrangements should provide opportunities to expand or establish international markets for Australian screen productions and personnel.

An important consideration is whether it is likely that screen productions will have cultural resonance in both countries. Opportunities for collaboration between creative and technical personnel in partner countries should also be taken into account.

Other considerations

Other areas that will be considered in assessing the suitability of a potential co-production partner country include the likelihood of reasonable balance of financial and creative contributions by partner countries over time; and the relative working conditions for production cast and crew in partner countries.

Types of audiovisual co-production arrangements

Treaty

The Australian Government's preferred form of ongoing co-production arrangement is a treaty. Treaties are government-to-government agreements that are binding at international law and provide surety in the flow of creative and financial benefits to Australia.

They include agreed definitions of the scope of the agreement, articles relating to the provision of benefits to partner countries, with an annex that sets out how the treaty is to be administered.

The Australian Government requires a ministerial mandate (sought by the Minister for the Arts from the Minister for Foreign Affairs) in order to begin the treaty negotiation process with a new partner country. The pursuit of a treaty must be in line with the Australian Government's foreign policy objectives and be shown to be in Australia's national interest.

Negotiation is a lengthy process, often taking up to several years. The Australian Government department with responsibility for the arts negotiates treaties in consultation with the relevant Australian screen agency, known as the 'competent authority', as well as stakeholder departments across the Australian Government.

After agreement is reached on the final text, the treaty is subject to Australia's domestic treaty approval process. The first stage of the process is to seek the approval of the Ministers for Foreign Affairs, the Attorney-General and Treasurer as well as any other ministers with portfolio interest in the matters covered by a proposed treaty. The Prime Minister must also be informed. Once agreement from relevant Ministers has been provided, approval is sought from the Federal Executive Council to sign the treaty. Once the treaty is signed, a national interest analysis (and possibly a regulation impact statement) is prepared for consideration by the relevant parliamentary committee, which recommends whether or not the Government should take binding treaty action.

The treaty only enters into force when each partner country has completed its domestic treaty approval process and has notified the other partner country of this. Australia's domestic treaty approval process can take up to nine months or more.

For more information about Australia's treaty process, see the Department of Foreign Affairs and Trade 'Australian Treaties Database' webpage www.dfat.gov.au/treaties.

Memorandum of Understanding

A Memorandum of Understanding (MOU), also known as an administrative arrangement, is an instrument of less-than-treaty status that is not binding under international or national law.

An MOU represents a statement of intent by partner countries to cooperate in the area of audiovisual co-production, without guaranteeing that the creative and financial benefits outlined in the MOU will be made available to screen producers working under the arrangement. It does not bind partner countries to its provisions, as is the case with a treaty, although there is a strong expectation that both parties will honour the intent of the arrangement.

Like a treaty, an MOU must be compatible with Australia's foreign policy objectives and benefit the Australian screen production industry.

Given the significant resources required to negotiate a MOU and the benefits, including financial, that can be bestowed on a project made under a co-production arrangement, the Australian Government will only in exceptional circumstances negotiate new MOUs under the International Co-production Program.

One-off Memorandum of Understanding

Where a treaty has been signed and is waiting to go through the domestic treaty approval process, the Australian Government may consider entering into a one-off co-production MOU with the partner country for the duration of a specific screen production project (or a number of projects).

Under a one-off MOU, a project would – depending on the outcome of negotiations – have access to the national benefits of an ongoing arrangement. This might be government support in the form of tax concessions and direct investment, or being considered Australian content for the purposes of Australia's broadcast content quotas.

Further information

Visit www.arts.gov.au/film for more information about Australian Government screen programs.