

FILMS CO-PRODUCTION AGREEMENT
BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF IRELAND

16 May 1997

The Government of Australia and the Government of Ireland ("the Parties");

CONSIDERING that the film industries of their two countries will benefit from closer mutual co-operation in the production of films; and

CONSIDERING that films capable of enhancing the prestige of the film industries of the two countries should benefit from the provisions of this Agreement;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

- (1) "competent authority" means the authority designated as such by each Party.
- (2) "co-producer" means the national or nationals of a Party involved in the making of a co-production film;
- (3) "co-production film" means a film made by one or more nationals of one Party in conjunction with one or more nationals of the other Party and shall also mean a film made by one or more nationals of one Party in conjunction with one or more nationals of the other Party and one or more nationals of another country with which either Party has signed a co-production treaty. A reference in this Agreement to a co-production film shall also be read as including a proposed co-production film;
- (4) "film" means an aggregate of images, or of images and sounds, embodied in any material but does not include an item which is outside the scope of the legislation of either Party which governs the provision of benefits under international agreements relating to the co-production of films;

- (5) "national" means:
- (a) in relation to Australia, an Australian citizen, a permanent resident of Australia or a company incorporated under Australian law;
 - (b) in relation to Ireland, a citizen of Ireland, anyone domiciled in Ireland, resident or ordinarily resident in the State or a company incorporated under Irish Law; and
- (6) "third co-producer" means the one or more nationals of another country (that country having entered into a co-production treaty with one of the Parties) who are involved in the making of a co-production film.

ARTICLE 2

OVERRIDING AIM

An overriding aim of this Agreement shall be to ensure that an overall balance is achieved as regards:

- (a) the contribution of the nationals of each Party to the production costs of all films;
- (b) the usage of studios and laboratories of the two Parties;
- (c) the employment of nationals of the two Parties as creative, craft and technical personnel, measured on a straight head count basis; and
- (d) the participation of nationals of the two Parties in each of the major creative, craft and technical categories and, in particular, that of the writer, director and lead cast.

ARTICLE 3

APPROVAL OF A CO-PRODUCTION FILM

1. The competent authorities, acting jointly, may approve a co-production film which complies with the requirements set down in the Annex to this Agreement.

2. In deciding whether an approval should be granted the competent authorities shall, in addition to the requirements set down in the Annex, take into account the overriding aim of the Agreement and their own policies and guidelines.
3. Subject to any departures permitted by the competent authorities when granting the approval, an approval shall be subject to the condition that the requirements set down in the Annex are satisfied. An approval may also be subject to more detailed conditions framed to ensure satisfaction of those requirements and other conditions framed to achieve the overriding aim of this Agreement and the policies and guidelines of the competent authorities.
4. Should the competent authorities disagree about whether an approval should be granted or made subject to a condition, the approval shall not be granted.
5. An approval shall be in writing and shall specify the conditions upon which it is granted.
6. An application for approval shall be made simultaneously to the competent authorities not less than 30 days (or such other period as may be agreed between the competent authorities) before shooting of the film is due to commence.
7. The competent authorities are as follows:

IRELAND - Department of Arts, Heritage, Gaeltacht and the Islands

AUSTRALIA - Australian Film Commission
8. An applicant shall supply such further information in support of an application as a competent authority may require.

ARTICLE 4

BENEFITS ACCORDED TO NATIONAL FILMS TO BE ACCORDED

A co-production film made or being made in accordance with an approval pursuant to this Agreement shall be entitled to the full enjoyment of all the benefits which it would be accorded under the laws of a Party in force from time to time if it was a national film of that Party.

ARTICLE 5

EXEMPTION OF EQUIPMENT FROM IMPORT DUTIES AND TAXES

Each of the Parties shall permit, in accordance with its legislation, temporary admission, free of import duties and taxes, of cinematographic equipment for the making of approved co-production films.

ARTICLE 6

PERMISSION TO ENTER AND REMAIN IN COUNTRY

Each of the Parties shall permit the nationals of the other country and citizens of the country of any third co-producer to enter and remain in its territory for the purpose of making or exploiting an approved co-production film, subject to the requirement that they comply with the laws relating to entry and residence.

ARTICLE 7

PUBLIC EXHIBITION

The approval of a co-production film by the competent authorities shall not bind the relevant authorities of either country to permit the public exhibition of the resulting film.

ARTICLE 8

INTERNATIONAL OBLIGATIONS

The provisions of this agreement are without prejudice to the international obligations of the contracting parties, including in relation to Ireland, obligations devolving from European Community Law.

ARTICLE 9

MIXED COMMISSION

There shall be a Mixed Commission composed of an equal number of representatives of each of the Parties. Its role shall be to supervise and review the operation of this Agreement, including the achievement of the overriding aim set down in Article 2, and to make any proposals considered necessary for any modification of the Agreement. The meetings of the Commission shall be held alternately in Australia and in Ireland or such other venue as may be mutually determined by the parties hereto. It shall meet eighteen months after the date of entry into force of this Agreement, and thereafter within six months of a request to meet being made by either Party.

ARTICLE 10

AMENDMENT OF THE ANNEX

The provisions of the Annex to this Agreement may be amended by the mutual consent in writing of the competent authorities, after consultation with the Mixed Commission, provided that these amendments do not conflict with Articles 1 to 9 inclusive of the Agreement.

ARTICLE 11

ENTRY INTO FORCE

This Agreement, shall enter into force when the parties have notified each other that their domestic requirements for the entry into force of this Agreement have been satisfied.

ARTICLE 12

TERMINATION

1. This Agreement shall remain in force initially for a period of three years from the date of its entry into force. Either Party may terminate it by giving written notice to the other Party at least six months before the end of that period and the Agreement shall then terminate at the end of the three years. If no such notice is given the Agreement shall automatically remain in force for successive periods each of three years, unless written notice to terminate is given by either Party at least six months before the end of any period of three years, in which case it shall terminate at the end of that period.

2. Notwithstanding termination of the Agreement pursuant to paragraph 1 of this Article, this Agreement shall continue in force in respect of any film made in accordance with an approval granted by the competent authorities under the Agreement prior to that termination.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at _____ this

_____ day of _____.

For the Government of
Australia:

For the Government of
Ireland:

ANNEX

1.
 - (i) The film shall be made and processed up to the creation of the first release print in one or both of the Parties and/or, where there is a third co-producer, that co-producer's country. Re-voicing may be carried out in one or both of the Parties and/or where there is a third co-producer, in that co-producer's country.
 - (ii) The majority of this work shall be carried out in the country of the co-producer which has the major financial participation. The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers.
 - (iii) Where location filming is to be carried out in a country other than that of the participating co-producers, citizens of that country may be employed as crowd artists, in small roles, or as additional employees whose services are necessary for the location work to be undertaken.
2. Subject to sub-paragraph 1(iii) of this Annex, individuals participating in the making of the film shall be nationals of a Party or, where there is a third co-producer, citizens of that co-producer's country. In exceptional circumstances, where script or financing dictates, restricted numbers of performers from other countries may be engaged.
3.
 - (i) The Australian co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled, if that producer were the only producer, in order for the production to be eligible as an Australian film.
 - (ii) The Irish co-producer shall fulfil all conditions relating to access to the tax relief provisions under section 35 of the Finance Act, 1987 as amended including compliance with the guidelines issued by the Minister under the statute from time to time. Applications by Irish co-producers for certification under section 35 of the Finance Act 1987 as amended will be treated by the Minister within the framework of this Agreement.
 - (iii) Any third co-producer shall fulfil all the conditions relating to status which would be required to be fulfilled to produce a film under the terms of the co-production treaty in force between that co-producer's country and either Australia or Ireland.

4. The performing, technical and craft contribution of the nationals of each co-producer's country shall be in reasonable proportion to each of the co-producer's financial participation and in any event, each co-producer shall have a financial and creative contribution of not less than twenty per cent (20%) of the total financial and creative contribution for the film, it being understood that the co-producers shall jointly contribute 100% of the financial and creative participation in the film.

5. Any music specially composed for the film shall be composed by nationals of one or both of the Parties or, where there is a third co-producer, it may be composed by citizens of that co-producer's country.

6. Subject to any departure from this provision approved by competent authorities, at least ninety per cent (90%) of the footage included in the film shall be specially shot for the film.

7. The film shall include either a separate credit title indicating that the film is either an "Australian-Irish co-production" or an "Irish-Australian co-production", or where relevant, a credit which reflects the participation of Australia, Ireland and the country of the third co-producer.

8. The conditions of work which will apply to the making of the film in each of the countries of the participating co-producers shall be in broad terms comparable and, in the event that location shooting of the film is to take place in a country other than that of a co-producer, conditions in that country shall be, in broad terms, no less favourable.

9. 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.

10. There shall be a contract or contracts governing the making of the film which shall

(i) provide that:

(a) a co-producer may not assign or dispose of the benefits referred to in Article 4 except to a natural or a legal person who is a national of or established in that co-producer's country;

(b) a sufficient number of copies of the final protection and reproduction material used in the production shall be made for all the co-producers;

(c) each co-producer shall be the owner of a copy of the protection and reproduction material and shall be entitled to use it to make the necessary reproductions;

(d) each co-producer shall have access to the original production material in accordance with any conditions set down in the contract;

(ii) set out the financial liability of each co-producer for costs incurred:

(a) in preparing a project which is refused conditional approval as a co-production film by the competent authorities;

(b) in making a film which has been given such conditional approval and fails to comply with the conditions of such approval; or

(c) in making an approved co-production film, permission for whose public exhibition is withheld in any of the countries of the co-producers;

(iii) set out the arrangements regarding the division between the co-producers of the receipts from the exploitation of the film, including those from export markets; and

(iv) specify the dates by which their respective contributions to the production of the film shall have been completed.