

Screen Canberra: Information for Recipients

Key Screen Canberra funding conditions

As per Screen Canberra's Terms of Trade, Screen Canberra regularly publishes its expectations with regard to certain key funding conditions and other commercial terms upon which it will provide its funding.

Funding recipients must familiarise themselves with these key funding conditions. Note that funding recipients may also be referred to throughout as 'producers' for key funding conditions applicable to production funding.

For the purposes of these key funding conditions 'Screen Canberra' means Screen Canberra and/or where relevant, any of its predecessor agencies.

1 Limits on Screen Canberra funding

There are limits on the amount of funding that Screen Canberra can provide for an individual project. These limits are set out in the relevant program guidelines.

2 Types of funding

Funding is typically provided by way of grant or recoupable equity investment, depending on the type of project and program applied for.

Screen Canberra funding will generally be provided as a grant where Screen Canberra's total contribution (including any development funds) is **\$300,000 or under**.

Screen Canberra production funding of **\$300,000 to \$500,000** will generally be provided as a recoupable equity investment.

The application and assessment processes are generally the same where funding is provided as a grant as it is for other production funding. However, the contracting process for grants is generally faster and requires less contractual documentation than for recoupable equity investments.

3 Screen Canberra Grants

Funding provided under a grant does not have to be repaid (subject to section [insert section number here] regarding development funding) other than:

- in case of breach by the funding recipient;
- where not all of the grant is required; or
- with respect to production funding, where further funding is provided by way of a recoupable equity investment in relation to the same project.

Screen Canberra will provide grant funding to successful applicants subject to the terms and conditions of Screen Canberra's standard grant agreements. Screen Canberra will not enter into negotiations with grant recipients in respect of the general terms of the relevant funding agreement other than in exceptional circumstances.

Where Screen Canberra provides production funding by way of a grant:

- Screen Canberra does not require a share of copyright; and
- Screen Canberra does not take a share of gross receipts (being all revenue from sales of a project, and all receipts from exploitation of ancillary and other underlying rights, any claims relating to the project and its underlying rights, and interest on the collections account).

4 General funding conditions for all funding

4.1 Deliverables for Screen Canberra

Funding recipients must deliver to Screen Canberra the materials required in the relevant funding agreement.

Screen Canberra deliverables must be included in the project budget.

In order to be eligible for any future funding, funding recipients must have provided all deliverables (including but not limited to any acquittal report) to Screen Canberra in accordance with any previous funding agreements.

4.2 Audit rights

Screen Canberra may require funding recipients to provide an independent audit report in relation to expenditure of Screen Canberra funds.

Where an independent audit report is not required, Screen Canberra may require the funding recipient to provide a statutory declaration verifying the expenditure report(s). In all cases, Screen Canberra reserves the right to carry out an audit of the expenditure of its funding support to ensure compliance with contract requirements.

4.3 Crediting Screen Canberra

As per Screen Canberra's Terms of Trade, funding recipients are required to acknowledge the support of Screen Canberra and the A.C.T. Government. Screen Canberra expects funding recipients to adhere to (and to procure that any other relevant parties adhere to) Screen's Canberra's Credit Policy when negotiating third party agreements for the relevant project. Screen Canberra's Credit Policy may be accessed here. Credit requirements vary according to the nature of the support provided by Screen Canberra and are detailed in the relevant funding agreement.

4.4 Promotional rights and approval rights

Screen Canberra requires the following rights:

- the right to use the project and promotional materials (and/or other delivery materials, if applicable) for corporate and promotional purposes, including promotion of the Australian film, television, and digital media industries (as applicable) and online use of excerpts of the project (for example, on Screen Canberra's websites and social media channels); and
- approval or meaningful consultation rights, as set out in the relevant funding agreement.

4.5 Reporting and information provision

For all projects and activities with funding from Screen Canberra (whether by way of recoupable equity investment, grant or otherwise), the recipient will be required to provide some form of reporting/acquittal.

For example, in the case of recoupable equity investment funding, the producer will be required to provide regular reporting in relation to the 'Marketing' of the project and 'Gross Receipts' (as those terms are defined in the relevant funding agreement).

In addition, funding recipients may also be required to provide information about the funded project or activity for the purposes of Screen Canberra's strategy and research function. For example, Screen Canberra may use such information for the purposes of preparing and publishing aggregated research and reporting.

The reporting/information requirements will be set out in the relevant funding agreement.

4.6 First Nations Content and Participation

As per Screen Canberra's Terms of Trade, the agency is committed to supporting authentic First Nations screen stories.

Screen Canberra requires funding recipients to ensure that Indigenous Cultural and Intellectual Property (ICIP) rights are respected, upheld and appropriately licensed.

The relevant funding agreement will include ICIP protection and licensing provisions.

Funding recipients must also have regard to [*Pathways & Protocols: a filmmaker's guide to working with indigenous people, culture and concepts*](#) available on Screen Australia's website and follow any other applicable First Nations' protocols.

4.7 Acting fairly and reasonably

Screen Canberra expects all recipients of funding support to act fairly and reasonably in relation to third parties involved in the funded project. Fairness and reasonableness include:

1. paying at least award minimum rates or, where applicable, any minimum rate agreed between the relevant guilds, for all work performed by third parties on their project, including key creatives, cast and crew; and
2. respecting the rights of all relevant persons, whether those rights be copyright or other intellectual property rights, moral rights or ICIP rights.

4.8 ABN & GST

Screen Canberra requires applicants to have an Australian Business Number (ABN) at the time of application, and to register for GST if required by law. Where a funding recipient is registered for GST, GST will be payable on Screen Canberra's funding and fees, and the agency will require the recipient to issue a Tax Invoice as a precondition to drawdown of the Screen Canberra funds.

5 Funding conditions applicable to production funding

5.1 Chain of title and copyright

Please refer to the Information for Applicants for Screen Canberra's core eligibility requirements with respect to having the right to carry out projects and the acquisition of all underlying rights.

'Chain of title' is the set of documentation that establishes the producer's ownership of the rights to produce and exploit the funded project (for example, option agreements, extension of option agreements, writer's agreements, quitclaim deeds and co-development agreements).

In relation to production funding (including online and games funding), Screen Canberra requires the producer to provide a satisfactory chain of title opinion letter from an appropriately qualified solicitor.

For projects that Screen Canberra funds through a recoupable equity investment, Screen Canberra requires a 1% copyright interest in the project for the duration of the project's copyright with the balance of copyright to be owned by the producer.

The producer may grant a share of its copyright to other equity investors but not to non-equity contributors to the finance plan of a project. The producer cannot assign their copyright in the project to another party unless the producer has the prior written approval of Screen Canberra.

Where referred to herein, 'copyright' means the exclusive right to copy, broadcast, perform, exhibit, communicate to the public and otherwise commercially deal with and exploit works such as novels, stage plays, scripts, music, film and sound recordings. Copyright is personal property and can only be transferred in writing.

5.2 Repayment of development funding

Where the project goes into production with or without Screen Canberra production funding, Screen Canberra generally requires the producer to repay the development funding previously provided by Screen Canberra.

If a project has received development funding from Screen Canberra and later goes into production with production funding from Screen Canberra, the previous development funding must be recognised in the production budget (as an above-the-line cost) and will become part of Screen Canberra's total grant or investment in the project.

5.3. Producer contributions for projects claiming the Producer Offset

Screen Canberra expects the producer to make a contribution towards the production budget for Offset projects.

The contribution will be at least 90% of the projected value of the Offset for feature films and television, and at least 85% of the projected value of the Offset for documentaries. Screen Canberra will not cashflow the Producer Offset or any part of the Producer Offset.

5.4. Completion guarantee

For either a flat fee (in the case of most documentaries) or a percentage of the below-the-line budget of a project, a 'completion guarantor' will guarantee or 'bond' a project. This means that they will supervise the project and will meet budget overages to ensure that the project is completed and delivered, subject to the terms of the relevant completion guarantee documentation.

Generally, Screen Canberra requires the appointment of a completion guarantor for feature film and television production investment projects. This requirement will depend on the experience and track record of the producer, on the nature of the project and on Screen Canberra's assessment of the risk of completion of the project.

Generally, a completion guarantor will not be required for documentary, online or games projects, for feature film or television projects that are not claiming the Producer Offset, or for post-production (completion) funding.

5.5. Accessibility of screen content

Screen Canberra generally requires all feature films that it funds to be captioned and audio described to provide access for the hearing and/or visually impaired for cinema and home entertainment release. The producer will need to budget for these requirements.

Funding recipients are also required by Screen Canberra to use reasonable endeavours to ensure that all Australian distribution agreements include an obligation for distributors to require sub-licensees to provide access for the hearing and/or visually impaired via closed captioning and audio-description, where supported by the relevant exhibition platform.

Screen Canberra encourages producers of online content and games to follow best practice for accessibility and to budget for accessibility measures including closed captioning and audio description where practicable.

5.6. Deliverables for the NFSA

Screen Canberra will require the producer to enter into a Delivery Deed with the NFSA, whereby the producer agrees to deliver certain items to the NFSA. For all feature film, television, online and applicable games projects, the materials specified in the Delivery Deed between the Producer and the NFSA are to be delivered directly to the NFSA (at the best quality available and at the completed resolution).

NFSA deliverables must be included in the project budget.

6. Funding conditions applicable to recoupable equity investments only

6.1. Screen Canberra equity investments and recoupment

For production funding provided as a recoupable equity investment, Screen Canberra requires an initial recoupment entitlement to participate in gross receipts commensurate with its investment. The recoupment structure for a project will be determined on a case-by-case basis taking into account Screen Canberra's investment and the investment of others, both equity and non-equity investors.

Screen Canberra does not require Screenrights income (being secondary royalties collected and paid by Screenrights) to form part of Screen Canberra's gross receipts.

If a 'related entity' (being a related body corporate of the producer or any corporation of which the producer is a director) of the producer makes a financial contribution to the budget it must be made under an arm's length arrangement i.e. on standard market terms.

It is expected that producers receive the recoupment position associated with their equity (see section 5.4). Once all equity investment is repaid, the producer's profit share will be 50%. All equity investors (including the producer in relation to the Producer Offset equity and any other producer equity) will share the remaining 50% *pro rata, pari passu*.

The expression '*pro rata and pari passu*' relates to contributions to a project's budget and to recoupment of investments, and refers to the percentage and timing of contribution or recoupment. A *pro rata* contribution or recoupment is one that is provided or received in proportion to the

contributor/recipient's interest in the project. *Pari passu* contributions or recoupment are made or received at the same time as contributions or recoupment of another party.

6.2. Subordination

Generally, Screen Canberra will not subordinate its recoupment right to other equity investors, meaning that it will not agree to recouping its investment on less favourable terms than other investors. Screen Canberra expects to participate in gross receipts *pro rata and pari passu* with other equity investors.

6.3. Marketplace approval rights

For all recoupable equity investment production funding, Screen Canberra requires:

- prior approval over any major territory deal (as defined in the relevant funding agreement); and
- if applicable, prior approval over any non-major territory deal which is under the take price for the relevant territory approved by Screen Canberra (in the sales agency agreement or relevant international distribution agreement).

6.4. Collection and disbursement of gross receipts

The producer is ultimately responsible for the collection and disbursement of all gross receipts. Where Screen Canberra provides a recoupable equity investment:

- for feature films (including feature documentaries), Screen Canberra will generally require the appointment of a collection account manager (CAM) for all territories; and
- for television projects (including documentaries), Screen Canberra will generally require the appointment of a disbursement administrator for all territories.

Screen Canberra's approval is required over the CAM and disbursement administrator (as applicable) and the terms of any collections or disbursement agreement entered into.

The producer (or any other equity investor or beneficiary on the relevant project) must not have access to the relevant collection account or disbursement account (as applicable) that is controlled by the CAM or the disbursement administrator for the project.

For the purposes of this section:

- a 'collection account manager' or 'CAM' is the organisation (which must not be a related party of the producer) appointed to collect all revenues from exploitation of the project including licence fees, and distribution advances/minimum guarantees directly from a sales agent's sub-licensees, and to administer the collection account, pay the sales agent's commissions and expenses and distribute the remaining gross receipts in accordance with the recoupment/disbursement schedule in the collection account management agreement.
- a 'disbursement administrator' is the organisation (which must not be a related party of the producer) appointed to administer the collection account, and collect and distribute gross receipts (generally after the point at which the relevant distributor has recouped all approved licence fees, distribution advances/minimum guarantees, sales agent/distributor commissions and expenses) in accordance with the recoupment/disbursement schedule in the disbursement administration services agreement.

6.5. Sequels, spin-offs and remakes

In the case of all recoupable production funding, where the right to make a sequel, spin-off or remake (including a project based on the format of the original project) is optioned or acquired, the following principles apply:

- If the sequel, spin-off or remake is to be produced by the original producer *or* a related entity, whether in Australia or elsewhere, Screen Canberra requires the right to receive a fee in the production budget of each and every sequel, spin-off or remake calculated as follows:
Feature films: 1.5% of budget uncapped
Adult TV and Documentary series (less than 6 episodes): 1.5% of budget capped at \$125,000
Adult TV and Documentary series (6 or more episodes): 1.25% of budget capped at \$125,000
Children's TV: 1.25% of budget capped at \$125,000.

This fee is paid directly to the investors, and is not subject to any deductions. The fee does not go through the recoupment waterfall. For the avoidance of doubt, single-episode sequels, spin-offs or remakes for adult TV and documentary projects fall within the category of series that are less than 6 episodes.

- In addition to the applicable fee payable as per sub-paragraph , if the entity producing the sequel, spin-off or remake pays a fee for the licence to make the sequel, spin-off or remake which exceeds the applicable fee set out in sub-paragraph , the excess amount forms part of gross receipts and goes through the recoupment waterfall.
- If the sequel, spin-off or remake is to be produced by an unrelated production company (i.e. not the producer and not a related entity of the producer), the price paid for the right forms part of gross receipts and goes through the recoupment waterfall.
- If a fee is paid on the grant of an option to purchase the right to make a sequel, spin-off or remake, the fee forms part of gross receipts and goes through the recoupment waterfall.
- The fee referred to in sub-paragraph above is payable at the latest on the first day of principal photography (or on the first day of animation in the case of an animated project). Any amount payable under sub-paragraphs , or is payable by the producer or the relevant third party (eg, sales agent) in accordance with the terms of the production and investment agreement or relevant marketing agreement.

6.6. Reversion

Screen Canberra will revert its entitlement to gross receipts to a producer seven years after the first to occur of the following:

- the date of the first theatrical screening, broadcast or other communication of the project to the public (being the first episode of a series in the case of a multi-episode project) in a territory defined as a major territory in the funding agreement for the project; and
- the date of the first disbursement of gross receipts derived from marketing the project.

Screen Canberra's approach to reversion for projects approved by Screen Canberra and its predecessor agencies is set out in guidelines available on the Screen Canberra website. Where there is reversion, Screen Canberra will:

- retain a 1% copyright share in the project; and
- continue to have promotional and crediting entitlements in respect of the project.

In order to be eligible for reversion, the producer must provide any reports which are outstanding under the relevant funding agreement and Screen Canberra must be paid any gross receipts which are outstanding up to the date on which reversion takes effect.

7 7. Official co-productions

An 'official co-production' is a production between two or more countries that is officially approved as made under a treaty, or another form of government or quasi-government arrangement (typically, a Memorandum of Understanding or 'MOU'). In addition to meeting the requirements of the relevant treaty or MOU, in order to be approved as an official co-production.

In relation to official co-productions, Screen Canberra's funding agreement is generally only with the Australian co-producer and not with the non-Australian co-producer(s). As a result, the above funding conditions (to the extent that they are not applicable to a project as a whole) apply only to the Australian co-producer and to the Australian components of budget and revenue.