

30th January 2012

General Manager
Small Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear General Manager,

FILM TAX OFFSETS - DEFINITION OF A 'DOCUMENTARY'

Please find below some thoughts in response to the Exposure Draft. I believe the process could be fine-tuned by further definition of all the excluded categories in the legislation.

1.21 says a documentary:

- "Analyses, explores or interprets its subject matter." Most cinema verite documentaries let the viewer decide if there is anything meaningful in the material being presented. There is no analysis, no exploration and no interpretation forced on the viewer. Indeed the very idea of the documentary film-maker forcing the viewer to look at their interpretation is anathema to the idea of cinema verite documentary.
- I would note that "Lush House" analyses, explores and interprets the subject of cleaning and "Four Corners" analyses and explores current issues.
- Further 1.21 says "The information needs to enhance the viewer's understanding of the subject matter." Every program you watch enhances your understanding of its subject. Documentary filmmakers have the intent of enhancing the viewer's understanding of the subject matter but so too do news broadcasters and the makers of "Lush House".

1.22 suggests:

- That documentary is more creative than a news report because of editing and information source. News programs use editing techniques and a range of sources to present their information including subject interviews. Again I'd suggest it might be difficult to argue that news is less creative.
- An innovative narrative structure is inherent in a documentary. To suggest that documentaries have some special story structure that is different from a well rounded news story segment seems difficult to support. We may also need to be careful here that some cinema verite or observational documentaries might thus be excluded.

Example 1.1:

This example suggests that a news program is superficial, lacks creativity and original presentation. News stories are short and thus there is insufficient time to explore the subject matter. This doesn't mean it isn't documenting something important. One sentence in an interview with a wise person might give you more substance or depth of understanding than an hour-long documentary. To suggest that news is superficial and has no creativity is harsh. It concerns me that the Exposure Draft uses value laden words such as "superficial", "salacious", "shallow" which are subjective interpretations and which could be considered offensive to some practitioners. Is it necessary to use value laden words in describing why a program falls into a particular category?

All of the above demonstrates the difficulty in defining the term “documentary”. When Division 10BA was implemented it focused on what was excluded rather than attempting to more specifically define what a documentary was. There are a number of programs that blur the edges and it is possible that going forward there will be many more programs that will meld information, entertainment, lifestyle and reality that could be called documentary which we might want to support or not as the case may be.

If we assume for the moment that all programs dealing with reality are a form of documentary, then perhaps we could say more specifically what types of documentaries we want to encourage and be clearer about the definitions of what types of documentaries are to be excluded.

We don’t want the legislation to restrict the creativity and growth of the independent film and TV industry. I don’t know whether “Go Back to Where You Came From” received the producer offset however I would have thought this is a type of program that should be encouraged even though it was a completely contrived situation. If we do want this type of show to be encouraged then we can’t talk about contrivance in the context of the definition of documentary. Interviews and recreations in documentary are contrived situations and would not exist without the documentary film-maker involved so I’m unclear as to why the level of contrivance is an issue. If this criteria is to be retained, some further guidance needs to be given as to what level of contrivance is unacceptable.

Is “Big Brother” an observational documentary exploring the idea of how human beings act placed in a restricted prescriptive environment? As in all observational documentaries the narrative structure is inherent within the story unfolding on the screen. Is there too much contrivance? Replace humans with apes - would it then qualify as a documentary? Why?

Is it possible to approach this from a different angle by recognising different styles of documentary, some of which are to be excluded from the producer offset e.g. news is a short segment documentary which is an excluded category or perhaps that “Big Brother” is an observational style documentary melded with a game show ie overall it is a competition with a prize at the end, and that any documentary style program melded with a game show is excluded?

As there will likely be more genre hybrids in the future it might be worth looking more into this now so the industry is clear as to what is intended to be excluded and if any hybrid shows are to be encouraged.

Further consultation with the industry via Screen Australia may be worthwhile in regards to how best to embrace some of the new documentary/reality hybrids to assist in clearer application assessment within the context of growing the sustainability of the independent film and TV sector.

Best Regards,

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PD Film & TV