



Submission No 17

Inquiry into Australia's Relationship with Malaysia

Organisation: Media Entertainment and Arts - Alliance

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SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE

TO

JOINT STANDING COMMITTEE
ON
FOREIGN AFFAIRS, DEFENCE AND TRADE

REGARDING

INQUIRY INTO AUSTRALIA'S RELATIONSHIP WITH MALAYSIA

AUGUST 2006



The Media, Entertainment & Arts Alliance

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

SUBMISSION BY MEDIA, ENTERTAINMENT & ARTS ALLIANCE TO
JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE
INQUIRY INTO AUSTRALIA'S RELATIONSHIP WITH MALAYSIA

The Media, Entertainment & Arts Alliance welcomes the opportunity to make a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Australia's relationship with Malaysia.

The Committee is to consider Australia's relationship with Malaysia having particular regard to:

- bilateral relations at the parliamentary and government levels;
- economic issues, including trade and investment;
- cultural and scientific relations and exchanges;
- defence cooperation and regional security, and

consider both the current situation and opportunities for the future.

The Alliance is not in a position to provide comment on bilateral relations at the parliamentary or government level, nor on defence cooperation and regional security.

The Alliance's interest lies in the performing arts, audiovisual, entertainment and media industries.

Of particular interest to the Alliance are the negotiations for a free trade agreement between Australia and Malaysia.

The Alliance has made two submissions to the Department of Foreign Affairs and Trade on the matter – the first in November 2004 in response to the call for submissions inviting comment the scoping study and the second in May 2005 in respect of the proposed free trade agreement. Both are attached – please refer to Appendix A and Appendix B respectively.

These two submissions look at the cultural and entertainment industries in the two countries, touch briefly on their history, set out the manner in which the two governments support these sectors, notes the cultural exchanges between the two countries and considers the cultural balance of trade.

As argued in the submissions, the Alliance supports multilateral trade agreements over bilateral trade agreements and positive listing agreements over negative listing ones. That being said, the Alliance considers that, in the event a free trade agreement is negotiated, and, as the Government has indicated is its preference, the agreement is a negative listing agreement, the Singapore Australia Free Trade Agreement would be the appropriate template to ensure Australia's cultural and entertainment industries are adequately protected.

APPENDIX A

SUBMISSION
BY
MEDIA ENTERTAINMENT AND ARTS ALLIANCE
TO THE
DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
AUSTRALIA-MALAYSIA FREE TRADE AGREEMENT
SCOPING STUDY

NOVEMBER 2004

The Media Entertainment and Arts Alliance

The Media Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

Executive Summary

The Media Entertainment and Arts Alliance welcomes the opportunity to provide input into the Scoping Study examining the viability of negotiating a bilateral free trade agreement (FTA) between Australia and Malaysia.

The Alliance considers that the nation's trade objectives are best achieved in the context of multilateral agreements such as the General Agreement on Trade in Services (GATS) and the General Agreement on Tariffs and Trade (GATT). The Alliance considers that Australia's trade objectives with Malaysia will be best served in the context of the World Trade Organisation (WTO) and could be achieved through the course of the current Doha Round which is finally showing signs that real progress might be made.

However, in the event Australia does proceed to negotiate a bilateral FTA with Malaysia, the Alliance favours a positive listing agreement – such as is the case with GATS and the recently signed FTA between Australia and Thailand.

Consistent with current Federal Government policy in respect of GATS, Australia's position in all positive listing FTAs must continue to be one where no commitments are made that might in any way impact on the Government's ability to give effect to its social and cultural objectives in respect of Australia's cultural industries now and into the future.

The Alliance is not supportive of negative listing agreements such as the Singapore Australia Free Trade Agreement (SAFTA) and the Australia United States Free Trade Agreement (AUSFTA). However, the Alliance considers that the Annex II reservations included in SAFTA in respect of Australia's cultural industries, by contrast with the Annex I and II reservations in the AUSFTA, provide appropriate protections for Australia's cultural industries to the extent possible in negative listing agreements, and consequently should serve as a model for all future bilateral negative listing FTAs. The Alliance is opposed to the concessions made in the AUSFTA wherein a broadly drafted comprehensive cultural exemption or reservation was not negotiated.

Consequently, in the event the Government considers it appropriate to enter into a bilateral FTA with Malaysia, ideally a positive listing model will be utilised and no commitments made in respect of cultural industries or, in the event the negative listing model is pursued, the Alliance considers such an agreement must incorporate a clearly drafted broad based cultural exception or reservation that:

- is technology neutral;
- allows for the Government to introduce protective legislation in the future to accommodate technologies including delivery platforms under development or not yet invented;
- allows for the Government to make protective strategic interventions at any time and in any manner it believes appropriate to maintain, strengthen or enhance development, production and/or the delivery and distribution of any sector or aspect of the cultural industries;
- is self-judging and not subject to dispute;
- is not subject to standstill, roll-back, snap-back or ratchet provisions, and
- is able to override all provisions in the entirety of the agreement including any commitments that might be made in respect of e-commerce.

Additionally, the Alliance believes that an FTA with Malaysia must have a clearly drafted immigration exception or reservation that:

- incorporates current restrictions on temporary business entry in the entertainment and cultural sectors;
- allows for such changes as the Government may consider necessary in the future;
- is self-judging and not subject to dispute;
- is not subject to standstill, roll-back, snap-back or ratchet provisions,

and:

- incorporate protection, enhancement and enforcement of labour standards, and
- make unlawful the use of reductions in domestic health, safety and labour standards to attract overseas investment.

Finally, as pirating is an issue for all those who trade in intellectual copyright, the Alliance recommends that Australia pursue the continued development of enhanced copyright protection mechanisms in Malaysia.

The Alliance believes that in accordance with rising international concerns about the treatment of cultural industries in FTAs, it is now more than ever appropriate that Australia join the International Network on Cultural Policy (INCP) and lend this country's support to current UNESCO initiatives to develop an international instrument on cultural diversity that quarantines cultural industries from all trade agreements.

Resolution of the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference

The participants reaffirm their commitment to the right of all nation states to foster and support their own cultural sectors. To that end, we support the inclusion of a cultural exemption in the proposed Malaysia-Australia Free Trade Agreement.

Bangkok, Thailand, 6-8 October 2004

UNI-MEI, a sector of Union Network International (UNI), represents over 130 trade unions around the world in the arts, audiovisual, cultural, entertainment and mass media sector.¹

¹ Representatives from both Malaysia and Australia were present at the Conference.

Government support to Australia's cultural industries

"All human beings have a need and a capacity to create. From weaving to websites, they seek outlets for artistic self-expression and for contributing to the greater community. The encouragement of creativity from an early age is one of the best guarantees of growth in a healthy environment of self-esteem and mutual respect, critical ingredients for building a culture of peace.

"But creativity does not occur in a vacuum. It must be nurtured, allowed the freedom to exist and grow legally protected, and it must not be repressed or censored."

Creativity and the Arts, UNESCO²

The right to determine cultural sovereignty is recognised as a fundamental right of nations. The ability to participate in the culture of their nation is a fundamental human right.

The cultural output of a nation is manifested in cultural goods and services.

Consequently, giving effect to these rights has increasingly come into conflict with the global impetus for trade liberalisation that commenced following World War II when the hopes of those at Bretton Woods that international trade would foster a world economy and thus mitigate against wars between nations resulted in the provisional implementation of the GATT in 1947.

To avoid such conflicts, UNESCO is currently developing an international instrument for cultural diversity that will hopefully allow for the separation of culture from trade agreements.

In the meantime, countries around the world have sought to foster and protect their own cultural industries.

In the early 1960s, GATS negotiations included moves by the United States for liberalisation of television. The Menzies Government's instructions to the Australian delegation were that Australia "would prefer to retain complete freedom of action and not enter into any commitment on the matter, particularly at a time when the television industry in Australia is in its infancy and the lines of its development are uncertain".

That position continued to enjoy bipartisan support until January 2004.

"Australia has long recognised the essential role of creative artists and cultural organisations in reflecting the intrinsic values and characteristics of our society, and is committed to sustaining our cultural policy objectives within the context of multilateral trade agreements."³

Australian Intervention, CTS Special Session, July 2001, Geneva

Unfortunately, at the time of writing, the exchange of letters necessary to allow the AUSFTA to enter into force on 1 January 2005 is due to occur, thereby giving effect to an FTA wherein that policy position has been compromised with significant concessions granted to the United States. This situation is unfortunate and the Alliance earnestly hopes that it will not be repeated either in the GATS negotiations, the FTA negotiations with China or Malaysia or in the event November Ministerial discussions result in a decision to proceed with an ASEAN FTA with Australia and New Zealand or in the event the mooted APEC FTA proceeds. Indeed, the compromises made in the AUSFTA should not be repeated in any future trade agreement.

Given the provisions contained in the AUSFTA, it is therefore not surprising that, although Australia's position in respect of its cultural industries in the context of the current Doha round of the GATS negotiations is to make no commitments, requests have been made for Australia to multilateralise the

² *Creativity and the Arts*, UNESCO, available on-line at <http://www.unesco.org/culture/creativity>.

³ Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, July 2001, Geneva.

AUSFTA concessions. The Alliance is strongly opposed to the multilateralisation of any of the AUSFTA concessions in respect of Australia's cultural industries. The reasons the Alliance opposed the concessions made in the AUSFTA are set out in our submissions to the Joint Standing Committee on Treaties and the Senate Select Committee on the subject, a copies of which are attached.

Australia currently supports its cultural sector through an effective web of mechanisms that combines regulation, subsidy and tax concessions which include:

- funding of national training institutions – the Australian Film Television and Radio School, the National Institute of Dramatic Art, the National Institute of Circus Arts;
- direct subsidy for the development and production of film and television productions through appropriation to the Australian Film Commission, Film Finance Corporation Australia, the Australian Children's Television Foundation and Film Australia;
- national free to air broadcasting through the ABC and SBS;
- licensing of community broadcasting;
- regulation of Australian content on commercial free to air television networks;
- local content expenditure requirements imposed on certain subscription television channels;
- indirect subsidy through tax concessions for the production of audiovisual programs through Divisions 10B and 10BA of the Income Tax Assessment Act and the recently introduced tax offset rebate for high budget film and television productions;
- direct subsidy for the performing arts and visual arts through appropriation to the Australia Council;
- direct subsidy administered by the Department of Communications Information Technology and the Arts for Artbank and programs for contemporary music touring, festivals and performing arts tours;
- regulation of the temporary entry of performers and crew under the Migration Regulations;
- international co-production treaties and memoranda of understanding covering film and television production;
- rules governing foreign ownership of media and cross media ownership, and
- support for the preservation of archives through the National Film and Sound Archive.

Many of these measures are mirrored by state governments and, in respect of the visual and performing arts, by local governments.

Cultural Industries in Malaysia

Malaysia has a population of 23.3 million, unevenly distributed across the country with West Malaysia seven times more densely populated than East Malaysia. A multicultural society, the three major population groups are indigenous Malays, comprising approximately 50% of the population, the Chinese, approximately 35%, and the Indians, approximately 9%. The balance of the population is a diverse mix of Eurasians, Pan-Asians, Portuguese, Sikhs, Babas and Nonyas.

At the time Malaya achieved independence from British rule in 1957, there were eleven states in Peninsular Malaya. Singapore, Sabah and Sarawak joined the Federation in 1963 with the formation of Malaysia (the name 'Malaysia' was adopted from that date), but Singapore opted out two years later.

There are 30 radio network stations, six television station operators and one subscription television operator.⁴

The public broadcaster, Radio Televisyen Malaysia (RTM) falls within the Malaysian Broadcasting Department of the Ministry of Information and provides a comprehensive service through 21 radio stations and two television channels together with a range of other services including publishing, performing groups and, since 1995, a website.⁵

⁴ Creative & Media Industries Market in Malaysia – Overview, *UK Trade and Investment*, available online at www.tradepartners.gov.uk.

⁵ Source: Radio Televisyen Malaysia, see www.rtm.net.my.

Unlike the ABC in Australia, advertising is allowed on public broadcasting in Malaysia.⁶

The local audio-visual industry is afforded some protections, some in a manner not dissimilar to support mechanisms in place in Australia.

Like Australia, Malaysia faces the challenges presented by the international domination of the audiovisual industry by the United States.

However, given its ethnic diversity, the Malaysian industry faces some unique challenges.

Malaysia's Indian community is a ready audience for material from India, the Chinese population a ready market for material from China, Hong Kong, Singapore and Taiwan and, given the similarity between Bahasa Melayu and Bahasa Indonesia, there is a ready made market for Indonesian material. Additionally, audiovisual material, including music, from South Korea and Japan is finding a market in Malaysia and Filipina bands are the most in demand in contemporary live music venues. The breakdown by language of cinema audiences indicates the multilingual fabric of Malaysia – see Attachment 1.

On television, the appeal of telenovelas, imported principally from Latin America, is soaring. Indeed, they have made such an impact that last year the Malaysian Government became so concerned about the “unhealthy” lifestyles portrayed in imported telenovelas, it ordered the production a Malaysian one. According to *The New Straits Times*, “Zainuddin [Deputy Information Minister] said RTM had no choice but to lead efforts in producing local telenovelas to counter the influence of imported ones, because the only other alternative was an outright ban, which was not feasible in view of the Government's ‘open skies’ broadcasting policy.”⁷

That being said, censorship remains a major issue. As Malaysian film historian, author and critic, Baharudin A. Latif puts it: “Draconian is the word for censorship”.⁸

The audiovisual industry in Malaysia

Like the Australian audiovisual industry, the industry in Malaysia has had its ups and downs and has struggled for viability in the absence of access to Malay controlled exhibition.

The Malay film industry started in Singapore rather than Malaya in the early 1930s.

Some analysts have described the industry, especially in its earlier years, as a multi-racial endeavour with the Chinese providing the production finance and controlling distribution and exhibition, the Indians providing the directors and technicians and the Malays, the actors – as Malaysian film historian Hamzah Hussin describes it: “The Malaysian film industry was founded on Chinese money, Indian imagination and Malay labour.”⁹

Two broad eras of production activity can be identified. The first, starting in 1947 in the wake of World War II and unceremoniously ending in the early 1970s, was dominated by Chinese entrepreneurs. The era of independents commenced soon after, controlled by Malays who nonetheless had little access to exhibition.

⁶ Creative & Media Industries Market in Malaysia – Overview, *UK Trade and Investment*, available online at www.tradepartners.gov.uk.

⁷ *Local Telenovela Plan to Promote Healthy Values*, *New Straits Times*, 13 December 2003, available online at www.finas.gov.my.

⁸ *Film in South East Asia: Views from the Region*, edited by David Hanan, SEAPAVAA (south East Asia-Pacific Audio Visual Archive Association) in association with the Vietnam Film Institute and the National Screen and Sound Archive of Australia, 2001, page 190.

⁹ Cited in *Where are the Borders?* David Neo, a critique of *Malaysian cinema*, *Asian film: border crossing and national cultures*, William Van Der Heide, Amsterdam University Press, 2002, available online at http://www.latrobe.edu.au/screeningthepast/reviews/rev_16/DNbr16a.html.

The 1950s and the first half of the 1960s have been dubbed the Golden Era of Malay film during which time the Shaw Brothers with their company Malay Film Productions and Loke Wan Tho with Cathay-Keris in Singapore were regularly releasing a film a month.

From the beginning, the Malay film industry was built on the entrepreneurship of Chinese businessmen from Shanghai, in particular that of the legendary Runme and Run Run Shaw and the Wong Brothers. From the outset, the Shaw Brothers realised the importance of first establishing control of exhibition and then meeting the needs of their venues with their own productions. Both the Shaws and the Wongs brought with them technical expertise and equipment from China. In the early years of cinema, the other significant influence was India.

Produced by Singapore Indian businessman SM Chesty, directed by the Indian director, BS Rajhans, and cast with Malay opera (Bangsawan) performers, *Laila Majnun (The Ill-fated Lovers)* is thought to be the first indigenous feature film produced in Bahasa Melayu. Recently arrived from India, Rajhans brought his experience of Indian cinema language with him including the mandatory songs and dances. Thus from the first feature, Malayan films adopted the language of what are now known as Bollywood films – songs, dance sequences and, by comparison with Western cinema, excessively long running times. “The characters sang and danced when they were happy and they sang and danced if they were sad; they also sang and danced during mood swings.”¹⁰ With *Laila Majnun* borrowing heavily from Sanskrit, the pattern for Malay films was set for years to come.

The reliance on the cinema language of other cultures was not confined to that of India. Having established themselves in exhibition in the 1930s, the Shaw Brothers had their first forays into production brought to an abrupt halt with the outbreak of World War II, during which time they were forced to work for the Japanese. However, they established themselves in earnest after the war and many of the Malay films they produced were remakes of Shaw films produced in Hong Kong in Chinese.

Although others tried, most producers working in Malaya found that without control of exhibition their films struggled to reach audiences.

A star system emerged, the most luminary of all Malayan stars being P. Ramlee, a backing vocalist who became a mega-star, firstly as an actor and later as a director. Ramlee was also instrumental in effecting changes to the style of Malay films. Emerging at a time when cinema was still heavily influenced by the stylistic conventions of Malay opera performance techniques and Indian cinema, Ramlee “initiated something innovative ... He demonstrated good solid acting which relied on facial expressions to convey mood and feelings, as well as controlled but meaningful body movements.”¹¹ Unlike most other lead actors, he was also able to sing his own songs. Ramlee was heavily influenced by an association with Pujabi director, Phani Majumdar, whose films, unlike most Indian films, were identified by an exploration of social and political issues. With no formal training in film, Ramlee became a student of film masters as diverse as Akira Kurosawa, John Ford, Alfred Hitchcock and Satyajit Ray. Consequently, in 1955 when Ramlee commenced directing films, in which he also often took the lead role, his work was markedly different from what had become accepted as staple Malay cinema. In large part because of his continuing to take lead roles, his work was enormously successful with audiences and now, more than 30 years after his death at the age of 44 in 1973, his songs are still played and his films are still screened regularly on television. His work was the first to bring a genuinely Malay sensibility to Malay cinema.

However, despite the success of Ramlee's films, times were changing and the heyday of Malay language films was on the wane in the second half of the 1960s. Production costs had begun to rise, profits to decline, and along with them, production levels. The Indonesian market was closed to Malay

¹⁰ *Film in South East Asia: Views from the Region*, edited by David Hanan, SEAPAVAA (South East Asia-Pacific Audio Visual Archive Association) in association with the Vietnam Film Institute and the National Screen and Sound Archive of Australia, 2001, page 166.

¹¹ Film historian Hamzah Hussein, cited in *Film in South East Asia: Views from the Region*, edited by David Hanan, SEAPAVAA (South East Asia-Pacific Audio Visual Archive Association) in association with the Vietnam Film Institute and the National Screen and Sound Archive of Australia, 2001, page 181.

films by Indonesia's confrontation with the newly established Federation of Malaysia and television entered the market.

Whereas almost all films produced in the United States were in colour by the mid-sixties, the same was not the case in Malaysia where black and white was still common, the additional costs of colour often considered unaffordable. By contrast, the industries in Hong Kong and Indonesia plunged headlong into colour. Hong Kong productions filmed in colour and featuring stunts and special effects found a ready audience in Malaysia.

While the Malaysian industry was in decline, the Indonesian industry was re-inventing itself and its "extravagant costume spectaculars" and "effervescent melodramas", filmed in colour, also found audiences in Malaysia. "Local audiences went bonkers over them. If what they wanted was glamour, colour and excitement in their cinema fare, local film-goers found them in abundance in these films. And the language ... was only too easy to understand."¹² To make matters worse, the higher budget Indian films were also being produced in colour.

After 20 years, the Shaw Brothers' Malay Film Productions studio closed in 1967. The Cathay-Keris studio struggled on until it too closed in 1972.

Finally, the increasing popularity of television along with improvements in the quality of locally produced television programs and the extension of broadcast hours effectively sealed the fate of Malaysian cinema for a decade.

The film industry languished until the mid 1970s when Deddy M. Borhan set up Sabah Films and produced *Keluaga Si Comat* in 1975, "making history in the process as the first truly independent Bumiputera (the terminology for the indigenous Malays) film-maker".¹³ A runaway success, he went on to produce one hit after another. Other production companies were established and Malay businessmen were for the first time in control of production and to some extent distribution. Exhibition, however, remained outside their grasp and spelled the collapse of the industry yet again.

While the Shaw Brothers and Cathay-Keris had withdrawn from production in Malaysia, they still dominated exhibition. By the end of the 1970s, the two companies controlled more than 200 cinemas with another 50 independent cinemas owned by Chinese companies based in either Hong Kong or Singapore, a couple by Indians and none by Malays.

In the mid 1970s, production industry lobbying to the Government for access to cinemas resulted in the announcement of a National Film Corporation but little happened until 1979 when a task force was established and the National Film Development Corporation (FINAS) was finally established in 1981.

Whilst FINAS has undertaken a number of important initiatives, the issue of access to exhibition still remains to be adequately addressed.

The objectives of FINAS are "to nurture, promote and facilitate the development of the film industry in Malaysia. In line with this objective the corporation provides training, assistance, facilities and amenities, equipment, research, marketing, resource centre, publications, licensing for and enforcement on members of the film industry in the country."¹⁴

¹² *Film in South East Asia: Views from the Region*, edited by David Hanan, SEAPAVAA (South East Asia-Pacific Audio Visual Archive Association) in association with the Vietnam Film Institute and the National Screen and Sound Archive of Australia, 2001, page 176.

¹³ *Ibid*, page 185.

¹⁴ Source: FINAS, see www.finas.gov.my.

FINAS

Vision

Malaysian films of international standards based on superior Malaysian culture.

Mission

Building a Malaysian film industry that is able to compete in the international arena.¹⁵

FINAS provides assistance with script development and makes loans available (to a maximum of RM 500,000¹⁶) for films produced for theatrical release to cover the costs of items such as film stock, laboratory processing, equipment rental, labour costs for technicians and cast, publicity, promotion and distribution. The loans are not provided direct to the producer but to the suppliers. Such loans are repayable from box office receipts. Loans to cover the costs of cast, crew and equipment rental (to a maximum of RM120,000) are also available for television drama and documentary productions, repayable from broadcast licence fees. Loans attract interest at five percent per annum for the first two years with a seven percent penalty imposed on monies outstanding thereafter.

FINAS certifies all films produced in Malaysia and principal photography cannot commence in the absence of a valid licence from FINAS. A valid producer's licence (also issued by FINAS) is a prerequisite to the application for a film licence. All crew and cast must be registered with FINAS or be members of associations approved by FINAS. (See Attachment 2.)

Since FINAS was established, approximately 600 indigenous feature films have been produced.¹⁷

FINAS appears to have its supporters and its detractors. In 1981, the year that FINAS was established, approximately 25 Malaysian films were produced. Following the so-called "Asian melt-down", the industry all but collapsed with only four films released in 1999 and some commentators holding FINAS partially responsible. "Unfortunately the Corporation has not succeeded in all its aims, and today the industry, hit hard by the economic downturn that began in 1997, is on death's door ... FINAS' board of directors lacked the foresight or vision to draw up an effective master plan, preferring to administer on a day-to-day basis, with the result that the industry has collapsed due to aggressive assaults by more progressive and updated films from foreign sources. Technically today's local films display a total lack of technical advancement and innovation, and seem alien to 'special effects' and 'computer generated imagery' technology."¹⁸

In any event, the number of films produced annually has grown in the last four years with an estimated 32 titles currently awaiting release dates.¹⁹

By comparison with Australia, feature film budgets are relatively low, reflecting in large part the lower cost of wages. As far as the Alliance has been able to ascertain, feature film budgets are typically less than RM2 million and seem to have a not dissimilar track record in terms of critical and box office success to Australian films. Like the industry world-wide, the majority of films do not recover their production budgets. A breakdown of Malaysian films for 2004-05, including box office takings for those that have been released is at Attachment 3. Attachment 4 sets out the results for the period 2000-2004.

¹⁵ Source: FINAS, see www.finas.gov.my.

¹⁶ As at 11 November 2004, 1 Malaysian Ringgit = 0.34675 Australian Dollar – Source OANDA, see www.oanda.com.

¹⁷ Source: *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

¹⁸ *Film in South East Asia: Views from the Region*, edited by David Hanan, SEAPAVAA (South East Asia-Pacific Audio Visual Archive Asscoation) in association with the Vietnam Film Institute and the National Screen and Sound Archive of Australia, 2001, page 191.

¹⁹ Source: *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

Pontianak Harum Sundal Malam, a horror/romance about avenging ghosts,²⁰ produced for RM2.5 million has recouped RM3 million since its release in May this year.²¹ Action comedy *MX3*, released in December 2003, produced for a budget of RM1 million, took RM1.3 million in the first fortnight of its release. Conversely, *Mr Cinderella 2* was produced for RM1.75 million but recovered only RM1.25 million in the first weeks of its release last December, unfavourably comparing with the original *Mr Cinderella* which took RM2.5 million at the box office in 2002.²² The most expensive Malaysian feature ever produced to date, with a budget of nearly RM15 million, *Puteri Gunung Ledang*,²³ had recouped only RM2 million after being in release for a month²⁴ rising only to RM2.8 million by August this year²⁵. An epic set in the late 15th century, it is the story of a forbidden romance between a princess (curiously Javanese rather than Malaysian) and a Malay Muslim warrior set against a backdrop of war and mysticism.²⁶

Although access to exhibition remains a contentious issue for Malaysian producers, FINAS does, however, require the mandatory screening of all films it certifies as Malaysian filmed in Bahasa Melayu. Syarat Wajib Tayang requires exhibitors to screen certified films for a minimum of seven consecutive days, after which the exhibitor can make a commercial determination about whether to extend the season.²⁷ FINAS also determines the release dates for certified films in order to ensure that they are spread throughout the year and to avoid too many competing for audiences simultaneously.

The manner in which FINAS controls release dates also meets with mixed reviews. Last December, in a controversial move, it allowed the release of five films in the one month, rather than the more usual two. Supporters pointed to the need to reduce a growing list of titles awaiting release while detractors felt it unfairly forced five local films to compete not only against each other but against the *Last Samurai* and *Lord of the Rings: Return of the King*.²⁸

A Government entertainment tax of 25% applies to cinema tickets. Producers of certified Bahasa Melayu language feature films are able to benefit from a rebate from funds raised by the tax. For every Malaysian Ringgit cinema tax raised from the release of certified films, 25% is retained by the Government and the balance is split 50% to the exhibitor and 50% to the producer.²⁹

Malaysia, like Australia, does not, however, impose a quota for local feature film productions as is the case in Korea, where since the enforcement of a local cinema content quota, feature film production has blossomed with some 80 features produced annually. In addition to the overall cinema quota in Korea, a network of a dozen arthouse cinemas have agreed to screen 60% Korean art-house content.³⁰

²⁰ See www.imdb.com.

²¹ Source: *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

²² Source: FINAS, see Attachment 2.

²³ *Good enough ... for a local film*, Hari Azizan, *The Star*, available online at http://star-ecentral.com/movies/reviews/review.asp?file=archives/movie_reviews/2004/9/10_2_PuteriGunungLedang

²⁴ *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

²⁵ Source: FINAS, see Attachment 2.

²⁶ Source: International Movie Data Base, see www.imdb.com.

²⁷ Sources: FINAS, see www.finas.gov.my, and *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

²⁸ *Box Office Battles*, Meor Shariman, *The Malay Mail*, 9 December 2003.

²⁹ *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

³⁰ *Film industry Seoul search*, Philippa Hawker, *The Age*, 20 October 2004.

National Film Policy

On 8 January 1992, the Minister of Information established the Consultative Panel on the National Film Policy to conduct a comprehensive study of the film industry and to make recommendations about how it might be developed. Declaring its mission to be "Malaysian Films, Universal Values", the objectives were as follows:

- to create the catalyst for the development of the local film industry, including the upstream and downstream industries in order to make Malaysia the destination of off-shore filming activities as well as the regional centre for the film industry;
- to nurture a liberal but responsible approach towards local films;
- to promote and improve the country's image internationally;
- to raise the quality of local films by emphasising the infusion of good of good cultural and humanitarian values as well as focusing on more serious issues affecting humanity universally; and
- to align the film industry with the aims and philosophies contained in Vision 2020 and the National Development Policy.³¹

The National Film Policy sets out the following strategies to achieve its objectives:

- the creation of an integrated organisational structure responsible for all matters concerning the management of the film sector;
- to streamline the various existing legislations and regulations to make them more integrated, effective and in keeping with the current developments in the film sector;
- to promote investments in the Malaysian film industry by providing the necessary incentives such as tax exemption, reducing bureaucratic red tape, for example, in the movements of materials and foreign film personnel both into and out of the country;
- to promote trade involving the distribution and exhibition of films and protection of copyrights;
- to promote the growth of services within the film industry that would result in multiplier effects;
- to create the infrastructure for off-shore filming activities;
- to upgrade the knowledge of local film producers in business management;
- to recognise and incorporate film-making into the national education curriculum as an important component in the development of national art and culture; and
- to stimulate the absorption of cultural, historical and national values and heritage in line with basic universal human aspirations.³²

The National Film Policy envisages the abolition of FINAS and Filem Negara, establishing in their place a National Film Board, planned to be one integrated government organisation under the Ministry of Information, responsible for determining policy, implementing policy objectives and enforcing related legislation.³³

The Alliance has not been able to ascertain where the implementation of the National Film Policy has reached. Certainly, FINAS has not yet been dismantled.

Broadcasting in Malaysia

The history of radio in Malaya commenced in 1921 when an electrical engineer working with the Johore Government, A.L. Birch, brought the first radio set into the country. He established the Johore Wireless Association and commenced broadcasting. The Association then commenced broadcasting in Penang and the Malayan Wireless Association was established in Kuala Lumpur.

In 1930, the Singapore Port Authority commenced a fortnightly broadcast, variously on Sundays or Wednesdays and, in 1937, Sir Shenton Thomas opened the studio of the Broadcasting Corporation of

³¹ Sources: *Windows to Malaysia*, available online at <http://www.windowstomalaysia.com.my> and <http://www.kempen.gov.my/coci/filmpol.htm>.

³² Sources: *Ibid.*

³³ Sources: *Ibid.*

Malaya with its transmitter at Caldecott Hill in Singapore. The British Broadcasting Corporation of Malaya was then taken over by the Straits Settlement and became a part of the British Information Ministry, but more often known as the Malayan Broadcasting Corporation.

Following the Japanese invasion and the fall of Singapore in 1942, the Japanese took control of the radio stations in Penang, Malacca, Kuala Lumpur, Seremban and Singapore until the British regained control of the stations the following year.

The Department of Broadcasting was established on 1 April 1946 in Singapore, moving in the early 1950s to Kuala Lumpur. From 1956, following the Department's move to Federal House in Kuala Lumpur, broadcasting began to flourish with stations opening across the country, including in Sabah and Sarawak. Commercials were first aired in 1960, providing a new source of revenue for the Government.

From 16 September 1963, the date of the founding of Malaysia, broadcasters commenced programs with "Inilah Radio Malaysia" ("This is Radio Malaysia") and radio coverage went nation-wide. Later that year, on 28 December, Dewan Tunku Abdul Rahman launched the first television service, Rangkaian Satu (later to become RTM). Responsibility for both radio and television broadcasting was transferred to the Ministry of Information in 1969, and the same year a second television channel was launched. During the following years, broadcast hours were extended and today six radio stations broadcast 24 hours a day in Malay, English, Mandarin and Tamil. In Sabah and Sarawak radio stations broadcast in Kadazan, Murut, Dusun, Ajau, English, Mandarin, Bidayuh, Iban, Kayan, Bisaya and Murut.

In what today is a competitive broadcasting environment, RTM provides multi-lingual schedules of cultural, educational and information programmes, including its own daily news service, on both radio and television, to national audiences. Its emphasis is on original material.³⁴

According to *Windows to Malaysia*, between 300 and 400 television dramas and serials are produced annually in addition to in-house productions produced by individual television stations.³⁵

The television commercials industry is afforded some protection by the Made-in-Malaysia regulation which specifies that all commercials for local products and services are at least 70% locally produced.³⁶

Television commercials are also subject to the Malaysia Code of Advertising.

Malaysian Communications and Multimedia Commission

The Malaysian Communications and Multimedia Commission (MCMC) is the regulator for communications and multimedia. Charged with implementing and promotion "the Government's national policy objectives for the communications and multimedia sector", it also oversees the developing regulator framework "for the converging industries of telecommunications, broadcasting and on-line activities."³⁷ The MCMC explains its responsibilities as follows:

"Economic regulation, which includes the promotion of competition and prohibition of anti-competitive conduct, as well as the development and enforcement of access codes and standards. It also includes licensing, enforcement of license conditions for network and application providers and ensuring compliance to rules and performance/service quality.

"Technical regulation, includes efficient frequency spectrum assignment, the development and enforcement of technical codes and standards, and the administration of numbering and electronic addressing.

³⁴ Source: Radio Televisyen Malaysia, see www.rtm.net.my.

³⁵ *Windows on Malaysia*, available online at www.windowstomalaysia.com.my.

³⁶ Creative & Media Industries Market in Malaysia, *UK Trade and Investment*, available online at <http://www.tradepartners.gov.uk/creative/malaysia/profile/overview.shtml>.

³⁷ Source: Malaysian Communications and Multimedia Commission, www.mcmc.gov.my.

"**Consumer protection**, which emphasises the empowerment of consumers while at the same time ensures adequate protection measures in areas such as dispute resolution, affordability of services and service availability.

"**Social regulation** which includes the twin areas of content development as well as content regulation; the latter includes the prohibition of offensive content as well as public education on content-related issues."³⁸

The MCMC "is entrusted with the responsibility to grow and nurture local information recourses and cultural representation that facilitate the national identity and global diversity."³⁹ To that end, the Malaysian Communication and Multimedia Commission convened the Content Forum on 28 February 2001.

On 1 November 2001, the Malaysian Communications and Multimedia Commission also took over regulation of the Postal Industry and was appointed the Certifying Agency pursuant to the Digital Signature Act (1997).

The Communications and Multimedia Content Forum of Malaysia developed the Communications and Multimedia Content Code, officially launched on 21 October 2004 by Dr Lim Keng Yaik, Minister for Energy Water and Communications.

The Communications and Multimedia Act 1998 provides for the Content Forum to develop the Content Code "and to enforce the Code containing governing standards and practices in the communications and multimedia industry."⁴⁰ The Content Code "demonstrates a commitment toward self-regulation by the industry in compliance with the Communications and Multimedia Act 1998 (Act 558). It seeks to identify what is regarded as offensive and objectionable while spelling out the obligations of content providers within the context of social values in this country."⁴¹ The full text Content Code is now available online.⁴²

Restrictions in advertising content are more extensive than is the case in Australia. For instance, not only is the advertising of cigarettes "not acceptable", neither is the advertising of alcohol, any form of gambling, death notices, disco scenes, slimming products and, in line the with national religion being Islam, pig, pork products and their derivatives.⁴³

Programs broadcast on free-to-air or subscription television are classified as follows:

- U: programs intended "for broad general audience and is suitable for viewers of all ages ... contains little or no violence, no strong language and little or no sexual dialogue or situation." Can be shown any time of day.
- PG-14 Parental Guidance for children under 14. Programs "may contain mild physical violence, comedic violence, comic horror, special effects, fantasy, supernatural elements or animated violence ... may also contain some suggestive dialogue and mild sexual situations and innuendo, but depictions will be infrequent, discreet and of low intensity." Can be shown any time of day.
- PG-18 "Parents/Guardians are strongly cautioned to exercise discretion in permitting young persons below the age of 18 to view ... without supervision ... may contain sophisticated themes, some sexual content, discreet sexual references, suggestive language and in some instances strong and coarse language and violence which are dominant elements of the storyline and

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Communications and Multimedia Content Code*, Communications and Multimedia Content Forum of Malaysia, 2004, available online at http://www.mcmm.gov.my/mcmm/facts_figures/codes_gl/guidelines/pdf/ContentCode.pdf.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid, Section 3, Part 4 (xviii) Unacceptable Products and Services, page 26.

justifiable within the context of theme and character development ... may also contain and deal with mature themes and societal issues in a realistic and candid manner.”

Can be shown only after 7.30pm.

18 & above Over 18 ... “intended for adult viewing and may contain one or more of the following which is considered integral to the development of the plot, character of themes: intense violence and depictions of violence, graphic horror images, graphic language, mature themes, intense sexual situations and suggestive dialogue.”

Can only be shown after 1000pm.

These thresholds, together with guidelines on what is not considered acceptable, serve to confine much overseas programming to after 10.00pm time slots.

Additionally, Malaysia censors audiovisual programs and music, in some instances requiring sequences to be cut, on others imposing outright bans.

Last year the Censorship Board, unhappy about “excessive violence” and scenes featuring vigilantes, banned Twentieth Century Fox’s *Daredevil* starring Ben Affleck and based on the Marvel comics character.⁴⁴

It is not only violence that causes concern. Several films have been banned or censored on moral or religious grounds. Sequences depicting women kissing were cut from *The Hours* to protect the “interests of the country and people from bad influences and negative elements”.⁴⁵

Stephen Spielberg’s animated epic about the life of Moses, *Prince of Egypt*, was found to be “insensitive for religious reasons”, while *Austin Powers: The Spy Who Shagged Me* featured too much sexual innuendo.⁴⁶

Other film titles banned by Malaysia include *Dog Day Afternoon*, *Tequila Sunrise*, *The X-Files* and *Saturday Night Fever*.⁴⁷

Performing arts industry in Malaysia⁴⁸

Traditional Malay drama, better known as Bangsawan or Malay Opera, originated in Persia and arrived in Malaya in the 19th century. It was a popular form of entertainment until the advent of television.

Mak Yong, a traditional form of dance-drama from Pattani and Kelantan, is based on traditional tales of the region and is performed by all female casts. Similar to Mak Yong is the dance-drama of Kedah, known as Mek Mulong.

Of the performing arts, possibly the best known outside Malaysia is shadow puppets. Wayang Kulit, is most popular in Kelantan where three traditions have been established, all based on the epics of Hindu literature – wayang golek, wayang jawa and wayang siam. Like dance drama, the impact of cinema and television has resulted in a decline in the art form. During the 1930s there were more than 130 master puppeteers – dalangs – whereas today there are only a handful. Nonetheless, they continue to make their mark domestically and internationally and, in the case of the latter, usually within the context of arts festivals.

Modern Malaysian theatre first emerged in Kuala Lumpur and today there are companies and theatres in Penang, Melaka, Ipoh, Johor Bahru, Kota Kinabulu and Kuching. Like Malaysia itself,

⁴⁴ *Malaysia bans Affleck’s Daredevil*, BBC, 14 February 2003, available online at www.bbc.co.uk.

⁴⁵ *Malaysia bans ‘Volkswagen’ play*, BBC, 7 February 2004, available online at www.bbc.co.uk.

⁴⁶ Ibid.

⁴⁷ *List of Banned Songs, Movies, Video, etc*, Kementarian Dalam Negeri, available online at http://www.kdn.gov.my/bm/perkhidmatan/bah_c_filemharam.html.

⁴⁸ Source: Windows to Malaysia, see www.windowstomalaysia.com.my.

contemporary Malaysian theatre is diverse with productions in Bahasa Melayu, Chinese, Tamil and English covering art forms from comedy and mime to puppetry and children's theatre.

Bahasa Melayu theatre has been built on the work of post World War II Malayan playwrights and directors, with the first wave including the work of Shahrom Hussain, Usman Away, Mustapha Kamal Yassin, and A. Samad Said. The second wave is considered to have commenced in 1969 and today Bahasa Melayu theatre is said to be thriving, underpinned by writers and directors who have had the benefit of training either in Malaysia or overseas.

English language theatre in Malaysia was not established during the days of British rule. Rather it emerged in the wake of Independence in 1957 driven by the pioneer Krishen Jit.

As with the audiovisual and music industries, the performing arts are also subject to censorship. This year, despite having been performed four years ago in Kuala Lumpur, the play *Election Day* was censored by a newly constituted committee established to vet theatrical performances. According to the BBC, it was the first time the committee has refused a permit, finding the play breached six of its eight guidelines. The committee returned the script with references to the car maker Volkswagen, a local chain of pharmacies and various Malaysian politicians deleted. The play tells the story of three friends during the 1999 Malaysian election.⁴⁹

Balance of trade in cultural goods and services between Australia and Malaysia

Balance of trade (in millions of dollars) 2000-2001

Cultural Goods

	Heritage services	Books, magazines, etc	Audio & video media	Radios, TVs etc	Exposed film & artistic works	Musical instruments etc	Total
Exports to Malaysia	-	2.3	0.2	3.2	0.7	0.1	6.4
Imports from Malaysia	-	7.6	0.6	368.9	0.1	3.4	380.6

Source: *Australia's Trade in Culture 2000-01*, prepared by the National Centre for Culture and Recreation Statistics, Australian Bureau of Statistics, for Cultural Ministers' Council Statistics Working Group, March 2003, pp 9-10.

In addition to Australians seeing the work of Malaysian shadow puppet artists at arts festivals, there have been a number of tours to Australia by Malaysians. At the time of writing, the 94 member Malaysian Philharmonic Orchestra had just completed a tour of Australia that included performances in New South Wales, Victoria, Queensland, Western Australia and the Australian Capital Territory. The dance troupe, Sendirian Berhad, toured New South Wales and Victoria in September of this year, the Taiwanese pop star Richie Chen toured earlier in the year, backed by performers from Hong Kong and Malaysia, and singers Yee Wai Wong, Yuan Yuan Khoo and Mao-Shaw Lee are scheduled to perform at Perth's Burswood International Resort Casino later this month.

Whilst many Australian musical theatre productions tour Asia, typically they are taken to Singapore and not to Kuala Lumpur. Whereas in recent years, the Australian productions of *Buddy*, *Cabaret*, *Oliver*, *Chicago*, *Saturday Night Fever* and *Oh What a Night* have toured to Singapore, none went to Malaysia.

Australian performers have also been cast in Malaysian musical theatre productions including, in recent years, in the productions of *Honk* (based on the story of the ugly duckling) and *Chang and Eng* (based on the story of the original Siamese twins).

⁴⁹ *Malaysia bans 'Volkswagen' play*, BBC, 7 February 2004, available online at www.bbc.co.uk.

The only Malaysian drama to have filmed in Australia in recent years, of which the Alliance is aware, was the television series *36 Hours to Paradise* which filmed sequences for some episodes in September 1997.

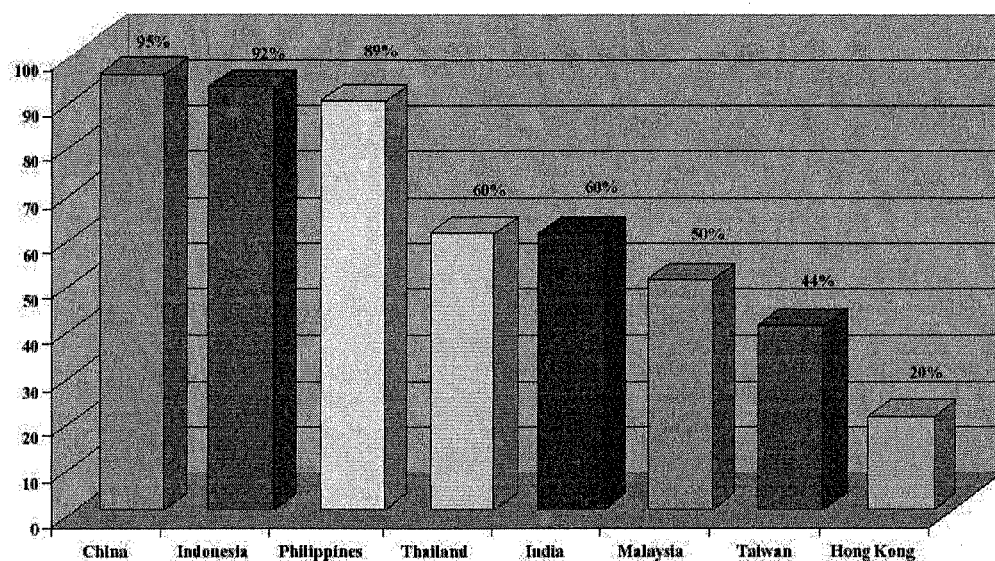
A small number of Australian audiovisual titles sell into Malaysia, although some sales cover rights for both Malaysia and Singapore. A listing for the period 1 January 2000 to 1 November 2004 is set out at Attachment 5.

Conversely, the Office of Film and Literature Classification advises that no Malaysian titles were classified during the period 1 January 2003 and 1 November 2004. It is therefore possible that audio and video media imports from Malaysia are copies of works originating from other countries, for instance, the production in Malaysia of video cassettes, CDs and DVDs of work produced in third party countries.

Piracy

Piracy is an issue that is increasingly impacting on returns for audiovisual materials. Although an issue in Malaysia, the situation is worse in countries such as Indonesia, China and the Philippines.

Asia Pacific Region: Piracy Rates and Losses



Source: Testimony of Jack Valenti, President and CEO, MPAA, before the United States Senate Committee on Foreign Relations: "International Intellectual Property Piracy: Stealing America's Secrets", 9 June 2004, available online at www.mpa.org/jack/.

The Motion Picture Production Association of America (MPAA), whilst noting that Malaysia is one of the three leading hubs in the Asia Pacific region for optical disc piracy (along with China and Taiwan), describes the current situation as follows: "Malaysia, while still a leading source of exported pirate optical discs to other countries, is making strides in its fight against copyright theft. Recently, the country's copyright law has been strengthened, with criminal penalties increased and enforcement officers given the power to arrest suspected copyright thieves. In 2003, enforcement officers conducted 12 surprise factory raids and more than 2,700 combined anti-piracy raids, resulting in the seizure of more than 2.8 million illegal discs."⁵⁰

⁵⁰ Anti-piracy, Motion Picture Production Association of America, available online at www.mpa.org/anti-piracy.

On 26 October 2004, *Variety* reported on pay television piracy in the Asia Pacific region, commenting on a report undertaken by CLSA Asia-Pacific Markets, a brokerage and investment banking service provider, in collaboration with the Cable & Satellite Broadcasting Association of Asia, which found that while piracy is on the increase in Thailand, the Philippines, Hong Kong, Vietnam and Singapore, "antipiracy efforts in Malaysia seem to be working."⁵¹

That being said, two DVD pirates in London have just been sentenced to seven years jail. Between January 2002 and July 2003 it is reported the two men sold approximately 400,000 counterfeit DVDs imported from Malaysia. They specialised in films still screening at UK cinemas and the enterprise earned them up to \$7.4 million.

Consequently, as piracy in various forms remains an issue, it is to be hoped that the scoping study and any agreement that might follow would assist in pursuing further improvements in the current efforts to curtail it.

Conclusion

The Alliance's views on free trade are as outlined in the Executive Summary above. In short, whilst the Alliance supports free trade, it believes that, for a country the size of Australia, its objectives are best achieved in the multilateral context under the auspice of the WTO. Further, the Alliance believes that all countries have the sovereign right to determine their own cultural policy objectives and give effect to those policy objectives unconstrained by the provisions of free trade agreements.

However, if Australia does decide to negotiate an FTA with Malaysia, the Alliance considers it imperative that no commitments be made in respect of Australia's cultural industries, consistent with the position adopted and achieved in the agreements with Thailand and Singapore.

At a time when the cultural industries – in particular the audiovisual sector – are undergoing dramatic and rapid change, Australia should make no commitments in respect of our cultural sector that would restrict the ability of the Australian government to give effect to Australia's social and cultural policy objectives in any manner it sees fit now and into the future, in the same way that Malaysia will undoubtedly wish to continue to determine its own cultural policy free of commitments made in trade agreements.

As recorded in the Executive Summary, the audiovisual industry in Malaysia supports a comprehensive reservation for the cultural industries in the event an FTA is negotiated between Australia and Malaysia.

Finally, with the negotiation of an FTA between ASEAN, Australia and New Zealand a possibility, it would make no sense to negotiate outcomes inconsistent with those achieved in the agreements with Singapore and Thailand. To do otherwise would be to create webs within webs and unduly and unnecessarily compromise social and cultural objectives and complicate and increase the costs of doing business with the region.

⁵¹ *Pay TV piracy rings up \$1 bil bill*, Vicki Rothrock, *Variety*, 26 October 2004, available online at <http://www.variety.com/article/VR1117912527?categoryid=19&cs=1>.

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ATTACHMENT ONE

AUDIENCESHIP BY LANGUAGES, 2002 and 2003

NO	LANGUAGE	AUDIENCE		BOX-OFFICE (RM)	
		2002	2003	2002	2003
1	Malay	1,272,342	2,011,200	9,013,832.95	13,950,933.90
2	Chinese	1,727,370	1,384,725	13,137,771.62	13,170,255.25
3	Tamil	831,473	422,955	5,264,512.17	3,695,168.30
4	English	6,019,603	7,568,979	45,356,077.35	55,018,548.00
5	Indonesia	-	40,365	-	424,134.60
6	Hindi	188,540	67,218	1,409,129.21	609,973.30
7	Others	199,756	73,632	1,750,258.60	452,485.60
Total		10,239,084	11,569,074	75,931,581.90	87,322,498.95

Source: FINAS, available online at www.finas.gov.my.

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ATTACHMENT TWO

Padu Citra Membership Report (1st Quarter)

Association	DECEMBER 2003	JAN-MAR 2004	INCREASE (DECREASE)	PERCENTAGE %
SENIMAN	1,861	1,904	43	2.00
PPFM	5,167	5,167	-	-
FDAM	250	250	-	-
KARYAWAN	1,264	1,264	-	-
TOTAL	8,542	8,585	43	2

Source: FINAS, available online at www.finas.gov.my.

ATTACHMENT THREE

LOCAL FEATURE FILMS REPORT - 2004 - 2005

NO.	FILM TITLE	PRODUCER	STATUS	DATE OF SCREENING	GROSS COLLECTION	# OF CINEMA
1.	Trauma	Tayangan Unggul	Completed Screening	22/01/2004	RM926,000	30
2.	Kuliah Cinta	Metrowealth	Completed Screening	29/01/2004	RM4.1 million	30
3.	Bisikan Remaja	Berjaya Filem	Completed Screening	26/02/2004	RM253,000	28
4.	Buli	Grand Brilliance	Completed Screening	11/03/2004	RM1.58 million	28
5.	Ah Lok Cafe	N. Finity	Completed Screening	18/03/2004	RM20,000	12
6.	Bintang Hati	Tayangan Unggul	Completed Screening	25/03/2004	RM683,000	29
7.	Di Ambang Misteri	Cosmos Discovery	Completed Screening	08/04/2004	RM362,000	27
8.	Gila Gila Pengantin Remaja	Skop Production	Completed Screening	29/04/2004	RM1.4 million	27
9.	Pontianak Harum Sundal Malam	Pesona Pictures	Completed Screening	20/05/2004	RM3.2 million	
10.	Bicara Hati	RJ Production	Completed Screening	03/06/2004	RM113,000	
11.	Berlari Ke Langit	Tayangan Unggul	Awaiting Screening	24/06/2004	RM632,000	
12.	Hingga Hujung Nyawa	Metrowealth	Awaiting Screening	22/07/2004		
13.	Makar	Cosmos Discovery	Awaiting Screening	05/08/2004		
14.	Aku No. 1	A & A Pictures	Awaiting Screening	19/08/2004		
15.	Puteri Gunung Ledang	Enfiniti Production	Completed Screening	31/08/2004	RM 2.8 million	
16.	Buai Laju Laju	Gambar Tanah	Completed	09/09/2004	RM 45,000	

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		Licin	Screening			
17.	Cinta Luar Biasa	Tayangan Unggul	Awaiting Screening	23/09/2004		
18.	Tujuh Perhentian	Metrowealth	Awaiting Screening	14/11/2004		
19.	I Know What You Did Last Raya	Grand Brilliance	Awaiting Screening	14/11/2004		
20.	Sh3... The Movie	AD Niaga	Awaiting Screening	02/12/2004		
21.	Biar Betul	Nizarman	Awaiting Screening	16/12/2004		
22.	Tak Ori Tapi O.K	Nusan Bakti	Awaiting Screening	20/01/2005		
23.	Gerak Khas The Movie III	Skop Production	Awaiting Screening	10/02/2005		

Source: FINAS, available online at www.finas.gov.my.

ATTACHMENT FOUR

COMPULSORY SCREENING (SYARAT WAJIB TAYANG) FOR LOCAL FILMS 2000 - 2004

YEAR	NO.	FILM TITLE	SCREEN DATE	BOX-OFFICE NETT	BOX-OFFICE GROSS
2004	1	Trauma			936,000.00
	2	Kuliah Cinta			4,100,000.00
	3	Bisikan Remaja			253,000.00
	4	Buli			1,580,000.00
	5	Ah Lok Cafe * (Non-Compulsory Screening)			20,000.00
	6	Bintang Hati			683,000.00
	7	Di Ambang Misteri			362,000.00
	8	Gila Gila Pengantin Remaja			1,400,000.00
	9	Pontianak Harum Sundal Malam			3,200,000.00
	10	Bicara Hati			113,000.00
	11	Berlari Ke Langit			632,000.00
TOTAL				-	13,279,000.00
2003	1	Gila Gila Pengantin	30 Jan	2,052,298.00	2,565,372.60
	2	Iskandar	27 Feb	353,914.40	442,393.00
	3	Laila Isabella	27 Mar	1,802,930.70	2,253,663.37
	4	Mistik	24 Apr	1,535,000.00	1,918,750.00
	5	Mami Jarum Junior	29 May	-	1,399,501.50
	6	Black Maria	26 June	-	145,331.80
	7	Paloh	10 July	-	142,645.00
	8	Janji Diana	24 July	-	2,187,254.25
	9	Diari Romeo	28 Aug	-	321,517.75
	9	Diari Romeo	28 Aug	-	321,517.75
	10	Aku Kaya The Movie	4 Sep	-	608,122.00
	11	Cinta Kolestrol	25 Sep	-	3,823,315.50
	12	Mr Cinderella Ii	25 Nov	-	1,251,949.00
	13	Mx3	25 Nov	-	1,129,498.75
	14	Lang Buana	4 Dec	-	1,786,403.75
	15	Jutawan Fakir	18 Dec	-	2,664,940.26
16	Gila Bola	25 Dec	-	631,448.75	
TOTAL				-	23,272,107.28
2002	1	Kl Menjerit	24 Jan	2,021,466.20	2,870,482.00
	2	Anak Mami The Movie	21 Feb	2,173,939.95	2,936,634.73
	3	Idola	7 Mar	681,980.75	958,753.83
	4	Mendam Berahi	28 Mar	151,128.65	214,602.68
	5	Gerak Khas The Movie Ii	23 May	2,164,693.10	3,073,864.20
	6	Embun	1 Aug	711,090.95	945,750.96

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	7	Mr. Cinderella	29 Aug	2,021,089.70	2,526,362.12
	8	Mami Jarum	6 Dec	2,227,442.60	2,684,303.25
	9	Cinta 200 Ela	6 Dec	104,376.95	147,066.40
	10	Soalnya Siapa	20 Dec	1,854,856.50	2,203,570.63
TOTAL				14,112,065.35	18,561,390.80
2001	1	Gerak Khas	1 Mar	3,095,812.15	4,396,053.25
	2	Seri Dewi Malam	24 May	430,456.30	611,247.95
	3	Sara	28 Jun	124,000.00	176,080.00
	4	Dari Jemapoh Ke Manchestee	2 Aug	25,480.00	36,181.60
	5	Getaran	31 Aug	592,000.00	840,640.00
	6	Putih	6 Sep	276,070.85	392,020.61
	7	Cheritera	13 Sep	1,800.00	2,556.00
	8	Cinta Tiada Restu	27 Sep	26,248.40	37,272.70
	9	Spinning Gasing	18 Oct	341,162.00	484,450.04
	10	The Deadly Dicile	1 Nov	24,516.80	34,813.86
	11	Lagi-Lagi Senario	14 Dec	4,458,739.85	6,331,410.59
TOTAL				9,396,286.35	13,342,726.60
2000	1	Pasrah	8 Jan	1,930,612.70	2,741,470.43
	2	Mimpi Moon	6 Apr	390,584.2	554,619.56
	3	Senario Lagi	25 May	3,079,438.54	4,372,802.73
	4	Anaknya Sazali	29 Jun	153,174.20	217,507.36
	5	Leftenan Adnan	30 Aug	757,533.70	1,075,697.85
	6	Soal Hati	28 Sep	974,058.11	1,383,134.12
TOTAL				7,285,401.45	10,345,232.05

Source: FINAS, available online at www.finas.gov.my.

ATTACHMENT FIVE

Sales of Australian feature films, telemovies, mini-series and documentaries to Malaysia for the period 1 January 2000 – 1 November 2004

Title	Type	Kids?	Buyer	Eps	Term	Territory	Rights
Crash Zone II, The	MS	Y	Ambang Media Sdn Bhd	13	2	Malaysia	TV
Cybergirl 6000	MS	Y	Ambang Media Sdn Bhd	26		Malaysia	TV
Genie From Down Under Series 2	MS	Y	Ambang Media Sdn Bhd	13	2	Malaysia	TV
Round the Twist 1	MS	Y	Ambang Media Sdn Bhd	13	2.8	Malaysia	TV
Round the Twist 2	MS	Y	Ambang Media Sdn Bhd	13	2	Malaysia	TV
Round the Twist 3	MS	Y	Ambang Media Sdn Bhd	13	2	Malaysia	TV
Dolphin Mania	DO		Arief Trading - Malaysia	1		Malaysia/Brunei	TV
Brilliant Lies	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
Crackers	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
Custodian, The	FE		Asia Teleprogramming Int'l Ltd	1	4	Malaysia/Singapore	C
Dead Heart	FE		Asia Teleprogramming Int'l Ltd	1		Malaysia	C
Devil Game, The	TM		Asia Teleprogramming Int'l Ltd	1	2	Malaysia	TV
Einstein's Wife	DO		Asia Teleprogramming Int'l Ltd	1	4	Malaysia	CC
Gross Misconduct	FE		Asia Teleprogramming Int'l Ltd	1	4	Malaysia/Singapore	C
Heavens Burning	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
Human Journey, The	DO		Asia Teleprogramming Int'l Ltd	3	3	Malaysia/Singapore	C
Kiss or Kill	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
Lantana	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
Looking for Alibrandi	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
My Mother Frank	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
Risk	FE		Asia Teleprogramming Int'l Ltd	1	3	Malaysia/Singapore	C
Don't Blame Me	MS	Y	Global Station Sdn Bhd	26	2	Malaysia	TV
Looking For Alibrandi	FE		Golden Communications Sdn Bhd	1	2	Malaysia	TV
Lucky Break	FE		Intercontinental Comms	1	1	Malaysia	TV
On The Beach	MS		Metropolis Television Inc	2		Malaysia	TV
Tribe	MS		Metropolis Television Inc	2	2	Malaysia	TV
Road from Coorain, The	TM		Not Advised	1		Malaysia	CC
Legacy of the Silver Shadow, The	MS	Y	Panca Embun Sdn Bhd	13	2	Malaysia	TV
Close Contact	TM		Sky Network Tv Ltd	1	3	Malaysia	CC
Man Who Sued God, The	FE		Sunny Films	1	5.3	Malaysia	ALL-F
Hard Word, The	FE		Suraya Filem Production	1	7	Malaysia	ALL-F
Ocean Girl Animation Series	MS	Y	Tv3 Malaysia	26	2	Malaysia	TV

Code: MS – television mini-series; DO – documentary; FE – feature film; TM – telemovie; Kids? – children's program; Y – yes; TV – free-to-air television; C – cable; CC – closed circuit (hotels); ALL-F – all rights including theatrical.

Source: Film Finance Corporation Australia

APPENDIX B

**SUBMISSION
BY
MEDIA ENTERTAINMENT AND ARTS ALLIANCE
TO THE
DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
REGARDING
AUSTRALIA-MALAYSIA FREE TRADE AGREEMENT**

MAY 2005

The Media Entertainment and Arts Alliance

The Media Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

Executive Summary

The Alliance made a submission to the Department of Foreign Affairs and Trade in November last year in response to a call for comment on the scoping study being undertaken for a free trade agreement between Australia and Malaysia. This submission builds on the November submission.

As noted in the November submission, the Alliance considers that trade liberalisation is best achieved multilaterally. However, where bilateral agreements are pursued, the Alliance considers that positive listing agreements, such as the Thailand-Australia Free Trade Agreement, offer more certainty to the countries party to the agreement. In the event the trade agreement with Malaysia is a positive listing agreement, the Alliance is strongly of the view that no commitments be made that might in any way constrain the Government's ability to foster Australia's cultural industries in any manner it sees fit now and into the future.

In the event of a negative listing agreement, the reservations in respect of cultural industries negotiated in the Singapore-Australian Free Trade Agreement serve as a model. The Alliance considers the concessions given in the Australia-United States Free Trade Agreement unnecessarily constrain the Government's ability to support the cultural industries and should not be treated as a precedent for an agreement with Malaysia.

DFAT is familiar with the reasons why the output of cultural industries is different from the output of other industries, why the cultural output of a nation cannot be substituted with the cultural output of another and why they need special consideration in the context of trade agreements. Those arguments are not repeated in this submission.

DFAT is also familiar with the matrix of support provided by government to support the cultural industries and again this information is not repeated in this submission. Rather this submission hopes to further illustrate the climate in which the cultural industries operate in Malaysia.

"Unlike automobiles, tooth paste, appliances, or textiles, information products are not consumed one unit at a time. Rather, each product unit is designed to be utilized repeatedly by many, thus becoming more valuable with use. While the value of a single industrial product such as an automobile, refrigerator, or computer decreases with usage, the precisely opposite effect applies to an information or cultural product. A film, book, television program, or software product increases its value disproportionately the more it is used, viewed, or applied by increasing numbers of people. This has been the case since commercial publishing began and certainly since the age of mass distributed audio-visual products such as popular music, film, and television programs. While we have had ample evidence of this economic phenomenon from the dawn of film and broadcasting, an appreciation of the unique characteristics of cultural products went largely unacknowledged in public policy and research."

Shalini Venturelli, Associate Professor, American University⁵²

⁵² *From the Information Economy to the Creative Economy: Moving Culture to the Center of International Public Policy*, Shalini Venturelli, Centre for Arts and Culture, pages 7-8, available online at www.culturalpolicy.org.

Background to Malaysia's support for cultural industries

Malaysia's population of 25.5 million comprises a number of ethnic groups with Malays accounting for 50.3% of the population, Chinese 23.8%, Indigenous peoples 11.0%, Indians 7.1%, non Malaysian citizens 6.6% and others at 1.2%.⁵³ Collectively, ethnic Malays and other Indigenous peoples are known as "bumiputeras". Malaysia's New Economic Policy (NEP), established in 1971, sought to eliminate poverty, end the identification of economic function with ethnicity and was specifically designed to enhance the economic standing of bumiputeras. Rapid growth, especially through the 1990s prior to the 'Asian meltdown', made it possible to expand the share of the economy for bumiputeras at no expense to other sectors of the community.

In 1991, when the NEP expired, it was replaced by the national Development Policy which broadly mirrored the goals of the NEP but without specific ethnic targets and timetables. In 2001, the Government released the National Vision Policy to guide development over the first decade of this century.⁵⁴ The focus on the bumiputeras during the latter part of the 20th century is reflected in the broadcasting content standards mandating levels of local programs produced in Bahasa Meluya.

Although Malaysia is rapidly changing from a primary producing country overly reliant on two commodities – rubber and tin – to a diversified industrialised country producing, on the one hand, goods from agricultural materials and, on the other, electronics like semi-conductors and chips, the Government nonetheless actively fosters cultural cottage industries like batik design, songket weaving, pottery, and basket and mat weaving. The Government also fosters the maintenance of traditional songs, music, and poetry.⁵⁵

Following racial riots in May 1969, the Government introduced Rukunegara (Malaysian nationhood) in an attempt to articulate the philosophy that would underpin the nation. It was officially declared on 31 August 1970 in the hope it would strengthen national unity in a multicultural society. It declares that Malaysia is dedicated to "achieving a greater unity for all her peoples, maintaining a democratic way of life, creating a just society in which the wealth of the nation shall be equitably distributed, ensuring a liberal approach to her rich and diverse cultural traditions, and building a progressive society which shall be oriented to modern science and technology".⁵⁶

Rukunegara is guided by five principles:

1. *Kepercayaan kepada Tuhan* (Belief in God)
2. *Kesetiaan kepada Raja dan Negara* (Loyalty to King and Country)
3. *Keluhuran Perlembagaan* (Supremacy of the Constitution)
4. *Kedaulatan Undang-undang* (Rule of Law)
5. *Kesopanan dan Kesusilaan* (Mutual Respect and Morality)⁵⁷

Along with the NEP, the National Cultural Policy was formulated in 1971. It comprises three elements – to place emphasis on cultural programs that enhance national identity, promote national integration and unity and maintain racial harmony.

In 1996, Malaysia launched Vision 2020 which sets out the Government's ambitions to be a developed country by 2020, a strategy articulated by former Prime Minister Dr Mahathir Mohamad in the following terms: "Malaysia should not be developed only in the economic sense. It must be a nation that is fully developed along all the dimensions: economically, politically, socially, spiritually, psychologically and culturally. We must be fully developed in terms of national unity and social

⁵³ Source: *Background Note: Malaysia*, US Department of State, Bureau of East Asian and Pacific Affairs, January 2005, page 1, available online at www.state.gov/r/pa/ei/bgn/2777.htm.

⁵⁴ Ibid, page 5.

⁵⁵ Source: *Malaysia*, APRCCN – Cultural Policy and Law, see online at www.culturelink.or.kr.

⁵⁶ Source: *Rukunegara*, All Malaysia Info, see online at http://allmalaysia.info/msiaknow/malaysia/symbols_rukunegara.asp.

⁵⁷ Ibid.

cohesion, in terms of our economy, in terms of social justice, political stability, system of government, quality of life, social and spiritual values, national pride and confidence.”⁵⁸

According to Mahathir Mohamad, “Malaysia entered year 2000, the first year of the 21st century and third millennium, determined to achieve its objective of becoming a fully developed country by the year 2020.” He went on to say, “Some have wondered why 2020 and not some other year. As a doctor I am attracted to the optometrist measurement of vision; 2020 indicates 100 percent good vision in both eyes. Our Vision 2020 for Malaysia implies this clear vision of where we want to go and what we want to be.”⁵⁹

Vision 2020 is the blueprint for building a fully developed, knowledge-rich society “through the development of the ICT sector and the use of ICT to increase global competitiveness. The intent behind Malaysia’s Multimedia Super Corridor (MSC) has been to create a high-tech environment and infrastructure that can attract national and international investors and create spillover effects in the rest of the Malaysia economy.”⁶⁰ The MSC “is designed to create an ideal environment for ICT-related production as well as provide the backbone for an information superhighway. The network contains a high-speed link (10Gb/s network) that connects the MSC to Japan, ASEAN, the US and Europe”.⁶¹ The Demonstrator Application Grant Scheme provides funds for multimedia program development. In 1999, the contribution of the ICT sector to GNP was approximately 36.5%. The government provides a range of financial incentives including zero income tax for ten years, research and development grants and a 100% investment tax allowance on new investment in the MSC.

Like Australia, Malaysia is experiencing skilled labour shortages especially in ICT. Consequently, the Malaysian Government is investing in high quality comprehensive education. In March 1997, the Cabinet instructed Telekom Malaysia Berhad to set up the Multimedia University in Cyberjaya. It opened two years later. Established to become “a world class university that leads in learning and research within the broad sphere of multimedia and information technology”⁶² it offers degrees in multimedia covering film, animation and games. The Computer in Education (CIE) Program equipped schools with computers and trained teachers to conduct CIE. Computer Aided Design and Computer Aided Manufacturing were added to the curricula of secondary technical schools. The National Information Technology Agenda (NITA), launched in December 1996 by the National Information Technology Council, provides the framework for using ICT to transform Malaysia into a developed country. “The NITA vision is to use ICT to transform Malaysia, across all sector, into an information society, then a knowledge society, and finally a ‘values-based’ knowledge society.”⁶³

Financing of cultural activity

As is the case in Australia, all three levels of government – federal, state and local – participate in financing the promotion of Malaysia’s cultural industries.

At the federal level, financial commitment to the cultural industries has been in place ever since the first Five Year Development Plan of 1966-1970.

Like Australia, Malaysia seeks to foster private sector participation in the arts and provides tax deductions for those making cash contributions to the Ministry of Culture, Arts and Tourism to sponsor orchestral, theatrical and other cultural performances. “To increase the quality of cultural

⁵⁸ *The Way Forward*, a speech presented by His Excellency YAB Dato’ Seri Dr Mahathir Mohamad at the Malaysian Business Council, available online at www.pmo.gov.my.

⁵⁹ *Malaysia on Track for 2020 Vision*, Mahathir Mohamad, available online at the United Nations Online Network in Public Administration and Finance, <http://unpan1.un.org>.

⁶⁰ *Creating a Development Dynamic, Final Report of the Digital Opportunity Initiative*, Accenture, Markle Foundation and United Nations Development Programme, July 2001, Appendix 3, available online at www.opt-init.org.

⁶¹ *Ibid.*

⁶² Vision Statement, Multimedia University, see online at www.mmu.edu.my.

⁶³ *Creating a Development Dynamic, Final Report of the Digital Opportunity Initiative*, Accenture, Markle Foundation and United Nations Development Programme, July 2001, Appendix 3, available online at www.opt-init.org.

performances, artists such as writers, actors, dancers, singers, musicians, composers and lyricists participating in performances recognised as national culture are given tax exemption on the income so derived. Tax exemptions are also given to stage plays organised by local theatre companies.⁶⁴

Malaysians are encouraged to develop a deep respect for moral values and ethical behaviour, principles that underpin the Rakan Muda programs – youth friendship programs – designed to foster healthy lifestyles and to instil positive values. To encourage public involvement in cultural activities, the Culture Division of the Ministry of Culture, Arts and Tourism organises or sponsors activities like the Socio-Cultural Youth Camp “which is intended to create and develop a generation of cultural leadership who are creative and innovative in the field of culture and art.”⁶⁵

Arts and culture in Malaysia – relevant legislation⁶⁶

- Antiquities Act 1976 (Act 168)
- National Art Gallery Act, 1958
- Legal Deposit of Library Material Act, 1986 (Act A667)
- National Library Act, 1972; The National Library (Amendment) Act, 1987
- National Archive Act, 1966 (Act 44), (Revised 1971), (Act A85), (Revised 1993), (Act 511)
- Tourist Development Corporation of Malaysia Act 1972
- Broadcasting Act 1988 (Act 338), Broadcasting (Amendment) Act, 1997 (Act A977)
- Radio Communications Regulation (Advertising) 1985
- Cinematography Film - Hire Duty Act 1965 (Revised 1990), (Act 434)
- Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 (Act 244), Perbadanan Kemajuan Filem Nasional Malaysia (Amendment) Act, 1984 (Act 589) (Malaysian National Film Development Corporation FINAS Act)
- Perbadanan Kemajuan Kraftangan Malaysia Act 1979 (Act 222)
- Theatres & Places of Public Amusement (Federal Territory) Act 1988 (Act 182)
- Bernama Act, 1967 (Revised 1990), (Act 449)
- Entertainment Duty Act 1953 (Revised 1973) (Act 103)
- Copyright Act 1987; Copyright (Amendment) Act 1997
- Computer Crimes Act 1997
- Digital Signature Act 1998

Key cultural institutions

- **Department of Museum and Antiquity** – charged with collecting and preserving the nation's cultural and historical heritage and its flora and fauna and disseminating cultural and historical knowledge through exhibitions, lectures, workshops and so on.
- **National Art Gallery** – the Legal Deposit of Library Material Act 1986 (Act A667) requires all publishers in Malaysia to deposit five copies of print material (books, serials, maps, charts, etc.) and two copies of non print materials (cinematography, film, microfilm, video, audio recordings and other electronic media) published or produced in Malaysia with the National Library of Malaysia.
- **National Archives of Malaysia** – collects, stores and preserves all records and information of national value and historical significance including government records.
- **Filem Negara Malaysia** – established in 1946, it is the media arm of Government, producing documentaries, trailers and animated films and recording events of socio-cultural and historical importance.
- **National Film Development Corporation (FINAS)** – established under the Perbadanan Kemajuan Filem Nasional Malaysia Act, 1981 (Act 244) to promote, nurture and facilitate the development of the Malaysian film industry. Its functions include making recommendations to the

⁶⁴ Source: *Malaysia*, APRCCN – Cultural Policy and Law, see online at www.culturelink.or.kr.

⁶⁵ Ibid.

⁶⁶ Sources: Lawyerment, The Malaysian Online Legal Resources, see www.lawyerment.com.my; Malaysia, APRCCN Cultural Policy and Law, www.culturelink.or.kr and Malaysia Culture and Information – Legislation, see online at www.kempen.gov.my.

Minister regarding policies, methods and measures to be adopted to nurture and support the local film industry; to stimulate the industry's growth and to enhance standards including by way of the provision of research and advisory services; to regulate industry; and to promote the industry within Malaysia and internationally.

- **Radio and Television Malaysia (RTM)** – provides services through domestic and overseas broadcasts known as Voice of Malaysia. Its key objectives are “to explain and provide widespread and in-depth coverage on government policies and programmes so that they would be fully understood by the people; to stimulate interest and promote the way of thinking of the people in line with government policies and aspirations; to develop civic consciousness and promote the development of Malaysian arts and culture; and to provide suitable materials for general information, education and entertainment purposes.”⁶⁷
- **Karyanika Exhibition and Marketing Centre** – established to foster and promote Malaysian handicrafts and cottage cultural industries.

The audiovisual industry in Malaysia

Malaysia

“Malaysia has some of the toughest censorship laws in the world. The authorities exert substantial control over the media and restrictions may be imposed in the name of national security.

The government is keen to insulate the largely-Muslim population from what it considers harmful foreign influences on TV. News is subject to censorship, entertainment shows and music videos regularly fall foul of the censors, and scenes featuring swearing and kissing are routinely removed from TV programmes and films.

The TV sector comprises commercial networks and pay-TV operations. Around a quarter of TV households subscribe to the Astro multichannel service. A second pay-TV operator, MiTV, is in the pipeline. TV3 is a leading national private, terrestrial broadcaster.

State-owned Radio Television Malaysia (RTM) operates two channels and many of the country's radio services. Private stations are on the air, broadcasting in Malay, Tamil, Chinese and English.

Newspapers must renew their publication licences annually, and the home minister can suspend or revoke publishing permits.

Malaysia had some 8.7 million internet users by 2003, according to the International Telecommunication Union. Some web sites, such as Laman Reformasi, close to former deputy prime minister Anwar Ibrahim, freeMalaysia or Malaysiakini, have come under official criticism.

The press:

New Straits Times – English-language

The Star – English-language

Business Times – English-language

The Malay Mail – English-language

Malaysiakini – English-language, online news service

Television:

Radio Television Malaysia (RTM) – state-run, operates TV1 and TV2 networks

TV3 – commercial network

ntv7 – commercial network

Radio:

Radio Television Malaysia (RTM) – state-run, operates some 30 radio stations across the country and external service Voice of Malaysia

Time Highway Radio – private Kuala Lumpur FM station

Era FM – private FM station

News agency:

Bernama – Malaysian national news agency”

Source: BBC, *Country Profile – Malaysia*, last updated 2 April 2005, available online at http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1304569.stm.

⁶⁷ Source: *Malaysia*, APRCCN – Cultural Policy and Law, see online at www.culturelink.or.kr.

Like Australia, Malaysian government policy is to foster its cultural industries.

Screen Digest 2004 lists Malaysia as one of the top 20 countries by government production investment in feature films, coming in at number 18, ahead of Australia at 22. Feature film production in Malaysia has been increasing in recent years, from nine features in 1997 to 26 in 2003. 25 features are due for release during 2005 and, if all are cleared by the censors in time, this year's Malaysian Film Festival in July will see 31 films vying for awards, the largest number since the Festival was established in 1980.⁶⁸

Importantly for producers and directors, the censors are showing signs of being more accommodating. According to filmmaker Saw Teong Hin, filmmakers are now able to present their case when they feel their work has been unjustly censored. Nonetheless, "It is a restrictive and arbitrary system that needs to be improved on."⁶⁹ In one concession made by the censors, filmmaker Amir Muhammad noted, "The horror genre was banned for 30 years when a regulation banning violence, horror and sex in movies was introduced. Horror movies came back to local screen last year with *Pontianak Harum Sundal Malam*, directed by Shuhaimi Baba, a woman director. It was a big hit."⁷⁰ (It was not quite so generously reviewed.)

There are no restrictions on importing English language films. However, strong censorship guidelines act to deter a number of titles achieving theatrical release in Malaysia that achieve distribution elsewhere.

Access to exhibition is a contentious issue for Malaysian producers. However, FINAS, Malaysia's film commission, requires the mandatory screening of all films it certifies as Malaysian filmed in Bahasa Melayu. *Syarat Wajib Tayang* requires exhibitors to screen certified films for a minimum of seven consecutive days, after which time the exhibitor is able to make a commercial determination about whether to extend the season.⁷¹ FINAS also determines the release dates for certified films in order to ensure that they are spread throughout the year and to avoid too many competing for audiences simultaneously.

A Government entertainment tax of 25% applies to cinema tickets. Producers of certified Bahasa Melayu language feature films are able to benefit from a rebate from funds raised by the tax. For every Malaysian Ringgit cinema tax raised from the release of certified films, 25% is retained by the Government and the balance is split 50% to the exhibitor and 50% to the producer.⁷²

Foreign equity in terrestrial broadcast television networks is banned. The government sets local content quotas on both radio and television programming. "Eighty percent of television programming is required to originate from local production companies owned by ethnic Malays (an increase from the previous limit of 60 percent)."⁷³ However, it is understood that at present the increased quota has not been rigorously enforced where lack of compliance can be demonstrated to be attributable to a lack of local programming availability. The content standard for radio remains at 60%.

As with film, strict censorship mitigates against many overseas television programs being broadcast on television. Consequently, the combination of local content regulation and censorship ensures that Malaysian content dominates television by comparison with Australia. See Appendix A. As in

⁶⁸ *Record entries expected*, New Strait Times, 10 May 2005, available online at www.nst.com.my.

⁶⁹ Saw Teong Hin, cited in *Local films stir interest abroad*, New Straits Times, 10 May 2005, available online at www.nst.com.my.

⁷⁰ Amir Muhammad, cited in *Local films stir interest abroad*, New Straits Times, 10 May 2005, available online at www.nst.com.my.

⁷¹ Sources: FINAS, see www.finas.gov.my and *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

⁷² *Films Made in Malaysia*, Datin Rosnani Jamil, President, Scriptwriters' Association of Malaysia, delivered at the UNI-MEI 4th Asia/Pacific Freelance Film Production Technicians' and Creators' Conference, Bangkok, October 2004.

⁷³ *2003 National Trade Estimate Report on Foreign Trade Barriers*, United States Trade Representative, page 269, available online at www.ustr.gov.

Australia, programming ranges over news and current affairs, children's programs, light entertainment, variety, infotainment, soaps and drama. Reality television has taken hold as it has done around the world. For instance, the second series of *Malaysian Idol* is now in production.⁷⁴

As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.⁷⁵

Unlike Australia, commercials are allowed on the public broadcasters. "Commercials are restricted to a maximum of 20 percent foreign film content and only Malaysian actors may be used in commercials shown in Malaysia. The Government of Malaysia has an informal and vague guideline that commercials cannot 'promote a foreign lifestyle.'"⁷⁶

According to Nielsen Media Research Malaysia, advertising expenditure in the sector during 2004 was RM4.4 billion (US\$1.16 billion) up 17% from 2003. The increase was in large part due to the launch of two new television stations – 8TV and the relaunched Channel 9. However, industry commentators believe growth in the advertising sector will continue notwithstanding Channel 9 "temporarily" going off air from 1 February this year, a mere 18 months after its relaunch.⁷⁷ Channel 9 has said it is now undergoing a "systematic and comprehensive corporate and debt restructuring scheme" aiming to draw new investors. According to the Asia Pacific Broadcasting Union, "New owners – widely speculated to be the Media Prima group – are expected to relaunch the station by February 2006."⁷⁸ As Media Prima already owns Sistem Television Malaysia Berhad (TV3) and the newly launched 8TV,⁷⁹ acquiring Channel 9 will lead to a greater concentration of ownership in television broadcasting.

As is the case in Australia, Malaysian production companies and postproduction houses have been looking offshore for work. Increasingly, companies are reporting reliance on offshore work for up to 50% of turnover. Many companies share views expressed by Justin Woon of Twisted Media about the need "to strike a fine balance between servicing the local and foreign markets. The foreign work will ultimately be more demanding and would require both greater resources and quality, so we have to ensure that we do not overburden ourselves and ultimately limit our availability to handle existing local clients."⁸⁰

Lucrative markets for Malaysia are Indonesia and Thailand, and increasingly China. Thailand, for instance, is said to be worth US\$500 million in advertising work. According to Nielsen Media Research figures, the advertising spend in 2004 across twelve Asia Pacific markets hit a record US\$62 billion. Securing cross border work has been particularly important for production houses that specialise in television commercials. Some companies report working with clients from the United States, Pakistan and Japan.

mfx's Peter Coleman reports, "Our foreign market ranges from the middle East, India, Africa through Southeast Asia and China. We have also been quoting for Australia and the US, as more people realise that distance is no longer a major issue, what with communication via the Internet being so efficient."⁸¹ By way of example, a Tusker Beer commercial was shot in Kenya, produced in Dubai, using an Australian director and director of photography, then edited and postproduced in Malaysia at mfx.⁸²

⁷⁴ Cheryl to co-host *Malaysian Idol*, New Straits Times, 10 May 2005, available online at www.nst.com.my.

⁷⁵ 2003 National Trade Estimate Report on Foreign Trade Barriers, United States Trade Representative, page 269, available online at www.ustr.gov.

⁷⁶ Ibid.

⁷⁷ *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com; *Malaysia's Channel 9 to go off air 'temporarily'*, Asia Pacific Broadcasting Union, 11 January 2005, see online at www.abu.org.my.

⁷⁸ *Malaysia's Channel 9 to go off air 'temporarily'*, Asia Pacific Broadcasting Union, 11 January 2005, see online at www.abu.org.my.

⁷⁹ Ibid.

⁸⁰ Justin Woon, Twisted Media, cited in *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com.

⁸¹ Peter Coleman, mfx, cited in *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com.

Not only are Malaysian companies seeking to augment domestic work with overseas work but, in the wake of two recessions during the 1990s, are also seeking to balance the kind of work they undertake. Rather than specialising, for instance, in television commercials production, they are increasingly seeking to work in television drama as well, thus enhancing survival chances in the event of another economic downturn.

As is the case in many other markets, including Australia, television commercials budgets have yet to recover from the downturns of the 1990s. The average budget in Malaysia is reported to be around RM150,000 (\$US40,000). While budgets are not moving, advertising expenditure in Malaysia is predicted to continue to increase during 2005 by RM400 million (US\$105 million) to RM4.8 billion (US\$1.26 billion).

The Media and Freedom of the Press

This year, Reporters without Borders released its Third Annual Worldwide Press Freedom Index. Rankings have regard to freedom of information and safety of journalists. Denmark, Finland, Iceland, Ireland, the Netherlands, Norway, Slovakia and Switzerland ranked equally in first position followed by New Zealand at ninth place. Australia ranked 41st whereas Malaysia ranked 122nd,⁸³ a sharp drop from 104th place in 2003.⁸⁴

Piracy and Corruption

As indicated in our November submission, piracy is an ongoing issue with Malaysia considered to be the most significant producer/exporter of pirate optical disc entertainment software in the world.

The International Intellectual Property Alliance 2005 Special 301 Report on Malaysia recommended that Malaysia remain on the United States Watch List but noted "cooperation from the government in Malaysia in 2004 in the form of continued raids, including against optic disc plants, retail stores, copy shops, and companies suspected of using illegal software ... The overall effects of these developments [raids, successful prosecutions, severe criminal penalties] is, for some industries, lowered piracy levels (e.g., 50% for motion pictures, down from 75% in 2002), and increased revenues for motion pictures and recorded music."⁸⁵ Despite these improvements, the Report warned of "what is certain to be a more than doubling of pirate DVD exports leading all around the globe" and noted "[e]stimated losses to the U.S. copyright industries in 2004 due to piracy in Malaysia were US\$188.4 million."⁸⁶

Nonetheless, initiatives to combat piracy continue. According to the New Straits Times X-ray machines to detect pirated DVDs are being installed at Kuala Lumpur International Airport and at the airport in Penang by the end of this month.⁸⁷ And Airline Industry Information reported on 6 April this year that "Malaysia Airlines Cargo Sdn Bhd (MASkargo), a subsidiary of Malaysia Airlines System Bhd, has made an agreement with the Motion Picture Association for checking cargo for pirated video compact discs and digital versatile discs, according to Mohd Yunus Idris, the general manager of MASkargo's cargo operations."⁸⁸

On 29 April 2005, the Integrity Institute Malaysia (IIM) and the United Nations Development Programme (UNDP) signed a Memorandum of Understanding under which the two organisations will work on a program focussing on implementing the 2004 National Integrity Plan. According to UNDP

⁸² *New Age of Post*, Asia Image, April 2005, available online at www.ai-interactive.com.

⁸³ Source: *East Asia and Middle East have worst press freedom records*, Reporters sans frontières third Annual Worldwide Press Freedom Index, available online at www.rsf.org.

⁸⁴ *Malaysia drops to no. 122 in press freedom ranking*, Malaysian Media Monitors' Diary, 27 October 2004, available online at www.aliran.com.

⁸⁵ *2005 Special 301 Report: Malaysia*, International Intellectual Property Alliance, 2005, page 357 available online at www.iipa.com.

⁸⁶ *Ibid.*

⁸⁷ Cited in *Malaysia to install X-ray machines to detect pirated films at two airports*, Airline Industry Information, 6 April 2005, Copyright 2005 MS Communications Ltd, the Gale Group.

⁸⁸ *Ibid.*

SUBMISSION BY MEDIA, ENTERTAINMENT & ARTS ALLIANCE TO
JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE
INQUIRY INTO AUSTRALIA'S RELATIONSHIP WITH MALAYSIA

representative Dr Richard Leete, it is designed to combat corruption and "help to improve efficiency and contribute to greater public and investor confidence."⁸⁹

⁸⁹ *The Integrity Institute Malaysia and United Nations Development Programme Launch 'Anti-Corruption' project – 29 April 2005*, UN Development Programme, available online at www.undp.org.my.

APPENDIX A – Program Schedule TV3 for Monday 16 May 2005

0630	Motivasi Pagi
0700	Buletin Pagi
0715	Malaysia Hari Ini (Live)
0900	Berita Terkini
0905	Sesame Street
0930	Nickelodean : Dora the Explorer
1000	Berita Terkini
1002	Citraneka : Putih Gaun Pengantin
1100	Detik Niaga
1102	Citraneka (cont'd)
1130	Sinetron : Cinta Berkalang Noda
1200	Berita Terkini
1202	Memori : Habang Kapiling Ka
1258	My TV3 Capsule
1300	Koleksi Kisah Benar
1329	Jurnal Protege
1330	Buletin 130
1400	Dramasuria : Salam Taj Mahal
1430	Wanita Hari Ini (live)
1530	Telenovela : Rubi
1600	Berita Terkini
1602	Telenovela (cont'd)
1628	My TV3 Capsule
1630	Asian Potpourri : Jealousy
1730	Business News
1732	Rewind Senario : Gitu Gitu Bersama Saiful
1759	Jurnal Protege
1800	Best of TVB : Square Pegs
1900	From the Green Room
1902	Hope & Faith : From And Circumstance
1930	Identiti : Harlina
2000	Buletin Utama
2100	Malaysian Top Host
2130	Misteri Nusantara
2200	Pearl Screen : What A Hero!
2358	My TV3 Capsule
0000	Nightline
0030	Score Board (Live)
0035	NBA Basketball (Delayed)

Source: TV3, see online at www.tv3.com.my.