



## *The Hobbit* and Engagement of Performers

### **Background**

For some years performers in New Zealand have struggled on non-union contracts. These contracts provide no minimum guarantees of wages or working conditions, no residual payments and no cancellation payments in the event the performer's contract is cancelled.

In 2006, at the request of New Zealand performers, the Australian union, the Media Entertainment & Arts Alliance (Alliance) opened an office in New Zealand.

Since that time the New Zealand branch of the Alliance has sought to negotiate with both individual producers and with the producers' association but to no avail.

The International Federation of Actors (FIA), of which the vast majority of performer unions around the world are members, resolved that the time had come for performers around the world to support their colleagues in New Zealand and seek a union contract for all performers on *The Hobbit*.

### **Who is FIA?**

FIA represents performer unions in 100 countries around the world. Unions represented include the Screen Actors Guild (SAG), the American Federation of Television and Radio Artists (AFTRA) American Actors Equity, the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Canadian Actors Equity, Equity UK and the Media Entertainment & Arts Alliance.

FIA's goal is to advance the interests of performers around the world.

### **What did FIA decide?**

At a recent meeting FIA decided that the situation had persisted long enough and that it was time for action to be taken.

Consequently, FIA resolved as follows:

***“Resolved, that the International Federation of Actors urges each of its affiliates to adopt instructions to their members that no member of any FIA affiliate will agree to act in the theatrical film *The Hobbit* until such time as the producer has entered into a collective bargaining agreement with the Media Entertainment and Arts Alliance for production in New Zealand providing for satisfactory terms and conditions for all performers employed on the productions.”***

### **Has someone tried to talk to the producers?**

Yes

On 17 August the General Secretary and President of FIA wrote the production company which will produce the film asking that they make contact with the Alliance. A copy of that letter is available here <http://www.alliance.org.au/documents/letter1.pdf>

On 20 August the English speaking unions in FIA wrote a joint letter to the producers of the film advising that they were adhering to the FIA position set out in the 17 August letter. A copy of that letter is available here <http://www.alliance.org.au/documents/letter2.pdf>

On 31 August the Alliance wrote to the studios behind the film, MGM and New Line. A copy of that letter is available here <http://www.alliance.org.au/documents/letter3.pdf>

### **What have the producers said?**

The producers, through their lawyers, have refused to negotiate with the union. The producers claim it would be unlawful (and a breach of New Zealand competition laws) for the producer to enter into an agreement with the union covering the engagement of performers on the production.

### **Would it be illegal for the producer to enter into an agreement with the union?**

No

The Alliance has obtained legal advice that there are a variety of lawful means which could be used to establish the minimum wages, working conditions and residuals for performers on the production. A copy of this advice has been provided to the lawyers for the producer.

### **What is the current situation?**

SAG, Equity UK and the Alliance have made contact with their performer members who are either rumoured to be involved in the film or to whom offers of involvement have been made. These performers have indicated strong support for the FIA position. The producers have indicated that, notwithstanding the request to meet and discuss the terms of engagement of performers on the production, they intend to make imminent offers to performers. In addition, they have now advised that they propose to pay some performers "residuals" on the production.

### **What would these residuals be?**

These residuals are significantly less than the Alliance's usual agreements in every respect. The producers have offered 2% of distributors gross receipts to commence for exploitations 2 years after the first US theatrical release of the film. However, it is unclear on what they would be based (for example what about sales which occur before the 2 years relating to use after the two year period), how these residuals would be divided between the performers and how they would be enforceable. It is not clear which performers may be offered this arrangement.

### **How does this compare to residuals under other Alliance agreements?**

The Alliance agreement for large budget international studio films (such as *Mad Max 4* aka *Fury Road* and *Happy Feet 2*) provides for residuals that are equivalent to those under the SAG Agreement. The residuals proposed by the producers of *The Hobbit* are less in every respect.

Under all Alliance agreements all performers are entitled to share in residual payments and there is no uncertainty about how each performer's share is calculated or about enforceability.

### **What about other conditions?**

The producers have advised they do not intend to negotiate with the union. Consequently the usual provisions of the New Zealand contract would apply. These include a provision which permit the producer to terminate the contract at any time without obligation to pay out the performer's contract. This provision could also be used to justify non-payment of any residual obligation which may have been agreed above (even after the performer has performed all their work on the film and even if the performer's work is used in the film).

This clause alone makes the residual offer above meaningless. Under an Alliance agreement this would not be the case.

### **Where to from here?**

In accordance with the resolution of FIA performers are advised not to work on *The Hobbit* unless and until the production enters into an agreement with the Alliance protecting the wages and working conditions of performers on the production.

If you are contacted to work on the production please make immediate contact with your local union to establish the current position.

All unions remain hopeful that this situation can be resolved with goodwill on all sides.

Many thanks for your support.