

AUDIO-VISUAL CO-PRODUCTION AGREEMENT

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA, hereinafter referred to as the "Parties",

CONSIDERING that it is desirable to establish a framework for audio-visual relations and particularly for film, television and video co-productions;

CONSCIOUS that quality co-productions can contribute to the further expansion of the film, television and video production and distribution industries of both countries as well as to the development of their cultural and economic exchanges;

CONVINCED that these exchanges will contribute to the enhancement of relations between the two countries;

HAVE AGREED as follows:

CO-PRODUCTION

Article 1

1. For the purpose of this Agreement, an "audio-visual co-production" is a project, irrespective of length, including animation and documentary productions, produced either on film, videotape or videodisc, or in any other format hitherto unknown, for exploitation in theatres, on television, videocassette, videodisc or by any other form of distribution. New forms of audio-visual production and distribution will be included in the present Agreement by exchange of notes.

2. Co-productions undertaken under the present Agreement must be approved by the following authorities, referred to hereinafter as the "competent authorities":

In Canada : the Minister of Canadian Heritage; and
In the Republic of Austria : the Minister for Economic Affairs

3. Every co-production proposed under this Agreement shall be produced and distributed in accordance with the national legislation and regulations in force in Canada and in The Republic of Austria, including any Republic of Austria laws flowing from its accession to the European Union (EU). Any proposed changes in the domestic legislation of either Party that may affect discharge of its obligations under this Agreement, including legislation made necessary under The Republic of Austria's membership in the EU or a successor organization, shall be the subject of consultations between the Parties in accordance with Article 18(3).

4. Every co-production produced under this Agreement shall be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production shall be fully entitled to take advantage of all benefits currently available to the film and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them.

Article 2

The benefits of the provisions of this Agreement apply only to co-productions undertaken by producers who have good technical organization, sound financial backing and recognized professional standing.

CONTRIBUTIONS

Article 3

1. The proportion of the respective contributions of the co-producers of the Parties may vary from twenty (20%) to eighty percent (80%) of the budget for each co-production.
2. Each co-producer shall be required to make an effective technical and creative contribution. In principle, this contribution shall be in proportion to his investment.

PRODUCTION PERSONNEL

Article 4

1. The producers, writers and directors of co-productions, as well as the technicians, performers and other production personnel participating in such co-productions, must have Austrian citizenship or the nationality of a member state of the European Economic Area and hold work permits in Austria and must be citizens, or permanent residents of Canada. Performers are excluded from this regulation if script requires another nationality.
2. Personnel fulfilling the requirements in para (1) shall be subject to an agreement between the co-producers concerning their contribution to the co-production. Where no agreement can be reached, these persons shall be considered part of the contribution of the co-producer who has contracted them.
3. The technical and creative contribution of the minority producer shall be considered accomplished if the proportion of the personnel entitled to make organizational and creative decisions corresponds to at least the financial contribution.

Article 5

1. Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording must, in principle, be carried out either in Canada or in The Republic of Austria.
2. Location shooting, exterior or interior, in a country not participating in the co-production may, however, be authorized, if the script or the action so requires and if technicians from Canada and The

Republic of Austria take part in the shooting.

3. The laboratory work shall be done in either Canada or The Republic of Austria, unless it is technically impossible to do so, in which case the laboratory work in a country not participating in the co-production may be authorized by the competent authorities of both countries.

MULTIPARTITE CO-PRODUCTIONS

Article 6

1. The competent authorities of both countries also look favourably upon co-productions undertaken by producers of Canada, The Republic of Austria and any country to which Canada or The Republic of Austria is linked by an official Co-Production Agreement.

2. The proportion of any minority contribution in any multi-party co-production shall be not less than twenty per cent (20%) of the budget total.

3. Each minority co-producer in such co-production shall be obliged to make an effective technical and creative contribution.

Article 7

1. The original sound track of each co-production shall be made in either English, French or German. Shooting in any two, or in all, of these languages is permitted. Dialogue in other languages may be included in the co-production as the script requires.

2. The dubbing or subtitling of each co-production into French and English, or into German shall be carried out respectively in Canada or in The Republic of Austria. Any departures from this principle must be approved by the competent authorities of both countries.

TWINNED PRODUCTION

Article 8

For the present purposes, productions produced under a twinning arrangement may be considered, with the approval of the competent authorities, as co-productions and receive the same benefits. Notwithstanding Article 3, in the case of a twinning arrangement, the reciprocal participation of the producers of both countries may be limited to a financial contribution alone, without necessarily excluding any artistic or technical contribution.

To be approved by the competent authorities, these productions must meet the following conditions:

1. there shall be respective reciprocal investment and an overall balance with respect to the conditions of sharing the receipts of co-producers in productions benefitting from twinning;

2. the twinned productions must be distributed under comparable conditions in Canada and in The Republic of Austria;

3. twinned productions may be produced either at the same time or consecutively, on the understanding that, in the latter case, the time between the completion for the first production and the start of the second does not exceed one (1) year unless decided otherwise by the competent authorities.

Article 9

1. Except as provided in the following paragraph, no fewer than two copies of the final protection and reproduction materials used in the production shall be made for all co-productions. Each co-producer shall be the owner of one copy of the protection and reproduction materials and shall be entitled to use it, in accordance with the terms and conditions agreed upon by the co-producers, to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with those terms and conditions.

2. At the request of both co-producers and subject to the approval of the competent authorities in both countries, only one copy of the final protection and reproduction material need be made for those productions which are qualified as low budget productions by the competent authorities. In such cases, the material will be kept in the country of the majority co-producer. The minority co-producer will have access to the material at all times to make the necessary reproductions, in accordance with the terms and conditions agreed upon by the co-producers.

Article 10

Subject to their legislation and regulations in force, the Parties shall:

- a) facilitate the entry into and temporary residence in their respective territories of the creative and technical personnel and the performers engaged by the co-producer of the other country for the purpose of the co-production; and
- b) similarly permit the temporary entry and re-export of any equipment necessary for the purpose of the co-production.

Article 11

The sharing of revenues by the co-producers should, in principle, be proportional to their respective contributions to the production financing and be subject to approval by the competent authorities of both countries.

Article 12

Approval of a co-production proposal by the competent authorities of both countries does not constitute a commitment to either or both of the co-producers that governmental authorities will grant a licence to show the co-production.

QUOTA REGULATIONS

Article 13

1. Where a co-production is exported to a country that has quota regulations, it shall be included either in the quota of the Party:
 - a) of the majority co-producer;
 - b) that has the best opportunity of arranging for its export, if the respective contributions of the co-producers are equal; or
 - c) of which the director is a national, if any difficulties arise with the application of subparagraphs (a) and (b) hereof.
2. Notwithstanding Paragraph 1, in the event that one of the co-producing countries enjoys unrestricted entry of its films into a country that has quota regulations, a co-production undertaken under this Agreement shall be as entitled as any other national production of that country to unrestricted entry into the importing country if that country so agrees and in so far as it is compatible with the international obligations of both parties.

Article 14

1. A co-production shall, when shown, be identified as a "Canada-Republic of Austria Co-production" or "Republic of Austria-Canada Co-production" according to the origin of the majority co-producer or in accordance with an agreement between co-producers.
2. Such identification shall appear in the credits, in all commercial advertising and promotional material and whenever this co-production is shown and shall be given equal treatment by each Party.

Article 15

In the event of presentation at international film festivals, and unless the co-producers agree otherwise, a co-production shall be entered by the country of the majority co-producer or, in the event of equal financial participation of the co-producers, by the country of which the director is a national.

Article 16

The competent authorities of both countries have jointly established the rules of procedure for co-productions taking into account the legislation and regulations in force in Canada and The Republic of Austria. These rules of procedure are attached to the present Agreement.

EXCHANGE OF FILMS

Article 17

The contracting Parties emphasize their intention to promote the import, distribution and exhibition of audiovisual productions of the other country to the best of their ability.

GENERAL PROVISIONS

Article 18

1. During the term of the present Agreement, an overall balance shall be aimed for with respect to financial participation as well as creative personnel, technicians, performers, and facilities (studio and laboratory), taking into account the respective characteristics of each country.
2. The competent authorities of both countries shall examine the terms of implementation of this Agreement as necessary in order to resolve any difficulties arising from its application. They shall, as needed, recommend possible amendments with a view to developing film and video co-operation in the best interests of both countries.

3. A Joint Commission is established to look after the implementation of this Agreement. The Joint Commission shall examine if this balance has been achieved and, in case of the contrary, shall determine the measures deemed necessary to establish such a balance. A meeting of the Joint Commission shall take place in principle once every two years, or as required, and it shall meet alternately in the two countries. However, it may be convened for extraordinary sessions at the request of one or both competent authorities, particularly in the case of major amendments to the legislation or the regulations governing the film, television and video industries in one country or the other, or where the application of this Agreement presents serious difficulties. The Joint Commission shall meet within six (6) months following its convocation by one of the Parties.

Article 19

1. The present agreement shall come into force when each Party has notified the other through a diplomatic note that its internal procedures have been completed.

2. It shall be valid for a period of five (5) years from the date of its entry into force; a tacit renewal of the Agreement for two (2) years shall take place unless one or the other Party gives written notice of termination six (6) months before the expiry date.

3. Co-productions which have been approved by the competent authorities and which are in progress at the time of notice of termination of this Agreement by either Party, shall continue to benefit fully until completion from the provisions of this Agreement. After expiry or termination of this Agreement, its terms shall continue to apply to the division of revenues from completed co-productions.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at _____, this _____ day of _____ 1999, in the English, French and German languages, each version being equally authentic.

**FOR THE GOVERNMENT
OF CANADA**

**FOR THE GOVERNMENT OF
THE REPUBLIC OF AUSTRIA**

ANNEX

RULES OF PROCEDURE

Application for benefits under this Agreement for any co-production must be made simultaneously to both administrations at least thirty (30) days before shooting begins. The administration of the country of which the majority co-producer is a national shall communicate its proposal to the other administration within twenty (20) days of the submission of the complete documentation as described below. The administration of the country of which the minority co-producer is a national shall thereupon communicate its decision within twenty (20) days.

Documentation submitted in support of an application shall consist of the following items, drafted in English or French in the case of Canada and in German in the case of The Republic of Austria:

- I. The final script;
- II. Documentary proof that the copyright for the co-production has been legally acquired;
- III. A copy of the co-production contract signed by the two co-producers;

The contract shall include:

1. the title of the co-production;
2. the name of the author of the script, or that of the adaptor if it is drawn from a literary source;
3. the name of the director (a substitution clause is permitted to provide for his replacement if necessary);
4. the budget;
5. the financing plan;
6. a clause establishing the sharing of revenues, markets, media or a combination of these;
7. a clause detailing the respective shares of the co-producers in any over or under expenditure, which shares shall in principle be proportional to their respective contributions, although the minority co-producer's share in any overexpenditure may be limited to a lower percentage or to a fixed amount providing that the minimum proportion permitted under Article VI of the Agreement is respected;

8. a clause recognizing that admission to benefits under this Agreement does not constitute a commitment that governmental authorities in either country will grant a licence to permit public exhibition of the co-production;
 9. a clause prescribing the measures to be taken where:
 - (a) after full consideration of the case, the competent authorities in either country refuse to grant the benefits applied for;
 - (b) the competent authorities prohibit the exhibition of the co-production in either country or its export to a third country;
 - (c) either party fails to fulfill its commitments;
 10. the period when shooting is to begin;
 11. a clause stipulating that the majority co-producer shall take out an insurance policy covering at least "all production risks" and "all original material production risks" if the competent authority of the country of the majority co-producer so decides;
 12. A clause providing for the sharing of the ownership of copyright on a basis which is proportionate to the respective contributions of the co-producers.
- IV. The distribution contract, where this has already been signed;
- V. A list of the creative and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;
- VI. The production schedule;
- VII. The detailed budget identifying the expenses to be incurred by each country; and
- VIII. The Synopsis.

The competent administration of the two countries can demand any further documents and all other additional information deemed necessary.

In principle, the final shooting script (including the dialogue) should be submitted to the competent administrations prior to the commencement of shooting.

Amendments, including the replacement of a co-producer, may be made in the original contract, but they must be submitted for approval by the competent administrations of both countries before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to both the competent administrations.

The competent administrations will keep each other informed of their decisions.