

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE GOVERNMENT OF CANADA AND THE RESPECTIVE GOVERNMENTS
OF THE FLEMISH, FRENCH AND GERMAN-SPEAKING COMMUNITIES
OF THE KINGDOM OF BELGIUM CONCERNING AUDIOVISUAL COPRODUCTION**

THE GOVERNMENT OF CANADA (CANADA) AND THE GOVERNMENT OF THE FLEMISH COMMUNITY, THE GOVERNMENT OF THE FRENCH COMMUNITY, AND THE GOVERNMENT OF THE GERMAN-SPEAKING COMMUNITY (BELGIAN COMMUNITIES), hereafter referred to as the “Participants”,

RECOGNIZING that quality audiovisual coproductions contribute to the vitality of the respective audiovisual industries of the Participants and to the development of their economic and cultural exchanges;

APPRECIATING that cultural diversity is nurtured by constant exchanges and interaction between cultures and that it is strengthened by the free flow of ideas;

CONSIDERING that, in pursuit of international cooperation, the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, done at Paris on 20 October 2005, encourages audiovisual coproduction instruments as a means of promoting international cooperation;

CONSIDERING that these exchanges may enhance their relations;

RECOGNIZING that the granting of benefits to qualified audiovisual coproductions is beneficial to the audiovisual industries of Canada and the Belgian Communities;

HAVE COME to the following understanding:

1. DEFINITIONS

For the purposes of this Memorandum of Understanding (MOU),

“audiovisual” means a film, television and/or video work on any existing or future production medium, of any genre (fiction, animation, documentary), in accordance with the legislative and regulatory terms and conditions respectively applicable in Canada and the Belgian Communities, for any distribution platform intended for viewing;

“authorities”:

- (i) “administrative coproduction authority” means the authority designated by each Participant to administer this MOU;
- (ii) “competent coproduction authority” means the authority designated by each Participant to be in charge of the application of this MOU;

“Belgian producer” means a national of Belgium that manages the production of a work;

“Canadian producer” means a national of Canada that manages the production of a work;

“collaborator” means a national participating in the work as a member of the creative or technical personnel;

“coproducing Participant” means the Participant involved in the work, and third States when applicable;

“elements”:

- (i) “Canadian elements” means expenditures made in Canada by the Canadian producer and expenditures on Canadian creative and technical personnel made in other states by the Canadian producer in the course of production of a work;
- (ii) “Belgian elements” means expenditures directly related to the production made in Belgium by the Belgian producer, and expenditures on Belgian creative and technical personnel made in other states by the Belgian producer in the course of production of a work to the benefit of a natural or legal person residing in Belgium for tax purposes;

“national” means a natural or legal person as defined by the laws respectively applicable in Canada, Belgium and the Belgian Communities, and who pursuant to the said laws may benefit from the application of this MOU;

“national” also means, in the case of the Belgian Communities :

- (i) a national of a Member State of the European Union; or
- (ii) a national of another contracting party to the *Agreement on the European Economic Area* of 2 May 1992;

“non-Participant” means a State other than a third state, and excludes the Participants in this MOU;

“producer” means a national that manages the production of a work;

“third State” means a State that has a coproduction instrument with at least one of the Participants and that has a producer involved in the work;

“work” means an audiovisual work, including every version of that work, to be subsequently recognized by the Participant as an audiovisual coproduction under this MOU.

2. GENERAL TERMS AND CONDITIONS

- (a) Each Participant will consider every work as if it were its own production in establishing whether that work is entitled to the same benefits as that Participant’s own audiovisual industry.

- (b) Each Participant will grant the benefits referred to in paragraph 1 to the producers of the work who are its own nationals.
- (c) Each Participant will strive to achieve an overall balance between financing by producers and its own financing for all works coproduced over a period of five years.
- (d) Each Participant will ensure that its producer fulfills the requirements herein for a work to be considered eligible for the benefits from the application of this MOU.
- (e) The Participants understand that the terms and conditions relevant to the administration of this MOU are set out in its annexes.

3. COLLABORATING PRODUCERS

- (a) The Participants understand that, to be eligible for the benefits from the application of this MOU, the work has to be jointly coproduced by producers from Canada and, as applicable, from the Flemish Community and/or the French Community and/or the German-speaking Community.
- (b) The Participants may, through the mutual written consent of their administrative coproduction authority, permit third-State producers to participate in the work.

4. PROPORTIONALITY

- (a) The Participants understand that the shares of the Canadian and Belgian elements of a work will be in reasonable proportion to the Canadian and Belgian financial participation.
- (b) The Participants may, through the mutual written consent of their administrative coproduction authority, grant exemptions from sub-paragraph (a), notably for storyline and creative purposes.

5. NATIONALITY OF COLLABORATORS

- (a) The Participants understand that every collaborator in a work will be a national from the coproducing Participants, unless otherwise provided for in Annex 1 of this MOU.
- (b) The Participants may, through the mutual written consent of their administrative coproduction authority, recommend exemptions from sub-paragraph (a), notably to allow non-Participant nationals to participate in a work for storyline, creative or production purposes.

6. TEMPORARY ENTRY AND RESIDENCE

Subject to the laws and regulations respectively applicable in Canada and Belgium, the Participants will facilitate:

- (a) the temporary entry and residence for the creative and technical personnel engaged by the Participants' producer for purposes of the work; and
- (b) the temporary entry and re-export of any equipment necessary for purposes of the work.

7. COPYRIGHT AND REVENUES

Subject to the laws and regulations respectively applicable in Canada and Belgium, the Participants will, through their administrative coproduction authority, ensure that the sharing of copyright and revenues is, in principle, proportional to their producer's financial contribution, and no less than the minimum financial contribution identified in Annex 1.

8. DISTRIBUTION

- (a) Each Participant will, through its administrative coproduction authority, ensure that its producer demonstrates the existence of a distribution or broadcasting commitment for the work in each of the coproducing Participants.
- (b) The Participants may, through the mutual written consent of their administrative coproduction authority, accept an alternative distribution commitment in lieu of the commitment described in sub-paragraph (a).

9. MATERIAL CHANGES

Each Participant will ensure that its producer promptly advises its administrative coproduction authority of any material change to a work that may affect its qualification for the benefits from the application of this MOU.

10. COMMUNICATION

Each Participant will through its competent coproduction authority, promptly notify the other Participants of any amendment or interpretation that may affect the benefits from the application of this MOU.

11. ANNEXES

The Participants may, through the mutual written consent of their competent coproduction authority, amend the annexes, provided that these amendments do not conflict with this MOU.

12. DIFFERENCE OF INTERPRETATION AND APPLICATION

The Participants will resolve any difference regarding the interpretation or application of this MOU by means of consultation.

13. STATUS

This MOU is not intended to establish commitments that are legally binding under international law.

14. FINAL TERMS AND CONDITIONS

- (a) Each Participant will notify the other Participants in writing of the completion of its domestic procedures required for this MOU to come into effect. This MOU will come into effect on the first day of the first month following the date of the last of these notifications.
- (b) The Participants may amend this MOU on the joint written consent of their competent coproduction authority. Each Participant will notify the other Participants, in writing, of the completion of its domestic procedures following from an amendment.
- (c) Any Participant may terminate this MOU by sending written notice to the other Participants. This MOU will terminate six (6) months after receipt of such notice by all the Participants.

- (d) The Participants understand that coproduced works that are in production when this MOU is terminated will continue to derive full benefit from the advantages of this MOU until the completion of the said works.

SIGNED in four copies at _____, this _____ day of _____ 2018,
in the English, French and Dutch languages, each version being equally valid.

**FOR THE GOVERNMENT
OF CANADA**

**FOR THE GOVERNMENT
OF THE FLEMISH COMMUNITY**

Mélanie Joly
Minister of Canadian Heritage

Geert Bourgeois
Minister-president of the government of
Flanders, Flemish Minister of Foreign
Policy and Intangible Cultural Heritage

**FOR THE GOVERNMENT
OF THE FRENCH COMMUNITY**

Rudy Demotte
Minister-president, responsible
for International Relations

**FOR THE GOVERNMENT
OF THE GERMAN-SPEAKING
COMMUNITY**

Oliver Paasch
Minister-president

ANNEX 1 – CONDITIONS OF COPRODUCTION

The Participants understand that:

1. Definitions

For the purposes of this Annex:

- (a) “key position” means the following eight (8) positions, set out below by type of work:
 - (i) animation: author-director or director, screenwriter, music composer or sound designer, lead actor (voice) or second lead (voice), chief of animation/animation director, character model supervisor/storyboard supervisor or chief picture editor/picture editor, special effects director or stereoscopy director, and layout director;
 - (ii) documentary: author-director or director, screenwriter or researcher, music composer, lead actor or narrator, second lead actor or narrator, director of photography, art director or production designer, and chief picture editor/picture editor;
 - (iii) fiction: author-director or director, screenwriter, music composer, lead actor, second lead actor, director of photography, art director or production designer, and chief picture editor/picture editor;
 - (iv) for types of work other than those listed above, such as non-linear digital works, the positions to be included in key positions will be determined by joint written consent of the administrative coproduction authorities;
- (b) “author-director” for the Belgian Communities means the person who directs all the technical and artistic aspects of a work and in addition for the French Community, the person specifically responsible for the staging of the work;
- (c) “director” for Canada means the person who directs all the technical and artistic aspects of a work.

2. Minimum Financial Contribution by Producers

- (a) The minimum financial contribution to a work of each of the producers will not be lower than fifteen (15) percent of the total production budget.
- (b) In the case of a multipartite work, the minimum contribution of each of the producers will not be lower than fifteen (15) percent of the total production budget. The administrative coproduction authorities of the coproducing Participants may reduce this minimum contribution to ten (10) percent of the total production budget upon joint written consent.

- (c) Strictly financial audiovisual coproductions will not qualify for the benefits from the application of this MOU.

3. Key Positions

- (a) The key positions identified in paragraph 1 of this Annex will be filled by one or more nationals of each of the coproducing Participants.
- (b) One of those key positions may be filled by a non-Participant national.
- (c) In the case of a high-budget work, the administrative coproduction authorities of the coproducing Participants may, by joint written consent, permit a second non-Participant national to fill one of those key positions. The threshold for what constitutes a high-budget work will be defined by the administrative coproduction authorities of each coproducing Participant, and applied accordingly as jointly determined by those authorities.

4. Location and Technical Services

- (a) A work will be coproduced in the territory of one of the coproducing Participants.
- (b) The administrative coproduction authorities of the coproducing Participants may, by joint written consent, permit a work to be coproduced in the territory of a non-Participant for storyline and/or creative reasons.
- (c) The administrative coproduction authorities of the coproducing Participants may, by joint written consent, permit technical services to be provided in the territory of one or more non-Participants, provided that producers demonstrate the non-availability of those services in any territory of the coproducing Participants, and provided that the value of such services does not exceed twenty-five (25) percent of the total production budget of the work.

5. Dubbing

- (a) “Dubbing” means the production of any version of the coproduced work in a language other than its original language or languages.
- (b) All dubbing services of a work, in English, French, Dutch or German, will be performed in the territory of one of the Participants.
- (c) When a producer can reasonably demonstrate that the necessary dubbing capacity does not exist in any of the coproducing Participants, the administrative coproduction authorities of the coproducing Participants may, by joint written consent, allow the dubbing to be performed elsewhere.

ANNEX 2 – ADMINISTRATIVE PROCEDURES

The Participants understand that:

1. Identification of Authorities

- (a) “Administrative coproduction authority” means, for
 - (i) Canada: Telefilm Canada;
 - (ii) the Flemish Community: Vlaams Audiovisueel Fonds;
 - (iii) the French Community: le Centre du Cinéma et de l’Audiovisuel;
 - (iv) the German-speaking Community: the German-speaking Community;
- (b) “Competent coproduction authority” means, for
 - (i) Canada: the Department of Canadian Heritage;
 - (ii) the Flemish Community: the Flemish Community;
 - (iii) the French Community: the French Community;
 - (iv) the German-speaking Community: the German-speaking Community.

2. Meetings

Meetings will be held every three years between representatives of the competent coproduction authority of each Participant to discuss and review the terms of this MOU. To the extent possible, these meetings will be held by videoconference or teleconference.

3. Canadian Application Procedures for Certification as a Work

- (a) Telefilm Canada will be the administrative body responsible for examining projects to assess whether they can eventually be recognized as audiovisual coproductions. Telefilm Canada will provide a recommendation to that effect to the Minister of Canadian Heritage via the Canadian Audio-Visual Certification Office. The Minister will be in charge of rendering the final decision on whether a production is an audiovisual coproduction.
- (b) In addition to applying to Telefilm Canada for a recommendation as an audiovisual coproduction, Canadian producers will apply to the Canadian Film or Video Production Tax Credit (CPTC) program, through the Canadian Audio-Visual Certification Office, to obtain either a “Canadian film or video production certificate” or an attestation letter of coproduction status under an agreement.

- (c) Telefilm Canada's recommendation procedure for audiovisual coproductions will comprise two stages:
 - (i) Application for a preliminary recommendation; and
 - (ii) Application for a final recommendation.
- (d) Applications for preliminary applications, duly completed and signed by the Canadian producer (or his or her authorized representative) will be submitted:
 - (i) for live-action projects (fiction or documentary), at least thirty (30) days before the start of principal photography; and
 - (ii) for animation projects, at the time of key animation or, for a series, no later than when the master video of the first episode is produced.
- (e) When the work is submitted to Telefilm Canada for evaluation, the Canadian producer will be able to provide proof of commitment for eventual distribution or broadcasting of the work in Canada and in the other coproducing Participant. Should the foreign producer not be able to obtain such a commitment for his or her state, a commitment for distribution or broadcasting in a State other than the coproducing Participant may be an acceptable alternative, upon joint written consent of the administrative authorities of the coproducing Participants.

4. Application Procedures of the Belgian Communities for Purposes of Certification as a Work

Provisional certification

- (a) To qualify for the benefits from the application of this MOU, the Belgian producers concerned by the work will attach to their application for admission to their competent coproduction authority, no later than thirty (30) days before the start of shooting, a file containing:
 - (i) a document on the acquisition of copyright for exploitation of the work;
 - (ii) a synopsis providing specific information on the subject of the work;
 - (iii) the provisional list of technical and artistic elements;
 - (iv) the provisional work plan, together with an indication of the number of weeks of shooting (studio and on location) and the countries (or regions) where shooting will be done;
 - (v) a detailed summary estimate and a detailed provisional funding plan, including costs and resources of each producer;
 - (vi) the coproduction contract(s); and

- (vii) any other document desired by the authorities that is necessary for technical and financial review of the project.
- (b) The administrative coproduction authority of the majority Participant will provide its recommendation for consideration to the administrative coproduction authority of the minority Participant.

Final certification

- (a) No later than six (6) months after the first broadcast in the territory of one of the Participants, the Belgian producers will send to their competent coproduction authorities a file including:
 - (i) an update of the provisional file;
 - (ii) contracts or confirmations of the director's commitment and the technical and artistic elements signed with each of the Participants concerned;
 - (iii) promotional and broadcasting plans;
 - (iv) opening and closing credits; and
 - (v) a DVD copy of the work in an official language (spoken, dubbed or subtitled) of one of the Participants.
- (b) For the Flemish Community, the deadline for the return of final certification will be twelve (12) months.