TELEFILM CANADA

Canada Feature Film Fund
Distribution Terms & Contracts Requirements

A: <u>General Principles Relating to Distribution Terms and Contracts</u>

For all productions budgeted over $2.5 million dollars applying for financing, Telefilm Canada requires a valid agreement between an eligible producer and an eligible Canadian distribution company, negotiated at fair market value, which outlines all rights and/or options being licensed or acquired, the territory, the term, all relevant terms and conditions, including all deductions permitted from revenues and admissible expenses. This agreement must guarantee the film's theatrical release in at least its original language market in Canada within one year of its delivery (in the case of double shooting or for animated productions, the distributor and producer must decide whether the primary market is English or French and contact Telefilm Canada for approval). The distribution contract should include a minimum commitment for print and advertising expenditure in support of the production's initial theatrical release.

<u>In addition:</u>

i. Distribution and sub-distribution agreements entered into by applicants seeking or receiving financial assistance from Telefilm Canada must be submitted to and approved by Telefilm Canada and must contain provisions acceptable to Telefilm Canada. Telefilm reserves the right to require any modifications at any time to Distribution and sub-distribution contracts.

ii. Distribution agreements must include default provisions; including the right for a producer to recover the distribution rights to a production in the event of bankruptcy or insolvency of the distributor

iii. Preliminary Marketing and Distribution Strategy:
Telefilm Canada requires that each application for production financing be accompanied by a document, agreed to by the production company and the distribution company, which analyzes the project's potential for success in the domestic and, if applicable, international theatrical marketplace. In addition to representing the distribution company's overall enthusiasm for the project, the preliminary marketing and distribution strategy must identify the following:

- a detailed description of how the box-office projections are built up given the demographics of the film,
- anticipated P&A spend,
- the proposed release pattern,
- the performance of comparable films,
- a description of the key marketable elements of the film, and
- a description of how the proposed advertising spend drives the box-office projection, including the type of media targeted, the tie-in's, cross-promotions, etc.

iv. All distribution fees or commissions proposed to be charged by a distributor or sales agent are subject to Telefilm Canada's review and approval. Telefilm Canada will require that fees permitted to be taken by distributor and sales agents are reasonable, consistent with industry standard and provide a reasonable expectation of recoupment of all funds advanced or invested by Telefilm Canada. Telefilm Canada may require as a condition of financial participation that proposed fees or commissions be revised or reduced. Under no circumstances will Telefilm Canada accept the pyramiding of commission fees. Likewise, with respect to international distribution or sales agency agreements, Telefilm Canada will generally require that agreements provide for limitations on allowable expenses (caps). Such expense caps should be negotiated based on reasonable projections for revenues and expenses, and should generally include a cap based on a percentage of gross sales as well as an absolute dollar amount.

v. Distributors' Reporting Requirements:
All distribution and sales agency agreements entered into by applicants to Telefilm Canada's programs must contain provisions specifying the details to be provided by the distributor or sales agents in their reporting to producers and/or to Telefilm Canada. Telefilm Canada requires distribution reports which, at a minimum, provide the following details on a current and cumulative basis:

1) gross theatrical box office per territory and language version
2) gross sales per territory and medium
3) gross receipts per territory and medium
4) foreign exchange rates (where applicable)
5) distribution and sub-distribution fees per territory and medium
6) detailed expenses per territory and medium (where applicable)
7) grants received

Canadian distributors must report separately on revenues and expenses related to distribution of productions in their English and French-language versions. Distribution revenues earned during the relevant reporting period must be reported on a cash basis. Distribution expenses must be reported during the period in which the activity was undertaken, whether or not the activity was actually paid for during this reporting period. Telefilm Canada does not accept the reporting of distribution expenses in a given reporting period for activities that have not yet been undertaken.

vi. Access to Distributors' Books and Records:
Telefilm Canada requires in its agreements with applicants that it be permitted to audit the books and records of the distributor(s) of any production which benefits from Telefilm Canada's financial support. Clause 5.07 of the Standard Terms of the CFFF Financing Agreement states "The Producer shall ensure that the Producer's or the Producer's appointed representative's examination and audit rights in respect of the Distribution agreements are not limited to less than two times per year and that Distributors will not be permitted to close or lock their books at any time during the term of any Distribution agreement or for as long as the Distributor receives Production Revenues, whichever occurs later."

B: General Principles Related to International Distribution Agreements

i. When international distribution rights are sold or licensed to an international sales company, Canadian or otherwise, to be considered eligible, the international sales company must:
   - o demonstrate to Telefilm Canada's satisfaction a level of experience and expertise sufficient to arrange for the film's optimal distribution in all territories and media for which the international sales company is proposed to acquire the rights;
   - o have a sufficient volume of business and business plan to ensure the company's future financial viability;
   - o participate annually as an international sales company in major international markets;
   - o have a proven commitment to the international distribution of independent feature films;
   - o if affiliated with a Canadian broadcaster, be a separately incorporated entity, distinct from the operations of the broadcaster(s) with which it is affiliated;
   - o normally sell its productions directly to foreign distributors/broadcasters without recourse to the services of a foreign sub-agent or sub-distributor.

ii. Where some or all international rights are retained by the producer at the time of production financing, Telefilm Canada will retain the right to approve all distribution arrangements and agreements for the production, and the production company will be expected to secure the commitment of an appropriately qualified international sales company or agent as soon as possible.

C. Applications Without a Distributor

Projects with budgets of equal to or less than $2.5 million may apply for production funding without a distribution trigger. In such a case, a preliminary market assessment will be required with the application for production financing, and a detailed marketing plan, prepared with the participation of both the producer and the distributor, must be submitted to Telefilm Canada. The film should normally be offered to all eligible Canadian distribution companies and the final choice of distribution company approved by Telefilm Canada.

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