



Canada Feature Film Fund Distribution Terms & Contracts Requirements

A: General Principles Relating to Distribution Terms and Contracts

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.

In addition:

- 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. Buyouts of distribution rights and/or sub-distribution rights are not acceptable. 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:
 - o a detailed description of how the box-office projections are built up given the demographics of the film,
 - o anticipated P&A spend,
 - o the proposed release pattern,
 - o the performance of comparable films,
 - o a description of the key marketable elements of the film, and
 - o 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 standards 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. Please see Section D for further details on typically acceptable distribution fee levels and Section E for acceptable distribution expenses.

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.

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. 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 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 must be submitted to Telefilm Canada. All distribution arrangements are subject to the prior written approval by Telefilm Canada.

D: Maximum Distribution Fees

<u>Canada</u>		
Theatrical		35%
Non-theatrical (including in-flight)		50%
PPV, Pay, Network, Cable, and any other TV		30%
SVOD/VOD		30%
Video (Blu-ray, DVD, etc.) minimum royalty to producer		20%
Video (Blu-ray, DVD, etc.) non-royalty fee plus Telefilm approval over budget		25%
Other – not to exceed without approval		25%
Merchandising and Ancillary	Negotiable	case-by-case
<u>USA</u>		
		25%
<u>Rest of World (ROW)</u>		
		35%
<u>Producer-made Sales (0% for pre-sales)¹</u>		15%

¹15% fee shall be inclusive of any sales agent fees

For video sales, reserves should be reasonable and reversed/liquidated within 12 months. In all

royalty models, the share retained by the distributor is calculated on gross sales and is inclusive of all fees, commissions, and expenses paid to applicable third parties, including but not limited to distributors, sub-distributors, and sales agents.

Distribution fees must also be inclusive of sub-distributor/sales agency fees. A sub-distributor/sales agent is a company hired by the distributor to negotiate sales in a territory or group of territories within the overall territory acquired by the distributor. Sub-distributor/sales agency fees are defined as those fees taken by a sub-distributor/sales agent for the business of selling the production in a territory or group of territories within the overall territory acquired by the distributor.

However, a “local distributor’s fee” is NOT included. A local distributor: (a) is the company that arranges the exploitation to the end-user (i.e. the theatre-goer, video retailer, the broadcaster) in the territory, and (b) usually (but not always) pays a “minimum guarantee” to acquire the exploitation rights to the film in the territory.

E: Distribution Expenses

Allowable distribution expenses (net of any non-recoupable financial assistance) may only be deducted by the distribution rights holders, and are costs related to campaign creation, publicity, material production costs, printing, dubs and other related costs. Other acceptable costs include packing, transportation, insurance customs tariffs, import taxes and those related to censorship requirements and prestigious festival entries/market costs (access fees and costs relating to attendance at festivals and/or markets by producers and/or distributors/sales agents are not considered eligible distribution expenses).

Non-theatrical distribution expenses incurred in connection with the exploitation of a production must include only reasonably incurred third party verifiable costs (net of any non-recoupable financial assistance) to a maximum of 10% of gross receipts with the exception of:

- royalties/residuals;
- versioning expenses, including all costs related to dubbing and/or sub-titling the production (and trailer into other languages). -;
- all costs related to shipping any and all elements of the production required by the distributor for its exploitation throughout the territory;
- all costs incurred by the distributor in connection with obtaining any and all clearances necessary in order to exploit the production throughout the territory, including the registration of relevant trademarks on behalf of the producer;
- the conversion costs (NTSC to PAL);
- the duplication of delivery materials required to be delivered to licensees;
- censorship and re-cutting fees;
- audit and legal fees incurred in connection with collections;

The above 10% cap is not applicable in Canada for Canadian distributors that have secured a Canadian theatrical release.

Financing costs, set-up fees, finder’s fees and additional material charges must be covered by the production budget for each film, and are not acceptable as distribution costs or as other deductions from production revenues.

CAMA fees are acceptable to a maximum of 1% of production revenues.

Distribution expenses may exceed 10% of gross receipts, in the first two years of reporting on the production, provided that a reconciliation is made at the end of the second year of reporting (the fourth reporting period). At that time, the cumulative total of the distribution expenses must not exceed 10%

of the cumulative total of the gross receipts for the two-year period. There is no cap on Canadian theatrical distribution expenses ("P&A" expenses).

Distribution expenses must be net of any non-recoupable financial assistance the distributor has received from Telefilm or elsewhere.

Interest (to a maximum of Prime + 2%) must be included in the above 10% distribution expense cap and may only be charged on minimum guarantees (not on P&A expenses) and to the following extent: interest shall be permitted to accrue only for the period between the payment of the advance to the Producer and whichever of the following occurs first:

- a) recoupment by the Distributor of the advance; or
- b) the 60th day following the issuance by the Producer of the notice of availability of the answer print.

Interest charged on distribution advances/minimum guarantees prior to the receipt of full payment by the producer is chargeable by the producer (to the extent that any portion thereof has not yet been paid) and must be included in the production budget. Interest charged after full payment of the distribution advance/minimum guarantee (and/or payment of any portion thereof) until such time as the advance is fully recouped, may be charged by the distributor (subject to the restrictions above), but only to the extent that such interest, together with all other chargeable distribution expenses, does not exceed the 10% cap.

Non-eligible distribution expenses are any costs not specifically listed above and include, amongst other things, travel/accommodation/living expenses for producers, distributors, and their employees, unless explicitly allowed above.

F: Other Distribution Agreement Requirements

In addition to key standard terms, distribution agreements should include the following clauses (note that this is not an exhaustive list but is intended to provide information on certain clauses that often may be absent from distribution agreements submitted to Telefilm):

- Canadian Eligibility (Canadian Distribution Agreements Only): "Distributor is, and shall remain for the duration of the Term, a Canadian-controlled corporation pursuant to the Investment Canada Act".
- Multiple Territories: a distributor cannot take multiple territories in the same agreement unless: (a) the contract clearly delineates between the minimum guarantee for each territory, and (b) the appropriate cross-collateralization wording is included in the contract (see below).
- Cross-Collateralization: cross-collateralization of Canadian and non-Canadian revenues and expenses is not allowed. Cross-collateralization of revenues and expenses for territories with different recoupment schedules is not allowed. Cross-collateralization of revenues and expenses against other titles carried by the distributor is not allowed. Minimum guarantees must be clearly broken out between the Canadian, US, and foreign territories.
- Package Sales: a production may be sold as part of a package of productions provided that:

- a) the distributor has made their best effort to maximize revenues for the production by selling the production separately;
 - b) the allocation of revenues and expenses among the productions sold as a package will be fair and reasonable; and
 - c) distribution reports (via notes) disclose any package sales and the allocation of the revenues and expenses to the production.
- Withholding taxes: withholding taxes are to be included in distributor's gross receipts for the period in which the taxes were returned to the distributor (i.e. a distributor may only calculate fees/commissions and expenses on Gross Receipts when actually paid to the distributor and not on any amounts withheld by government sources). As such, withholding taxes are not considered to be Distribution Expenses.
 - Audit Rights / Locking of Books: audit rights in respect of distribution agreements cannot be limited to less than two times per year and 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.
 - In the event that a security interest is taken by the distributor, a step back letter acceptable to Telefilm will be required.
 - All distribution corridors and recoupment arrangements must be explicitly confirmed in the distribution agreement.

Note: Telefilm has full discretion in the application and interpretation of the above information to ensure that it meets the spirit and intent of this policy, and in all cases Telefilm's interpretation shall prevail.

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