

FAQ – AUDIOVISUAL TREATY COPRODUCTIONS

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FAQ – AUDIOVISUAL TREATY COPRODUCTIONS

The answers provided in this document are of a general nature and may vary depending on the coproduction treaties applicable to each project.

In addition, please note that new guidelines apply to Canadian treaties that entered into force as of July 1, 2014.

Therefore, this document is divided in four different sections:

- General questions applicable to all treaties;
- Questions relating to the interpretation of treaties that entered into force before July 1st, 2014;
- Questions relating to the interpretation of treaties that entered into force as of July 1st, 2014;
- Questions related to administrative procedures.

A. General questions applicable to all treaties

1. Can a project be recognized as a treaty coproduction if the authorities of a coproducing State refuse this project?

No. The authorities of all coproducing States must jointly recognize the project as an audiovisual treaty coproduction.

2. Can a project be recognized as a treaty coproduction in the absence of a coproduction treaty between Canada and the coproducing State?

No. The recognition of a project as a treaty coproduction is based on a treaty or a memorandum of understanding between Canada and another coproducing State.

3. I would like to apply for a preliminary recommendation under a coproduction treaty, but the writer (a national from a non-coproducing State) was still awaiting his permanent resident status in Canada at the time he wrote the script. Can the writer be considered as a Canadian participant?

No. To be considered as a Canadian participant, the writer must have obtained permanent resident status in Canada and must maintain this status throughout his or her involvement in the project.

4. I hold a dual citizenship. Which State will my creative participation be attributed to?

This is a decision that must be made by the project's producers and that must be maintained throughout the entire project. Please note that a dual citizen cannot claim both nationalities for the same project.

5. Are the lead and supporting roles defined by the performer’s screen time or remuneration?

Given the disparity in remuneration from State to State, Telefilm takes into account the time spent on screen in order to determine the lead and supporting roles.

6. I’m a Canadian director living in the United States. Can I be recognized as a Canadian national, even though I do not pay taxes in Canada?

Yes, provided you still have your Canadian citizenship.

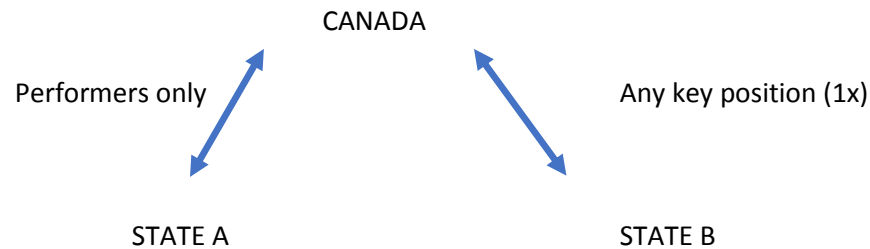
7. I would like to undertake a multipartite coproduction in which two Canadian treaties are applicable. The first treaty (Canada-State A) requires the coproducing States to provide a minimum financial contribution of 20% each, whereas the second treaty (Canada-State B) requires a minimum financial contribution of 10%. Which minimum financial contribution requirement must each coproducer meet?



Each coproducer must meet the minimum financial contribution requirement set forth in its own treaty. Since two Canadian treaties are applicable in this case, the Canadian producer must meet the minimum financial participation requirement of both applicable Canadian treaties.

Thus, in this case, the Canadian coproducer and the State A coproducer must provide a minimum financial contribution of 20% each, whereas the State B coproducer must provide a minimum financial contribution of 10%.

8. In this same multipartite coproduction project, the Canada-State A treaty allows the participation only of performers from non-coproducing States, whereas the Canada-State B treaty allows the participation of personnel from non-coproducing States in a variety of key positions. Is it possible for a participant from a non-coproducing State, other than a performer (for example, a director), to participate in the project?



These types of questions must be assessed on a case by case basis, considering the particular facts of each project, the provisions of the applicable treaties, and the perspectives of the competent authorities of the coproducing States.

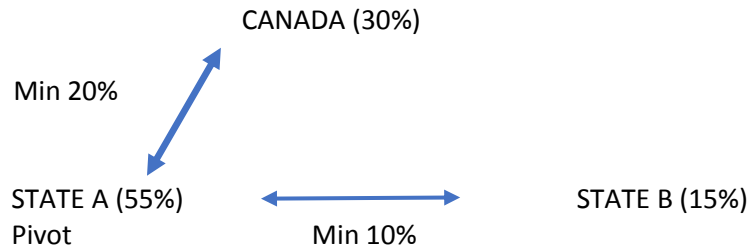
In all cases, it is **essential** that the treaty applicable to the coproducer covering the costs related to the participant from a non-coproducing State allow the participation of the requested participant.

Canadian producers who find themselves in this situation must submit their application to Telefilm as early as possible, with a business case indicating, among other things:

- Which coproducer will cover the costs related to the non-coproducing State participant;
- The perspective of all foreign authorities regarding the participant;
- The nature of the position filled by the non-coproducing State participant (is it a key position or a non-creative position);
- Why the participation of the non-coproducing State participant is essential to the project and why this position cannot be held by a participant from the coproducing States.

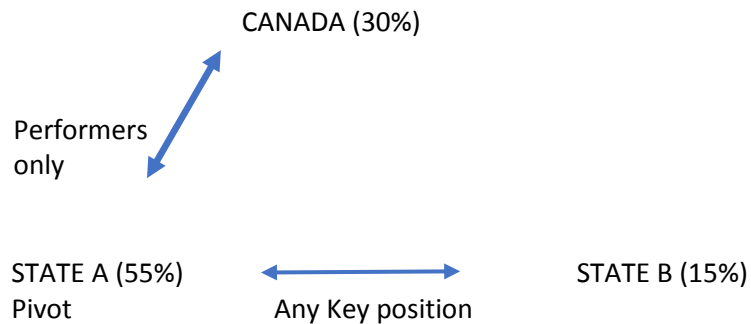
9. What happens if, in my multipartite coproduction project, the pivot State (the State using two of its treaties) is my coproducer’s State and only one Canadian treaty (the one between Canada and State A) is used?

a) What is the minimum financial contribution that each coproducer must provide?



As indicated above, each coproducer must meet the minimum financial contribution requirement set out in its own treaty. Thus, in this example, the Canadian coproducer and the State A coproducer must have a financial contribution of at least 20% each. It is up to the competent authorities of States A and B to determine whether the terms of their treaty are met.

b) What happens in the case of diverging rules on positions that can be filled by nationals of non-coproducing States?



As indicated above, the answer to this question may vary depending on the particular facts of each case, the provisions of the applicable treaties, the positions of the competent authorities of the coproducing States and the evaluation material submitted by the Canadian producer to Telefilm (please see Question 8 for the minimum elements that producers must submit to Telefilm as part of their business case).

N.B.: If the expenditure related to a non-coproducing State participant is incurred by the Canadian coproducer and this participation is not permitted under the applicable Canadian treaty, the project cannot be recommended as a Canadian treaty coproduction.

B. Interpretation of treaties that entered into force before July 1st, 2014

1. My coproducer and I have secured the rights to a published work and have hired the American author of the work to serve as a writing consultant on our production. Is this allowed?

Subject to the applicable treaty, a writing consultant from a non-coproducing State may be eligible under certain conditions. The producer will have to justify the reason for selecting the consultant and provide Telefilm with the consultant's contract. It is important for the producer to contact Telefilm before entering into such a contract.

2. I would like to do a bipartite coproduction. My coproducer will finance 60% of the production and I will finance the remaining 40%. How should I divide the key creative positions?

The breakdown of key creative positions between coproducers must be proportional to their respective financial contributions. Selected Key creative positions are listed in the Guidelines for audiovisual treaty coproductions governed by Canadian treaties that have entered into force before July 1, 2014. If in doubt, or if the project has an atypical structure, applicants should contact Telefilm to discuss the matter.

Producers may also use the Creative Evaluation Grid (available on Telefilm's website in: How to submit a coproduction certification application) when applying for a preliminary recommendation for their project.

3. Should there be a correlation between the financial contribution, the copyright ownership and the creative and technical participation of a coproduction project?

Yes, there should be a correlation. Subject to the provisions of the applicable treaty, the financial contribution of each coproducer should be proportional to the following components:

- Revenue sharing and copyright ownership;
- Creative and technical positions;
- Expenses.

4. An investor from a non-coproducing State has financed 60% of my project's total production budget. How much of the revenues can be given to this investor?

Subject to the applicable treaty, the participation of investors from non-coproducing States is permitted and the Canadian producer may share its revenues with such investors. Telefilm expects the Canadian producer's share of revenues to be proportional to the Canadian financial participation or to meet the minimum percentage set out in the treaty.

C. Interpretation of treaties that entered into force as of July 1st, 2014

1. Which States can be designated as coproducing States?

Coproducing States are Canada and the country with whom Canada has signed the relevant treaty, as well as any other country that has a treaty or MOU with either of the parties to that relevant treaty and has a producer involved in the work.

This third coproducing State may be designated as a third-State, third party, third country or as a third-country/third-party/third-State producer, depending on what is specified in the applicable treaty.

2. Are the nationals of each coproducing State required to take part in the work?

Yes, nationals from all coproducing States must participate in a multipartite coproduction.

3. What is the proportionality principle between financial contributions and expenditures?

The principle of proportionality required by the treaty is met when the amount of expenditures incurred on eligible Canadian elements¹ in Canada and abroad corresponds to the Canadian financial participation minus expenditures on non-Canadian elements pre-approved by authorities. The objective of this provision is to ensure that Canadian dollars are invested in Canadian goods and services.

4. How is the proportionality principle calculated?

When filling in the production budget, the Canadian producer must clearly set out **all** of the costs incurred by the Canadian producer. The non-Canadian elements that have been pre-approved as exemptions by the authorities of the coproducing States, in accordance with the applicable treaty, are then deducted from the total cost breakdown. The remaining amount/balance must be in reasonable proportion to the Canadian producer's financial contribution to the work.

For example:

Total production budget	\$2,500,000
Canadian Participation	\$1,000,000
Expenditures on non-Canadian elements (pre-approved by authorities)	\$200,000
Expenditures incurred on eligible Canadian elements	\$800,000

¹ Expenditures on Canadian elements are expenditures made in Canada by the Canadian producer and expenditures related to Canadian creative and technical personnel made in another State by the Canadian producer in the course of production of the project.

Examples of expenditures on non-Canadian elements that may be deducted from the total Canadian budget (non-exhaustive list and costs cited as examples only; these costs must be eligible under the applicable treaty and approved by the authorities of the coproducing States):

- Salaries related to key positions filled by nationals from States other than the coproducing States;
- Costs related to hiring non-creative personnel or for equipment rental in States other than the coproducing States required for shooting for storyline purposes (example: extras).

All these costs must be identified in the designated column of the production budget.

5. Is online distribution an eligible method of distribution/broadcast, and if so, which platforms are eligible for this type of distribution/broadcast in Canada?

Yes, this method of distribution/broadcast is eligible, subject to the applicable treaty and upon presentation of a commitment for such distribution by the coproducer that is choosing this method.

The list of eligible platforms in Canada is available here: <https://www.canada.ca/en/canadian-heritage/services/funding/cavco-tax-credits/notices-bulletins/public-notice-2017-01/acceptable-online-services.html>.

Please contact Telefilm if the platform on which you wish to show your project is not on this list.

It is important for the producer to verify whether the selected method of distribution is also eligible for the various funding or tax credit programs to which the producer intends to apply.

6. What types of works are eligible under treaties that entered into force since July 2014?

Each treaty has its own definition of an eligible audiovisual work. We recommend that you consult the text of the treaty you wish to use. In addition, it is the producers' responsibility to verify if a work eligible under a coproduction treaty is also eligible under the various funding and tax credit programs to which the producer intends to apply.

7. According to the treaty applicable to my project, online video works and/or applications are eligible for recognition as treaty coproductions. If I plan to submit a film project accompanied by a video work, do I need to submit a single application to Telefilm or two separate applications?

As a general rule, a single application should be submitted to Telefilm for these two components. However, if you are in this situation, we recommend that you contact Telefilm's coproduction department before submitting your application.

8. What are the key positions applicable for treaties that have entered into force as of July 1, 2014?

With the exception of the Canada-India treaty, the key positions are specified in each treaty and may vary from one treaty to the other. Please consult the treaty applicable to your project for more details.

9. Is the creative evaluation grid still an applicable tool for calculating creative participation for treaties that have entered into force as of July 1, 2014?

No, except for projects coproduced under the Canada-India treaty.

10. Can my project qualify if only one key position is held by a Canadian national?

Yes, provided that:

- All key positions are filled by nationals of the coproducing States (subject to the exemptions permitted under the applicable treaty);
- All other criteria under the treaty are fulfilled, notably the requirement regarding proportionality between the financial contribution and expenditures on Canadian elements;
- The Canadian key position is a full position (i.e. not shared between the coproducing States) and is valid for the entire duration of the work for which the Canadian was hired.

Furthermore, if the project is a television series, Telefilm Canada expects there to be a full Canadian key position in each episode. In such cases, the producer must complete the document “List of Key Positions – TV Series” which is available on the Telefilm Canada website.

11. My documentary series includes animation sequences in addition to live action. What type of work should this “hybrid” project be submitted as?

The type of work and positions recognized will be those of the predominant technique.

For example, for a documentary series that includes special effects, animation or CGI accounting for no more than 50% of the total duration of the project, the key positions will be recognized based only on key positions for the documentary and not on key positions for the animation/CGI.

12. My project includes a total of 6 key positions instead of 8. Is my project eligible?

Yes. Telefilm will base its analysis of key positions on the 6 existing positions as reflected in the applicable treaty. In all cases, the minimum of 1 full Canadian key position remains applicable.

13. My project includes a key position that is shared between two nationals of the coproducing States. Is this possible and how will this position be counted?

Yes, it is possible. Each key position can be shared between two or more nationals of the coproducing States (e.g. co-writers) as long as the minimum of 1 full (i.e. non-shared) Canadian position is met.

14. The applicable treaty for my project says that a key position can be filled by a national of a State other than the coproducing States. Is it possible to fill two different half key positions with two nationals of a State other than the coproducing States?

No, that is not possible.

15. I see that for certain key positions, there is a choice of two positions (e.g. music composer or sound designer for animation projects). How can this position be counted?

The coproducers have to agree on the key positions that will be used. Only one of the two positions will be counted, and it will be counted jointly for the two States, i.e. it will not be possible to count the music composer in Canada **and** the sound designer in the coproducing State.

16. My project is a fiction feature that is considered as a high-budget project by the authorities of the coproducing States. How many key positions can be filled by nationals of States other than the coproducing States?

An eligible project that qualifies as “high-budget” can have a second key position filled by a national of a State other than the coproducing States.

In exceptional circumstances, coproducers may request an exemption from their competent authorities in order to fill an **additional** key position with a national of a State other than the coproducing States for purposes related to the storyline, funding or commercial success of the project.

17. When a new treaty enters into force, can I still request that my coproduction project be evaluated under the old treaty?

That will depend on the transitional provisions set forth in each new treaty. Please contact Telefilm for more information.

D. Questions related to administrative procedures

1. Do I need to apply for a preliminary recommendation 30 days prior to the shooting?

Yes, except in the case of a single animation production or an animation series (see special conditions below).

Apart from exceptional circumstances, Telefilm will not examine requests filed after this deadline. Applicants that are unable to meet this deadline are asked to contact Telefilm’s coproduction department.

Specific conditions for animation

Single production: Submit application at the time of main key animation work. Series: Submit application, at the latest, upon production of a video master of first episode.

2. If I’m unable to provide all the required documentation when I apply for a preliminary recommendation, will my project be evaluated?

Applicants are required to submit a number of documents for a file to be opened and then evaluated. These documents are identified with an asterisk on the application form. The remaining documents may be submitted during the evaluation process.

3. Can I apply for a preliminary recommendation if I haven't signed a detailed coproduction contract with my partner?

Yes. Telefilm accepts a short form of the coproduction contract (deal memo). This memo must be signed and must contain the minimum required information (see the [List of Minimum Required Elements in a Coproduction Short Form or Deal Memo](#) on Telefilm's website). However, the detailed coproduction contract must be provided to and approved by Telefilm in order for the preliminary recommendation to be issued.

4. The preliminary recommendation letter Telefilm sent me states that I must notify Telefilm of any major changes made to my production. What are these major changes?

The major changes that must be declared to Telefilm and foreign authorities are those changes that could infringe upon the applicable coproduction treaty. Examples of major changes include:

- Change in corporate status of one of the production companies (shareholders and Canadian control);
- The Canadian and/or coproducing country's production company has changed during the project but the countries involved remain the same;
- The coproducing country has changed during the project;
- A bipartite coproduction has become a multipartite coproduction (or vice versa);
- The film has become a television program (or vice versa);
- Any elements that change the initial project breakdown or affect the following items: budget, key positions, financing, copyright, revenues, percentage spent by the Canadian producer on Canadian elements, distribution;
- The shooting (or part of it) is now being done in a studio in a non-coproducing country;
- The animation work is being sub-contracted;
- Any new contract or amendment to funding or distribution contracts that could have an impact on the revenue sharing or territory split; and
- Bankruptcy of one or more production companies.

5. I am coproducing a 26-episode animation series. I haven't hired all the writers yet, and some will be hired by my coproducer. Since Telefilm requires a complete chain of title, will this prevent issuance of a preliminary recommendation?

No. At the time of application, Telefilm expects to receive all the signed screenwriting contracts, regardless of the screenwriters' nationality, as well as all affidavits signed by the Canadian screenwriters working on the project. Any missing contracts must be supplied to Telefilm as soon as they are signed, accompanied by the [Creator's Affidavit](#) if Canadian screenwriters are involved. Telefilm may issue a preliminary recommendation in the absence of all the screenwriting contracts, and will evaluate on a case-by-case basis whether there is a sufficient number of contracts to issue a preliminary recommendation.

6. Do I need to complete a Canadian Producer Affidavit for every Canadian screenwriter?

When Canadian screenwriters are hired by a Canadian producer, the producer is required to complete a [Canadian Producer Affidavit – Preliminary Recommendation](#). This single affidavit can be completed for an author who has written several scripts in a series or who has worked in multiple capacities on a production (e.g. screenwriter and main author), and can be completed for several authors at once.

The Canadian screenwriter must complete the [Canadian Creator Affidavit](#). Please consult the [How to Use the Affidavits](#) document on Telefilm’s website for more details.

Note: When the final recommendation application is submitted, the producer must submit a new Affidavit to either confirm or change the list of hired screenwriters using the [Canadian Producer Affidavit – Final Recommendation](#).

7. Do I need to submit another Declaration of Canadian Status of Corporation and Corporate Information for each application?

Not necessarily. If you have already submitted this document within the last year as part of another application to Telefilm and there have been no changes, it’s not necessary to submit another declaration. However, if you are applying through a new company or there have been changes to the company’s structure, then you must resubmit the declaration.