

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 have entered into force as of July 1, 2014.

Therefore, this document is divided in three different sections:

- General questions applicable to all treaties;
- Questions relating to the interpretation of treaties that have entered into force before July 1st, 2014;
- Questions relating to the interpretation of treaties that have entered into force as of July 1st, 2014 (Ireland New Treaty and India only).

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.

B. Interpretation of treaties that have 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.

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 have entered into force as of July 1st, 2014

1. Are nationals from a third State that is not participating in the work as a coproducer considered differently from non-party nationals?

No. If the third State does not participate in the work as a coproducer, its nationals are given the same consideration as nationals from a non-party State.

2. If a third State is participating in the work as a coproducer, would the nationals from that third State be allowed 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 elements 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

Examples of eligible costs 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?

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

However, it is important for the producer to verify whether this type of distribution is also eligible for the various funding or tax credit programs to which the producer intends to apply.

6. Which online video services are eligible for the distribution/broadcast of works?

The producer must verify with Telefilm regarding the eligibility of the online video service being considered for the distribution/broadcast of the work.

7. What types of works are eligible under treaties that have 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.

8. 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.

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?

It depends on the applicable treaty. We encourage you to consult the applicable treaty and any provision regarding key positions to determine whether you should continue using the creative evaluation grid.

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. Under the new Canada-Ireland treaty, for example, coproducers have up to **6 months** following the date of entry into force of the new treaty to submit a project under the old Canada-Ireland treaty. However, all projects submitted after this 6-month period must be submitted under the new treaty.

18. I already submitted my coproduction project to Telefilm Canada before the new treaty entered into force. Do the requirements of the old treaty still apply to my project?

Subject to the transitional provisions set forth in the new applicable treaty, the requirements of the old treaty could continue to apply to a project submitted to Telefilm or to a project that has received a preliminary recommendation before the date that the new treaty entered into force. However, it is up to the Canadian producer and the foreign producer to notify their respective authorities of which treaty they wish to use prior to the deadline set out in the new treaty.

For example, under article 13 of the new Canada-Ireland treaty, Canadian and Irish producers that submitted an application for a preliminary or final recommendation before the new treaty was in force and that have still not received a final recommendation have until January 1, 2017 to notify Telefilm Canada and the Irish Film Board that they elect to continue receiving the benefits conferred by the 1989 treaty.

If they fail to do so, they must ensure that their project meets the requirements of the new treaty.