

AGREEMENT
BETWEEN THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
ON
AUDIO-VISUAL RELATIONS

done at Gatineau, Quebec, on June 22, 2004

**THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY**

referred to hereinafter as the "Contracting Parties";

CONSIDERING that it is desirable to establish a framework for their audio-visual relations and particularly for film, television and video co-productions;

CONSCIOUS that quality co-productions can contribute to the further expansion of the film, television and video production and distribution industries of both countries as well as to the development of their cultural and economic exchanges;

CONVINCED that these exchanges will contribute to the enhancement of relations between the two countries;

Have agreed as follows:

ARTICLE 1

1. For the purpose of this Agreement, an "audio-visual co-production" is a project, irrespective of length and format, produced for exploitation in theatres, on television or for any other form of distribution. New forms of audio-visual production and distribution will be included in the present Agreement by exchange of notes.
2. The present Agreement and changes that will be brought to it shall be approved, in Canada, by the Department of Canadian Heritage, and in the Federal Republic of Germany, by the Federal Government Commissioner for Culture and Media.
3. Co-productions undertaken under this Agreement shall be subject to approval after consultation between the administrative authorities of both countries:

In Canada:	Telefilm Canada;
In the Federal Republic of Germany:	the Federal Office of Economics and Export Control (BAFA).
4. Every co-production proposed under this Agreement shall be produced and distributed in accordance with the national laws and regulations in force in Canada and in the Federal Republic of Germany.
5. Every co-production produced under this Agreement shall be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production shall be fully entitled to take advantage of all benefits currently available to the film and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them.
6. The Contracting Parties agree that television co-production projects that were submitted to their respective administrative authority prior to the date of signature of this Agreement shall be accorded the benefits in accordance with the Agreement between the Government of Canada and the Government of the Federal Republic of Germany regarding Film Relations, signed on May 30, 1978, and amended by the Exchange of Notes dated April 24, 1995, and December 7, 1995, between the Government of Canada and the Government of the Federal Republic of Germany, provided they comply with the other stipulations of the said Agreement and the said Exchanges of Notes.

ARTICLE 2

In order to qualify for the benefits of co-production, every co-production produced under this Agreement shall be undertaken by producers who have good technical organization, sound financial backing and recognized professional standing.

ARTICLE 3

1. The performing, technical, artistic and creative contribution of the co-producers shall be in reasonable proportion to their financial participation.
2. The participation of the minority co-producer shall be at least 20% (twenty percent) of the budget for each co-production.

ARTICLE 4

1. All participants in the making of film, television and video productions shall be Canadian or German nationals. National means:

in relation to Canada

- Canadian citizens,
- Permanent residents of Canada;

in relation to the Federal Republic of Germany

- Germans within the meaning of the Basic Law,
 - Persons who belong to the German culture and are permanent residents of the Federal Republic of Germany,
 - Nationals of a Member State of the European Union,
 - Nationals of another Contracting State to the Agreement of 2 May 1992 regarding the European Economic Area (EEA Agreement).
2. Actors, authors, artistic or technical staff members who do not fulfill the requirements of sub-section (1) of this Article, may participate, in exceptional cases and if the nature of the film, television and video co-productions so requires, by agreement of the administrative authorities of the Contracting Parties.
 3. All laboratory work, sound recording, post-synchronisation and mixing shall be carried out in Canada, in the Federal Republic of Germany, in another Member State of the European Union, or in another Contracting State to the Agreement of May 2, 1992, regarding the European Economic Area (EEA Agreement).
 4. Studio shooting and location shooting shall take place within the area of application of this Agreement, but any of the location shooting may be permitted by the administrative authorities of the Contracting Parties to take place outside the area of application of this Agreement if any of the technical aspects of the production or the action of the film, television and video co-production so requires.
 5. Two final versions shall be made of the film, television and video co-production, one in English or French and the other in German. The versions may include dialogues in another language if the script requires it.

ARTICLE 5

1. The co-producers shall decide jointly on the use of the original negative (picture

and sound). Each of the co-producers shall be entitled to a duplicate negative. The making of a duplicate negative for a third language version shall be subject to the approval of both co-producers.

2. The co-producers make an agreement on where the negative shall be developed and where the original negative is kept for their joint use. Each co-producer shall be entitled to make the necessary copies for exploitation in his own country.

ARTICLE 6

1. In principle, receipts shall be allocated in proportion to the financial contribution of each co-producer.
2. Subject to the approval of the administrative authorities, this allocation may consist in a sharing of the receipts, or a division of territory, or a combination of both.
3. In principle, the majority co-producer shall be responsible for the export of the co-produced film, television and video unless the co-producers engage a world sales company for the exploitation of the co-produced film, television and video. Should difficulties arise in exporting to a particular country, the co-producer with the best possibility of arranging for export to that country shall assume this responsibility.

ARTICLE 7

1. Title credits and advertisement material for film, television and video co-produced under this Agreement shall indicate that the project is a co-production between the two countries.
2. Unless the co-producers agree otherwise, a co-production shall be shown at festivals as an entry of the majority co-producer or, if the financial contributions are equal, by the co-producer who provides the director.

ARTICLE 8

The administrative authorities shall, within the scope of this Agreement, look favourably upon co-productions undertaken by producers from Canada, the Federal Republic of Germany and from countries to which either of the two is bound by co-production agreements; in such cases, the provisions of Articles 3 and 4 of this Agreement shall apply with the necessary changes.

ARTICLE 9

Within the framework of their national laws and regulations, each Contracting Party shall facilitate the entry into and temporary residence in its territory of technical and artistic personnel of the other Contracting Party as well as the granting of working permits.

ARTICLE 10

1. There should be an overall balance in the number of co-productions, as well as an overall balance in the artistic, technical and financial contributions, between the two Contracting Parties.
2. The Joint Commission referred to in Article 13 of this Agreement shall determine whether this balance has been maintained and shall decide what measures are necessary in order to correct any imbalance.

ARTICLE 11

The Contracting Parties affirm their desire to promote by all available means the distribution and exploitation in their respective countries of film, television and

video co-productions from the other country. However, approval of a co-production by the administrative authorities shall in no way be binding upon them in respect of the granting of a license to permit the co-production publicly.

ARTICLE 12

1. Productions produced under a twinning arrangement may be considered, with the approval of the administrative authorities, as co-productions and receive the same benefits. Notwithstanding Article 6, in the case of a twinning arrangement, the reciprocal participation of the producers of both countries may be limited to a financial contribution, without necessarily excluding all artistic or technical contribution.
2. To be approved by the administrative authorities, these productions must meet the following conditions:
 - there shall be respective reciprocal investment and an overall balance with respect to the conditions of sharing the receipts of co-producers in productions benefiting from a twinning arrangement;
 - the twinned productions should be distributed under comparable conditions in Canada and the Federal Republic of Germany;
 - twinned productions may be produced either at the same time or consecutively, on the understanding that, in the latter case, the time between the completion for the first production and the start of the second does not exceed one (1) year.

ARTICLE 13

1. A Joint Commission shall be established, consisting of representatives from the government and film, television and video industries of both countries to monitor and facilitate the implementation of this Agreement and recommend changes if necessary.
2. While this Agreement is in effect, the Joint Commission shall meet every two years, alternately in Canada and in the Federal Republic of Germany. A meeting may also be convened at the request of either Contracting Party, especially in the event of an important change in the laws or regulations in the film, television and video industries of either Contracting Party.

ARTICLE 14

The Rules of Procedure which form an integral part of this Agreement may be amended by mutual written consent of the Department of Canadian Heritage and the Federal Government Commissioner for Culture and Media, after consultation with the Joint Commission.

ARTICLE 15

1. This Agreement shall enter into force on the date of its signature. At this date the Agreement between the Government of Canada and the Government of the Federal Republic of Germany regarding Film Relations, dated May 30, 1978, will expire.
2. This Agreement shall be valid for a period of five (5) years from the date of its entry into force; a tacit renewal of the Agreement for like periods shall take place unless one or the other Contracting Party gives written notice of termination through diplomatic channels six (6) months before the expiry date.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective governments, have signed this Agreement.

DONE in two copies at Gatineau, Quebec, this 22nd day of June, 2004, in the English, French and German languages, each version being equally authentic.

Ms. Judith A. LaRocque
Deputy Minister
Department of Canadian Heritage

**FOR THE GOVERNMENT
OF CANADA**

Ms. Sabine Sparwasser
Deputy Head of Mission
Embassy of the Federal Republic of Germany

**FOR THE GOVERNMENT OF
THE FEDERAL REPUBLIC OF GERMANY**

**ANNEX
TO THE AGREEMENT
BETWEEN THE GOVERNMENT OF CANADA
AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
ON AUDIO-VISUAL RELATIONS**

RULES OF PROCEDURE

1. Application for benefits under this Agreement for any co-production must be made simultaneously to the administrative authorities at least thirty (30) days before shooting begins:

In Canada:	Telefilm Canada;
In the Federal Republic of Germany:	the Federal Office of Economics and Export Control (BAFA).

2. Documentation submitted in support of an application shall consist of the following items, drafted in English or French in the case of Canada and in German in the case of the Federal Republic of Germany:

- a) The final script;
- b) The synopsis;
- c) Documentary proof of having legally acquired the rights to produce and exploit the co-production;
- d) A co-production contract, signed by the two co-producers. The contract shall include:
 - the title of the co-production;
 - the name of the author of the script, or that of the adaptor if it is drawn from a literary source;
 - the budget;
 - the financing plan;
 - a clause establishing the sharing of receipts, markets, media or a combination of these;
 - a clause detailing the respective shares of the co-producers in any over- or under-expenditure;
 - a clause recognizing that admission to benefits under this Agreement does not constitute a commitment that governmental authorities in either country will grant a licence to permit public exhibition of the co-production;
 - a clause prescribing the measures to be taken where:
 - after full consideration of the case, the administrative authorities in either country refuse to grant the benefits applied for;
 - the administrative authorities prohibit the exhibition of the co-production in either country or its export to a third country;
 - where one or the other co-producer fails to fulfill his/her commitments;
 - a clause stipulating that the production will be covered under an insurance policy covering at least "all production risks" and "all original negative production risks";
 - a clause providing for the sharing of the ownership of copyright on a basis which is proportionate to the respective contributions of the co-producers.
- e) Letters, contracts and other financial documents for all participants present in the financial structure;

- f) A list of the artistic and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;
 - g) The production schedule;
 - h) The detailed budget identifying the expenses to be incurred by each co-producer, as well as the expenditures in third party countries, if applicable.
3. The administrative authorities of the two countries can demand any further documents and all other additional information deemed necessary.
 4. In principle, the artistic and technical sharing should be submitted to the administrative authorities prior to the commencement of shooting.
 5. Amendments, including the replacement of a co-producer, may be made in the original contract. They must, however, be submitted for approval by the administrative authorities of the Contracting Parties before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional circumstances and for reasons satisfactory to both the administrative authorities.
 6. The administrative authorities will keep each other informed of their decisions.