

**AUDIOVISUAL TREATY
COPRODUCTIONS GOVERNED
BY CANADIAN TREATIES
THAT HAVE
ENTERED INTO FORCE
BEFORE JULY 1ST, 2014**

GUIDELINES



Preamble

These guidelines apply **only** to Canadian audiovisual treaties¹ that have entered into force **before July 1st, 2014**.

As each treaty is distinct, producers must ensure they acquaint themselves fully with the applicable treaties before consulting these guidelines. In the event of a discrepancy between these guidelines and the terms of the applicable coproduction treaty, the terms of the coproduction treaty will prevail.

The goal of these guidelines is to inform Canadian producers of the requirements and procedures to follow when submitting an application for a project to be recognized as an audiovisual treaty coproduction. Telefilm Canada reserves the right to require additional documents as necessary.

1. MANDATE AND INTENT

1.1. Mandate

Telefilm Canada (Telefilm) is a federal cultural agency dedicated to the development and promotion of the Canadian audiovisual industry.

Telefilm is the administrative body responsible for examining projects to assess whether they can eventually be recognized as audiovisual treaty coproductions. A recommendation to that effect is sent by Telefilm to the Minister of Canadian Heritage via the Canadian Audio-Visual Certification Office ([CAVCO](#)). The Minister is responsible for rendering the final decision on whether a production is an audiovisual treaty coproduction.

Recognition of a project as an audiovisual coproduction must also be obtained from the authority of each coproducing country relevant to the project.

A project that is recognized as such by all the coproducing countries is granted a national production status, which enables Canadian producers to access incentives available in Canada for the Canadian expenses that are eligible and it also enables foreign producers to access their own country's incentives, if any. Canadian producers are responsible for ensuring that their projects comply with the requirements of the various funding programs and federal and provincial tax credits to which they wish to apply.

In addition to applying to Telefilm for a recommendation as a coproduction, producers must apply to the Canadian Film or Video Production Tax Credit (CPTC) program, through CAVCO, to obtain a "Canadian film or video production certificate". This certificate gives the production national status and can be used to obtain a federal tax credit. If a production meets the terms of the treaty, but does not meet the requirements of the CPTC, or if the producer does not wish to apply for the CPTC, the producer may request an attestation of coproduction status² instead of the CPTC certificate. This request must

¹ The expressions "audiovisual coproduction treaty," "coproduction treaty" and "treaty" are used interchangeably throughout this document and refer to international treaties and memoranda of understanding between Canada and a foreign country that stipulate the terms regarding recognition of audiovisual treaty coproductions governed by treaties between signing countries. Similarly, the expressions "audiovisual treaty coproduction", "audiovisual coproduction" and "coproduction" are also used interchangeably.

² The attestation confers the national production status.

also be made through CAVCO.

For more information on the CPTC program and the attestation process, please consult the CAVCO guidelines and the [public notice #2004-01](#) issued by CAVCO to that effect.

1.2. Text and intent of treaties

Coproduction treaties between Canada and other countries allow Canadian and foreign producers to pool their resources in order to coproduce projects that will benefit from national production status in their respective countries. Countries participating in these coproduction treaties expect that an overall balance between minority and majority coproductions, recognized as such by each of the coproducing countries, be maintained over time. Information regarding [coproduction treaties](#) is available on Telefilm's website.

Coproducers are required to respect the text and intent of the coproduction treaties, as well as all administrative requirements arising from these treaties.

2. ELIGIBILITY CRITERIA

Eligible projects must be coproduced with foreign producers from States that have signed an audiovisual coproduction treaty with Canada. In cases where the coproducers wish to undertake multipartite coproductions, the additional foreign producers must come from a State that has signed a coproduction treaty or memorandum of understanding with at least one of the coproducing countries.

The coproducers must own the rights and options necessary for the production and exploitation of the project. Please refer to article 3.1 for further information.

2.1. Eligible Canadian applicants and their personnel

The application for a recommendation as an audiovisual coproduction must be submitted by a Canadian-controlled production company, as determined under sections 26 to 28 of the [Investment Canada Act](#). The applicant must also have its headquarters and carry out its activities in Canada.

Furthermore, individuals acting as producers and other key production personnel exercising creative and financial control over the project must be Canadian citizens as defined in the [Citizenship Act](#) or permanent residents as stated in the [Immigration and Refugee Protection Act](#).

All participants in the project must be nationals from the coproducing countries, subject to the terms set out in the applicable coproduction treaties and the approval of the authorities of the coproducing countries. The status of "Canadian national" must be maintained throughout the participants' involvement in the coproduction.

2.2 Eligible projects

Audiovisual work

An audiovisual work that meets the requirements and conditions described in the applicable coproduction treaty or established by the authorities can be recognized as an audiovisual coproduction.

An audiovisual work is defined as a film and/or a television production of any length and genre³, including a live-action (fiction or documentary) or animation production, which complies with the provisions of the audiovisual industry in each coproducing country.

The producers must ensure their project meets the requirements of the funding programs and tax credits to which they wish to apply (notably in terms of genre, type of work, support, length, etc.).

Origin of the project

A project may be originally conceived for any type of work provided that the creative, financial and technical control remains vested with the coproducers.

A project previously conceived in a non-coproducing country⁴ may be eligible subject to the coproducer(s) demonstrating that since acquiring the underlying rights, they have substantially developed and scripted the project. The coproducers must be fully and directly responsible for the development and implementation of the creative, artistic, technical and financial elements, and all credited scriptwriters must, for Canada, be citizens or permanent residents, and for other coproducing countries, be citizens or residents as required by the authorities of the coproducing countries.

Projects conceived, developed or scripted by professionals from non-coproducing countries and then entrusted to the coproducers for financing and shooting are not eligible to be recognized as treaty coproductions.

3. RECOMMENDATION REQUIREMENTS

In order to ensure an overall balance of the financial, technical and creative participation from each of the coproducing countries, minimal contribution requirements and conditions are set out in the coproduction treaties. In the case of coproductions made with multiple coproducing countries, a minimal creative and technical contribution is required from each participating country.

Since audiovisual coproductions are intended to benefit the coproducing countries, the participation of nationals from non-coproducing countries will only be considered if the treaty allows it.

3.1. Intellectual property

Subject to the terms set out in the applicable coproduction treaty, intellectual property rights must be shared between the coproducers in proportion to their financial participation.

3.2. Creative and technical participation

The creative and technical participation must be, in principle, proportional to the financial contribution of each coproducing country. For instance, if the financial contribution of the Canadian producer represents 25% of the total budget, 25% of the creative and technical positions must be filled by Canadians.

³ Under the [Income Tax Act](#), certain genres can be excluded from certification by CAVCO.

⁴ A “non-coproducing country” means any country that does not have a coproduction treaty with the coproducing countries or that is not participating in the production as a coproducing country.

Eligible personnel

The proportionality between the financial contribution and the creative and technical participation is measured against a selected number of key positions.

Key personnel

Subject to the provisions of the coproduction treaties, all key personnel for live-action (fiction or documentary) or animation productions must be citizens or permanent residents of Canada or of the coproducing country(ies) or, in the case of coproductions with an EU member country, citizens or permanent residents of an EU country.

Key personnel for live-action productions (fiction and documentary)	Key personnel for animation Conventional animation (2D)	Key personnel for animation 3D animation
<ul style="list-style-type: none"> • Director • Scriptwriter(s) • 1st lead performer or narrator (based on on-screen time) • 2nd lead performer or narrator (based on on-screen time) • Director of photography • Production designer/Art Director • Picture editor (off-line) • Music composer 	<ul style="list-style-type: none"> • Director • Scriptwriter(s) • Storyboard supervisor • Design supervisor (art director) • Voice of lead performer (based on on-screen time) • Voice of 2nd lead performer (based on on-screen time) • Picture editor (off-line) • Music composer 	<ul style="list-style-type: none"> • Director • Scriptwriter(s) • Storyboard supervisor • Design supervisor (art director) • Character model supervisor • Motion capture supervisor • Animation director • Voice of lead performer (based on on-screen time) • Voice of 2nd lead performer (based on on-screen time) • Picture editor (off-line) • Music composer

Non-creative personnel from non-coproducing countries when location shooting is done in non-coproducing countries

Subject to the provisions of the applicable coproduction treaties, the participation of non-creative personnel from a non-coproducing country can only be authorized by each country's authorities if:

- The position is a non-creative technical position or a role as an extra;
- The authorities have approved location shooting in a non-coproducing country; AND
- The participation of the non-creative personnel is deemed necessary for the location work to be undertaken in a non-coproducing country.

The participation of all non-creative personnel in a non-coproducing country must be approved by the authorities of all coproducing countries.⁵

⁵ Please consult Telefilm Canada's [website](#) for the list of non-creative technical positions.

Performers from non-coproducing countries

Subject to the provisions of the applicable coproduction treaties, the coproducers may request the participation of performers from non-coproducing countries if they are able to demonstrate, to the satisfaction of both Telefilm and the coproducing country's authority, that the participation of a performer from a non-coproducing country is indispensable to the storyline, financing and/or commercial success of the project. However, projects must respect the requirement for the maximum number of performers allowed in the applicable coproduction treaty. In all cases, the participation of performers from non-coproducing countries must be approved by the authorities of the coproducing countries.

For reference purposes and only where the applicable treaty allows for more than one performer from a non-coproducing country, the following table indicates the number and type of performers from a non-coproducing country usually allowed by type of project:

Type of project	Feature film or Made-for-TV movie	Television Series		
		of up to 6 episodes	of 7 to 13 episodes	of 14 to 26 episodes
Number and type of performers from a non-coproducing country	1 lead performer and 1 cameo ⁶	1 lead performer present during the entire series and one guest star ⁷ present only during one episode	1 lead performer present during the entire series and a maximum of 2 guest stars present throughout the entire series in up to 2 episodes.	1 lead performer present during the entire series and a maximum of 4 guest stars present throughout the entire series in up to 4 episodes.

3.3. Financing and expenditures

The minimum financial contributions that must be provided by each of the coproducers are set out in the applicable coproduction treaties.

All financing received from Canadian individuals or companies should be allocated primarily to Canadian expenditures⁸.

3.4. Distribution and revenue sharing

Distribution control

Subject to the applicable treaty's provisions, all exploitation and distribution rights on the Canadian market must be under the effective control of the Canadian producer or the Canadian distributor/broadcaster.

Revenue sharing

⁶ Cameo means the brief appearance of an internationally known personality from a non-coproducing country in a feature film or made-for-tv movie and, generally, the cameo's participation does not involve more than three shooting days.

⁷ Guest star means an internationally known personality that makes a brief appearance in one or more episodes of a series.

⁸ All eligible expenses related to services provided by or to Canadians, in or outside of Canada, for the purpose of the production.

Subject to the applicable treaty's provisions, the Canadian producer must retain a fair share of the revenues collected from all territories, including those of the coproducing country or countries.

After recoupment of the production costs, the Canadian producer's revenue share should be at least equivalent to the applicable treaty's minimum financial contribution or to the Canadian financial contribution in the coproduction, whichever is greater.

3.5. Shooting and production locations

The following rules apply subject to the terms set forth in the applicable coproduction treaties and the approval of the authorities.

Exceptions to these rules can only be granted if the applicable treaties allow for such exceptions to be made.

Location shooting

Location shooting in a non-coproducing country may be authorized if the storyline so requires.

Studio shooting

Studio shooting must take place in the territory of the coproducing countries. Studio shooting in a non-coproducing country is not permitted.

Versioning and dubbing

The production must be available for exploitation in French and/or English. The coproducers must ensure that versioning and dubbing in French or English is always carried out in either coproducing country, subject to the treaty's requirements.

3.6. Screen credits

Subject to the applicable treaties' provisions, screen credits provided to any individual or corporation should not reduce the prominence of the coproducers or give the impression that a project is a coproduction produced with a country other than the coproducing countries.

Audiovisual works produced as treaty coproductions must be presented with the mention "A Canada-[coproducing country] Coproduction" or "A [coproducing country]-Canada Coproduction".

Canadian and foreign coproducers (individuals) must be clearly, predominantly and equally identified in the credits since, in principle, credits should not imply that the control of the production rests with anyone other than the Canadian producer and the foreign coproducer(s).

The coproducers' copyright must also appear in the credits.

Screen credits for non-coproducing country personnel

Subject to the applicable treaties' provisions, participants from a non-coproducing country, as described in section 3.2, may receive screen credits according to their role in the project (as performers or technicians).

Producer-related credits may be granted as a courtesy to non-coproducing country participants, provided that their functions have not interfered with the coproducers' financial and creative authority and that these functions are connected either to the distribution or financing of the project, through the allotment of production services under the strict control of the coproducers. An [affidavit](#) to this effect must be submitted to Telefilm no later than at the time of submission of the provisional screen credits.

A list of a producer-related courtesy credits is available on Telefilm's [website](#).

4. PROCESS AND DEADLINES

Telefilm's recommendation process for audiovisual coproductions comprises two stages:

- Application for a preliminary recommendation
- Application for a final recommendation

To obtain a recommendation, applicants must complete the relevant forms and submit their request electronically via [eTelefilm](#).

A production may not be recognized as an audiovisual coproduction unless it is recognized as such by all the authorities involved in the production.

Please note that each authority has its own administrative procedures and determines the documentation necessary for it to recognize a project as a coproduction.

The list of foreign authorities is available on Telefilm's [website](#). Information and documents provided by the applicant in the application process may be shared between the various authorities of the countries that are party to the coproduction treaty.

4.1. Preliminary recommendation applications

Applications for preliminary recommendations, duly completed and signed by the Canadian producer (or his or her authorized representative), must be submitted as follows:

- For live-action projects (fiction or documentary): **at least 30 days before** the start of the principal photography.
- For animation projects: at the time of key animation, or, for a series, at the latest when the master video of the first episode is produced.

In the case of projects that include a funding application to the [Canada Feature Film Fund](#): please note that the preliminary recommendation application is now incorporated into the funding application – consequently, you are no longer required to submit separate application forms.

4.2. Final recommendation applications

Telefilm suggests that Canadian producers submit their final recommendation application as soon as possible after completing the production, provided they have all the required documents in hand (see the [list of documents](#) on Telefilm's website).

Telefilm will examine the completed final recommendation applications so as to ensure that the project

still respects the applicable treaty and the conditions set out in the preliminary letter of recommendation. Following evaluation of the application and once final approval from the foreign authorities is received, Telefilm will convey its final recommendation letter to the Minister of Canadian Heritage via CAVCO.

Producers are responsible for verifying and respecting the applicable deadlines for the funding programs and tax credits to which they wish to apply. Please note that Telefilm's processing time for complete final recommendation applications is approximately 8 weeks.

4.3 Major changes

Producers must inform Telefilm as soon as possible of any change to the project that may have an impact either on the project's eligibility or the eligibility of its applicants according to the applicable coproduction treaty. Such changes could include corporate changes and/or changes made to the budget, key personnel, the coproducer, etc.⁹

5. GENERAL INFORMATION

For further information regarding audiovisual treaty coproductions, please consult Telefilm's website as well as the [FAQs](#), which form an integral part of these guidelines.

Telefilm reserves the right to modify its guidelines, application forms and FAQs as necessary. The implementation and interpretation of these guidelines are made entirely at Telefilm's discretion, which ensures that any recommendation as a coproduction be granted to projects that respect the text and intent of the applicable coproduction treaties. For all questions regarding the interpretation of these guidelines, Telefilm's interpretation will prevail.

All information provided, obtained, created or conveyed as part of the application or of the project is subject to the [Access to Information Act](#) and the [Privacy Act](#).

In the event of a discrepancy between these guidelines and the terms of the applicable coproduction treaty, the terms of the coproduction treaty will prevail.

⁹ Consult the [FAQ](#) for other examples of major changes that must be declared to Telefilm.