

## GUIDELINES

# AUDIOVISUAL TREATY COPRODUCTIONS GOVERNED BY CANADIAN TREATIES THAT ENTERED INTO FORCE FROM JULY 1, 2014 ONWARDS:

[BELGIUM \(BELGIAN COMMUNITIES\)](#)

[CHINA](#)

[INDIA](#)

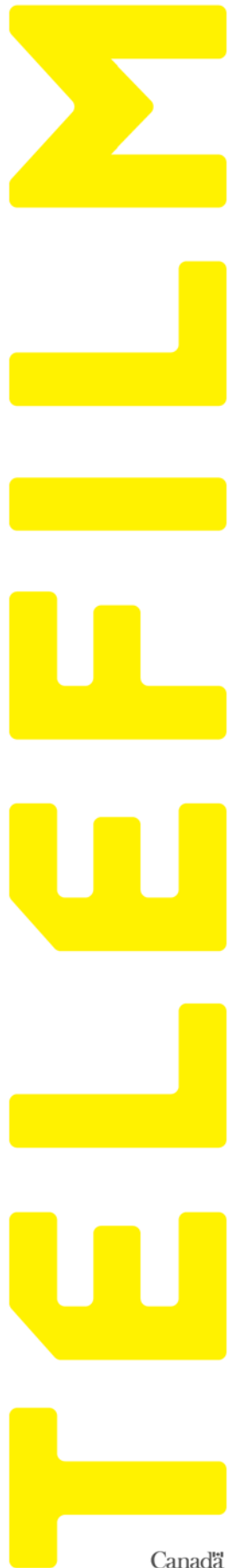
[IRELAND](#)

[JORDAN](#)

[NEW ZEALAND<sup>1</sup>](#)

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<sup>1</sup> In some cases, the [guidelines](#) for audiovisual treaties that entered into force **before** July 1, 2014 may also apply to certain provisions of the treaties listed above (see notably the treaties with India and China). Please see the webpage of the treaty applicable to your project for more details.



## Preamble

These guidelines follow the implementation of [Canada's Policy on Audiovisual Treaty Coproduction](#) by Canadian Heritage, in February 2011, the objective of which is to position Canada as an audiovisual coproduction partner of choice.

These guidelines apply **only** to Canadian audiovisual treaties<sup>2</sup> that entered into force **as of July 1, 2014**. Guidelines applicable to audiovisual coproduction treaties in force before that date will continue to apply.

**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 State<sup>3</sup> relevant to the project.

A project that is recognized as such by all the coproducing States is granted a national production status, which enables Canadian producers to access incentives available in

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<sup>2</sup> 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 State that stipulate the terms regarding recognition of audiovisual treaty coproductions governed by treaties between signing States. Similarly, the expressions “audiovisual treaty coproduction”, “audiovisual coproduction” and “coproduction” are also used interchangeably.

<sup>3</sup> The expression “coproducing State(s)” means the States participating in the coproduction and governed by a specific treaty or memorandum of understanding with Canada, along with third-States when applicable. See FAQs for more details.

Canada for eligible Canadian expenses and also enables foreign producers to access their own State'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<sup>4</sup> of coproduction status instead of the CPTC certificate. This request must 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 #2004-001](#) issued by CAVCO on this subject.

## 1.2. Text and Intent of Treaties

Coproduction treaties between Canada and other States allow Canadian and foreign producers to pool their resources in order to coproduce projects that will benefit from national production status in their respective States. States participating in these coproduction treaties expect that an overall balance between minority and majority coproductions, recognized as such by each of the coproducing States, 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. Please note that coproducers must also comply with the requirements of the annex of the applicable treaty.

## 2. ELIGIBILITY CRITERIA

An eligible project must be coproduced with a foreign producer from a State that has signed an audiovisual coproduction treaty with Canada.

In a case where those coproducers wish to undertake a multipartite project, the additional foreign producer must come from a State that has a coproduction treaty or memorandum of understanding with at least one of the coproducing States. Producers are responsible for apprising their respective authorities of the treaties being used in the production of a work in a timely fashion.

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

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<sup>4</sup> The attestation confers the national production status.

## 2.1. Eligible Canadian Applicants

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 must be Canadian citizens as defined in the [Citizenship Act](#) or permanent residents as stated in the [Immigration and Refugee Protection Act](#).

## 2.2. Eligible Projects

Subject to the terms established in the applicable coproduction treaty, and to the consent of the authorities of each of the coproducing States, an audiovisual work must be:

- 1) a **film** intended for theatrical release, television broadcast (including Video-on-Demand), or DVD distribution, which may be accompanied by one or more online video works or applications; \*
- 2) a **television** production intended for television broadcast (including Video-on-Demand) or DVD distribution, which may be accompanied by one or more online video works or applications; \*
- 3) an **online video work or application\*\*** that engages the user in a storytelling experience, and is designed for and made available to the public by way of a digital network, including Internet and mobile.

\* Please note that for options 1) and 2), **online video works or applications** refer to original content that are separate and distinct from the film or television work produced for a traditional platform. They must be:

- i) associated with the traditional audiovisual work seeking certification;
- ii) created to extend, enhance or complement the storytelling experience; and
- iii) designed for and made available to the public by way of a digital network, including Internet and mobile.

**\*\* Online video works and applications** may include, but are not limited to the following:

- original linear content including films, television productions, webisodes, mobisodes, and other productions made exclusively for consumption online;
- original non-linear content, including immersive or interactive websites, mobile content or applications.

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.).

### 3. RECOMMENDATION REQUIREMENTS

Each coproduction treaty sets out the minimum requirements in terms of the financial, technical and creative participation of each of the coproducing States, as well as the conditions that must be met for a work to be recommended as a coproduction.

#### 3.1. Copyright and Revenues

The sharing of copyright and revenues must be, in principle, proportional to the percentage of financial participation of each of the coproducers and may not be less than the minimum percentage set out in the applicable coproduction treaty.

Coproducers may assign part of their copyright and revenues to other individuals or corporations not involved in the work so long as they respect the conditions set out above and comply with the terms set out in the applicable coproduction treaty.

Canadian producers are responsible for ensuring that the allocation of their copyright meets the requirements of other funding programs and tax credits to which they wish to apply.

#### 3.2. Nationality of Key Participants

All participants in the work must be nationals<sup>5</sup> of the coproducing States, subject to the terms set out in the applicable coproduction treaties and the approval of the authorities of the coproducing States. The participation of nationals from a State other than the coproducing States may only be authorized if the treaty allows it. The “Canadian national” status must be maintained throughout the participants’ involvement in the coproduction.

Most treaties list key positions by type of production, and set out specific rules regarding

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<sup>5</sup> In Canada, a “national” is defined as being a Canadian citizen as set out in the *Citizenship Act* or a permanent resident as set out in the *Immigration and Refugee Protection Act*.

the nationality of the participants occupying these key positions. It is important to review the terms of the treaty applicable to your project to ensure that your project meets these requirements.

In general, there are eight key positions listed in the treaty that can be filled as follows:

- 1) all of the eight key positions must be held by one or more nationals of the coproducing States;
- 2) a national of each coproducing State must hold at least one **full**<sup>6</sup> key position. The other key positions can be divided among the nationals of the coproducing States;
- 3) one of those key positions can be filled by a national from a State other than the coproducing States;
- 4) in the case of a high budget production<sup>7</sup>, and only if allowed by the applicable treaty, a second national from a State other than the coproducing States can be assigned to fill one of those key positions, with the written consent of the administrative authorities of the coproducing States.

When the same key position has two designations (for example, the position of storyboard supervisor or picture editor in animation projects), those two designations count as one position only.

Note that, in the case of coproduction television series, the producer must ensure that at least **one full key position** is held by a Canadian in each episode. However, in some circumstances, exceptions to this principle could be granted, with the consent of the authorities of each of the coproducing States.

### **3.3. Nationality of Non-Key Personnel from States other than the Coproducing States**

Subject to the provisions of the applicable coproduction treaty, the participation of personnel from a State other than the coproducing States can only be permitted upon the mutual written consent of the authorities of each of the coproducing States and if:

- 1) the position is a non-key position;
- 2) it is clearly demonstrated that the participation of that personnel is essential to the storyline; and
- 3) the authorities have approved location shooting in a State other than in the coproducing States.

### **3.4. Financing and Expenditures**

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

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<sup>6</sup> A full key position is a position or function that must be held by one person only and that cannot be shared between a number of people.

<sup>7</sup> Please contact Telefilm to determine if your project qualifies as “high budget”.

Any source of funding in the Canadian financial structure must be allocated primarily to expenditures on Canadian elements<sup>8</sup>. Expenditures on Canadian elements must be, in principle, proportional to the Canadian financial participation. For purposes of calculation, the expenditures paid by the Canadian producer on non-Canadian elements allowed by the applicable treaty and approved by Telefilm will be excluded from the total Canadian budget.

Exceptions to this principle of proportionality between the expenditures and the financial contribution may be granted upon mutual written consent of the authorities, notably for storyline and creative purposes.

### **3.5. Distribution**

When presenting the project to Telefilm for review, the Canadian producer must be able to provide proof of a commitment to the eventual distribution or broadcast of the project in Canada and in the coproducing State. In the case where the coproducing partner is unable to obtain such a commitment in his State, a distribution or broadcast commitment in a State other than the coproducing State can be an acceptable alternative, with the mutual written consent of the authorities of the coproducing States.

A commitment for the distribution or broadcast of the project may include commitments with broadcasters, distributors or digital network providers, including via the Internet and mobile applications. In all cases, the coproducers must have a written commitment from these entities to the eventual distribution or broadcast of the project.

For distribution or broadcast of the work online, the Canadian producer must:

- 1) inform Telefilm of the selection of this alternate option when presenting the project for review;
- 2) confirm via Telefilm the eligibility of the online distributor (online video services); and
- 3) provide Telefilm with the proof of this alternative method of distribution before Telefilm makes its final recommendation.

The Canadian producers are responsible for ensuring that their distribution commitments meet the requirements set out in the various funding programs and tax credits to which they wish to apply.

### **3.6. Shooting and Service Locations**

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

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<sup>8</sup> 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.

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

### **Location and Studio Shooting**

The production shoot must take place in one of the coproducing States.

Location shooting in a State other than in the coproducing States may be authorized by the authorities of each of the coproducing States for storyline and/or creative reasons.

Studio shooting is only permitted in the coproducing States.

### **Technical Services**

Technical services<sup>9</sup> may be carried out in a State or States other than the coproducing States, provided that the coproducers demonstrate that these services are not available in any of the coproducing States and the value of these services does not exceed 25 per cent of the project's total budget.

### **Dubbing**

The production must be available for exploitation in French and/or English. The coproducers must ensure that dubbing in French or English is always carried out in one of the coproducing States, unless the coproducers can demonstrate that these services are not available in any of the coproducing States. Exceptions are subject to the approval of the authorities of the coproducing States.

## **3.7. Screen Credits**

Telefilm expects that the screen credits of audiovisual works undertaken as coproductions include the following elements:

- the mention “a Canada-[coproducing State] coproduction” or “a [coproducing State]-Canada coproduction”;
- the coproducing corporations' copyright;
- clear, equal and predominant identification of the Canadian and foreign coproducers (individuals); and,
- identification of the people occupying the required key positions according to the applicable coproduction treaty.

Screen credits provided to any individual or corporation should not reduce the prominence of the coproducers or give the impression that the project is a coproduction produced with a State other than the coproducing States.

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<sup>9</sup>All services linked to post-production (images, sound, subtitling and special effects), and services carried out in music recording and sound animation studios are considered technical services.



## 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 preliminary or final recommendation, applicants must submit their application electronically via [Dialogue](#).

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.

Information and documents provided by the applicant in the application process may be shared between the various authorities of the States that are party to the coproduction treaty.

### 4.1. Preliminary Recommendation Applications

Applications for preliminary recommendations, duly completed by the Canadian producer (or his/her authorised representative), must be submitted:

- For live action projects (fiction or documentary): **at least 30 days before** the start of the principal photography. Please note that, for documentary projects, limited filming at the development stage, to create a promo reel, or to record time-sensitive events will not be considered as part of 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.

### 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.<sup>10</sup>

## 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.**

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<sup>10</sup> Consult the [FAQ](#) for other examples of major changes that must be declared to Telefilm.