

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA
ON TELEVISION CO-PRODUCTION**

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The Government of Canada and the Government of the Republic (hereinafter referred to as the "Parties"),

RECALLING the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Korea on Cultural Cooperation, signed at Seoul on September 19, 1990, which plays a significant role in the promotion and development of co-operation in the fields of culture, education, science and technology and other areas;

CONSIDERING that it is desirable to establish a framework for the development of their audiovisual relations and particularly for television co-productions;

CONSCIOUS that quality co-productions can contribute to the further expansion of the television production and distribution industry 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 REACHED THE FOLLOWING UNDERSTANDING:

ARTICLE 1

1. For the purpose of this Memorandum of Understanding, a "co-production" is a project, irrespective of length, including animation and documentary productions, produced for exploitation on television.
2. Co-productions undertaken under the present Memorandum of Understanding must be approved by the following authorities, referred to hereinafter as the "competent authorities" :

In Canada : the Minister of Canadian Heritage ; and
In Korea • the Minister of Information

3. Every co-production proposed under this Memorandum of Understanding will be produced and distributed in accordance with the national legislation and regulations in force in Canada and Korea.

4. Every co-production produced under this Memorandum of Understanding will be considered to be a national production for all purposes by and in **each** of the two countries. Accordingly, all such co-productions will be fully entitled to take advantage of all benefits currently available to the television industry 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.

ARTICLE 2

The benefits of the provisions of this Memorandum of Understanding apply only to co-productions undertaken by producers who have good technical organization, sound financial backing and recognized professional standing.

ARTICLE 3

1. The proportion of the respective contributions of the co-producers of the two countries may vary from 30%(thirty per cent[minority]) to 70% (seventy per cent[majority]) of the budget for each co-production.

2. Each co-producer will be required to make an effective technical and creative contribution. In principle, this contribution will be in proportion to one's investment.

ARTICLE 4

1. The producers, writers and directors of co-productions, as well as the technicians, performers and other production personnel participating in such co-productions, must be Canadian or Korean citizens, or permanent residents of Canada or Korea.

2. Should the co-production so require, the participation of performers other than those provided for in the first paragraph may be permitted subject to approval by the competent authorities of both Parties.

ARTICLE 5

1. Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording will, in principle,

be carried out alternately in Canada and in Korea.

2. Location shooting, exterior or interior, in a country not participating in the co-production may, however, be authorized, if the script or the action so requires and if technicians from Canada and Korea take part in the shooting.

3. The laboratory work will be done in either Canada or Korea, unless it is technically impossible to do so, in which case the laboratory work in a country not participating in the co-production may be authorized by the competent authorities of both Parties.

ARTICLE 6

1. The competent authorities of both Parties will look favourably upon co-productions undertaken by producers of Canada, Korea and any country to which Canada or Korea is linked by an official Co-Production Agreement or Memorandum of Understanding.

2. The proportion of any minority contribution in any multi-party co-production will be not less than 20% (twenty per cent).

3. Each minority co-producer in such co-production will be obliged to make an effective technical and creative contribution.

ARTICLE 7

1. The original sound track of each co-production will be made in either English, French or Korean. Shooting in any two, or in all, of these languages is permitted. Dialogue in other languages may be included in the co-production as the script requires.

2. The dubbing or subtitling of each co-production English and French, into Korean will be carried out respectively in Canada or Korea. Any departures from this principle must be approved by the competent authorities of both Parties.

ARTICLE 8

For the present purposes, productions produced under a twinning arrangement may be considered, with the approval of the competent authorities, as co-productions and receive the same benefits. Notwithstanding Article 3, in the case of a twinning arrangement, the reciprocal participation of the producers of both countries may be limited to a

financial contribution alone, without necessarily excluding any artistic or technical contribution.

To be approved by the competent authorities, these productions must meet the following conditions:

1. there shall be respective reciprocal investment and an overall balance with respect to the conditions of sharing the receipts of co-producers in productions benefitting from twinning;
2. the twinned productions must be distributed under comparable conditions in Canada and in Korea;
3. 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 9

1. Except as provided in the following paragraph, no fewer than two copies of the final protection and reproduction materials used in the production will be made for all co-productions. Each co-producer will be the owner of one copy of the protection and reproduction materials and will be entitled to use it, in accordance with the terms and conditions agreed upon by the co-producers, to make the necessary reproductions. Moreover, each co-producer will have access to the original production material in accordance with those terms and conditions.
2. At the request of both co-producers and subject to the approval of the competent authorities in both Parties, only one copy of the final protection and reproduction material need be made for those productions which are qualified as low budget productions by the competent authorities. In such cases, the material will be kept in the country of the majority co-producer. The minority co-producer will have access to the material at all times to make the necessary reproductions, in accordance with the terms and conditions agreed upon by the co-producers.

ARTICLE 10

Subject to their legislation and regulations in force, the Parties will:

- a) facilitate the entry into and temporary residence in their respective territories of the creative and technical personnel and the performers engaged

by the co-producer of the other country for the purpose of the co-production;
and

b) similarly permit the temporary entry and re-export of any equipment necessary for the purpose of the co-production.

ARTICLE 11

The sharing of revenues by the co-producers should, in principle, be proportional to their respective contributions to the production financing and be subject to approval by the competent authorities of both Parties.

ARTICLE 12

Approval of a co-production proposal by the competent authorities of both Parties does not constitute a commitment to either or both of the co-producers that governmental authorities will grant a license to show the co-production.

ARTICLE 13

1. Where a co-production is exported to a country that has quota regulations, it shall be included either in the quota of the country:

- a) of the majority co-producer;
- b) that has the best opportunity of arranging for its export, if the respective contributions of the co-producers are equal; or
- c) of which the director is a national, if any difficulties arise with the application of sub-paragraphs (a) and (b) hereof.

2. Notwithstanding Paragraph 1, in the event that one of the co-producing countries enjoys unrestricted entry of its films into a country that has quota regulations, a co-production undertaken under this Memorandum of Understanding will be as entitled as any other national production of that country to unrestricted entry into the importing country, if that country so agrees.

ARTICLE 14

1. A co-production will, when shown, be identified as a "Canada-Korea Co-production" or "Korea-Canada Co-production" according to the origin of the majority co-producer or in accordance

with an arrangement between co-producers.

2. Such identification will appear in the credits, in all commercial advertising and promotional material and whenever this co-production is shown and will be given equal treatment by each country.

ARTICLE 15

In the event of presentation at international film festivals, and unless the co-producers agree otherwise, a co-production will be entered by the country of the majority co-producer or, in the event of equal financial participation of the co-producers, by the country of which the director is a national.

ARTICLE 16

The competent authorities of both Parties have jointly established the rules of procedure for co-productions taking into account the legislation and regulations in force in Canada and Korea. These rules of procedure are attached to the present Memorandum of Understanding.

ARTICLE 17

No restrictions will be placed on the import, distribution and exhibition of Canadian television productions in Korea or that of Korean television productions in Canada other than those contained in the legislation and regulations in force in each of the two countries.

ARTICLE 18

1. During the term of the present Memorandum of Understanding, an overall balance will be aimed for with respect to financial participation as well as creative personnel, technicians, performers, and facilities (studio and laboratory), taking into account the respective characteristics of each country.
2. The competent authorities of both Parties will examine the terms of implementation of this Memorandum of Understanding as necessary in order to resolve any difficulties arising from its application. They will recommend, if necessary, possible amendments with a view to developing television co-operation in the best interests of both countries.
3. A Joint Commission is established to look after the implementation of this Memorandum of Understanding. The Joint Commission will examine if this balance has been achieved and, in case of the contrary, will determine the measures deemed necessary to establish such a balance. A meeting of the Joint Commission may be convened at the request of one or both competent authorities, particularly in the case of major amendments to the legislation or the regulations governing the television industry in one country or the other, or where the application of this Memorandum of Understanding presents serious difficulties. The Joint Commission will meet within six (6) months following its

ARTICLE 19

1. The present Memorandum of Understanding will enter into effect on the date of its last signature.
2. It will be valid for a period of five (5) years from the date of its entry into effect; a tacit renewal of the Memorandum of Understanding for like period will take place unless one or the other Party gives written notice of termination six (6) months before the expiry date.
3. Co-productions which have been approved by the competent authorities and which are in progress at the time of notice of termination of this Memorandum of Understanding by either Party, will continue to benefit fully until completion from the provisions of this Memorandum of Understanding. After expiry or termination of this Memorandum of Understanding, its terms will continue to apply to the division of revenues from completed co-productions.

IN WITNESS WHEREOF, the undersigned, have signed this Memorandum of Understanding.

DONE in duplicate at Ottawa, this 25 day of April, 1995, in the French, English and Korean languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA

**FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA**

ANNEX

RULES OF PROCEDURE

Application for benefits under this Memorandum of Understanding for any coproduction must be made simultaneously to both administrations at least thirty (30) days before shooting begins. The administration of the country of which the majority co-producer is a national will communicate its proposal to the other administration within twenty (20) days of the submission of the complete documentation as described below. The administration of the country of which the minority co-producer is a national shall thereupon communicate its decision within twenty (20) days. Documentation submitted in support of an application will consist of the following items, drafted in English or French in the case of Canada and in Korean in the case of Korea ;

- I. The final script;
- II. Documentary proof that the copyright for the co-production has been legally acquired;
- III. A copy of the co-production contract signed by the two co-producers; The contract shall include:
 1. the title of the co-production;
 2. the name of the author of the script, or that of the adaptor if it is drawn from a literary source;
 3. the name of the director (a substitution clause is permitted to provide for his replacement if necessary);
 4. the budget;
 5. the financing plan;
 6. a clause establishing the sharing of revenues, markets, media or a combination of these;
 7. a clause establishing the respective shares of the co-producers in any over or underexpenditure, which shares will in principle be proportional to their respective contributions, although the minority co-producer's share in any overexpenditure may be limited to a lower percentage or to a fixed amount providing that the minimum proportion permitted under Article 6 of the the Memorandum of Understanding is respected;
 8. a clause recognizing that admission to benefits under this Memorandum **of Understanding dose not constitute a commitment that governmental authorities in either country will grant a license to permit public exhibition of the co-production;**

9. a clause prescribing the measures to be taken where:
 - (a) after full consideration of the case, the competent authorities in either country refuse to grant the benefits applied for;
 - (b) the competent authorities prohibit the exhibition of the co-production in either country or its export to a third country;
 - (c) either co-producer fails to fulfill its commitments;
10. the period when shooting is to begin;
11. a clause stipulating that the majority co-producer will take out an insurance policy covering at least "all production risks" and "all original material production risks";
12. 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.

IV. The distribution contract, where this has already been signed;

V. A list of the creative and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;

VI. The production schedule;

VII. The detailed budget identifying the expenses to *be* incurred by each co-producer; and

VIII. The Synopsis.

The competent administration of the two countries can demand any further documents and all other additional information deemed necessary.

In principle, the final shooting script (including the dialogue) should be submitted to the competent administrations prior to the commencement of shooting.

Amendments, including the replacement of a co-producer, may be made in the original contract, but they must be submitted for approval by the competent administrations of both Parties before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to both the competent administrations. The competent administrations will keep each other informed of their decisions.