

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE REPUBLIC OF MALTA
ON AUDIOVISUAL RELATIONS**

Signed September 23, 1997

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**THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE
REPUBLIC OF MALTA** (hereinafter referred to as the "Parties"),

CONSIDERING that it is desirable to establish a framework for the development of their audiovisual 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 REACHED THE FOLLOWING UNDERSTANDING:

ARTICLE I

1. For the purpose of this Memorandum of Understanding, an "audio-visual co-production" is a project, irrespective of length, including animation and documentary productions, produced or generated either on film, videotape or videodisc, via computer-based technology or in any other format hitherto unknown, for exploitation in theatres, on television, videocassette, videodisc or by any other form of distribution. New forms of audio-visual production and distribution will be included in the present Memorandum of Understanding by exchange of notes.

2. Co-productions undertaken under the present Memorandum of Understanding must be approved by the following competent authorities:

In Canada:	the Minister of Canadian Heritage; and
In the Republic of Malta:	the Minister of Education and National Culture.

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 in the Republic of Malta;
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, each such co-production will be fully entitled to take advantage of all benefits currently available to the film, television 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.

ARTICLE II

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 III

1. The proportion of the respective contributions of the co-producers of the Parties may vary from twenty (20%) to eighty per cent (80%) 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 his investment and should comprise the participation of a combination of creative personnel, technicians, performers (in either leading or supporting roles or both) and facilities. Departures from this principle must be approved by the competent authorities of the Parties.

ARTICLE IV

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 Maltese citizens, or permanent residents of Canada or the Republic of Malta.
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 the Parties.

ARTICLE V

1. Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording must, in principle, be carried out alternately in Canada and in the Republic of Malta.
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 the Republic of Malta take part in the shooting.
3. The laboratory work will be done in either Canada or the Republic of Malta, 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 VI

1. The competent authorities of both Parties will look favourably upon co-productions undertaken by producers of Canada, the Republic of Malta and any country to which Canada or the Republic of Malta is linked by an official co-production agreement.
2. The proportion of any minority contribution in any multi-party co-production will be not less than twenty per cent (20%).
3. Each minority co-producer in such co-production will be obliged to make an effective technical and creative contribution.
4. Except as otherwise expressly provided, the provisions of this Memorandum of Understanding will apply "mutatis mutandis" to any co-production submitted to the competent authorities of the Parties hereunder.

ARTICLE VII

1. The original sound track of each co-production will be made in English or French or Maltese. 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 into English or French, or into Maltese will be carried out respectively in Canada or in the Republic of Malta. Any departures from this principle must be approved by the competent authorities of both Parties.

ARTICLE VIII

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 countries, 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 IX

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 X

Notwithstanding any other provision in the Memorandum of Understanding, for taxation purposes, the legislation and regulations in force in Canada and the Republic of Malta will apply, subject to the provisions of the "Agreement between the Government of Canada and the Government of the Republic of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital" done at Valleta on July 25, 1986.

ARTICLE XI

The sharing of revenues by the co-producers should, in principle, be proportional to their respective contributions to the production financing. This sharing may consist of a proportionate sharing of revenues, a sharing of markets, a sharing of media or a combination of these formulas. The overall formula for establishing the sharing of revenues may also take into account the difference in the size of the markets of both countries and will, in any case, be subject to approval by the competent authorities of the Parties.

ARTICLE XII

1. Where a co-production is exported to a country that has quota regulations, it will 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 subparagraphs (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 XIII

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

ARTICLE XIV

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 XV

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

ARTICLE XVI

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

ARTICLE XVII

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 shall examine the terms of implementation of this Memorandum of Understanding as necessary in order to resolve any difficulties arising from its application. They will, as needed, recommend possible amendments with a view to developing film and video co-operation in the best interests of both Parties.
3. A Joint Commission will be 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 will take place in principle once every two years and it will meet alternately in the two countries. However, it may be convened for extraordinary sessions at the request of one or both competent authorities, particularly in the case of major amendments to the legislation or the regulations governing the film, television and video industries 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 convocation by one of the Parties.

ARTICLE XVIII

1. The present Memorandum of Understanding will enter into effect on the date of its signature.
2. It will remain in effect for a period of three (3) years from the date of its entry into effect; a tacit renewal of the Memorandum of Understanding for like periods shall 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 from the provisions of this Memorandum of Understanding until completion. Any unfulfilled obligations arising from its operation will be fulfilled in accordance with the provisions of the Memorandum of Understanding and as though the Memorandum of Understanding, for those purposes, were still in effect. After the expiry or termination of this Memorandum of Understanding, its terms will continue to apply to the division of revenues from completed co-productions.

DONE in duplicate at Valetta this 23th day of September 1997, in the English and French languages, each version being equally valid.

Canadian High Commissioner
Mr. Jeremy Kinsman

Permanent Secretary Ministry
of Foreign Affairs
Mr. Salv J. Stellini

**FOR THE GOVERNMENT
OF CANADA**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF THE REPUBLIC OF
MALTA**

ANNEX

RULES OF PROCEDURE

Application for benefits under this Memorandum of Understanding for any co-production must be made simultaneously to both administrations at least thirty (30) days before shooting or principal animation 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 will 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 Maltese or English in the case of the Republic of Malta:

- 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 will 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 detailing the respective shares of the co-producers in any over or under expenditure, which shares will in principle be proportional to their respective contributions, although the minority co-producer's share in any over expenditure may be limited to a lower percentage or to a fixed amount providing that the minimum proportion permitted under Article VI of the Memorandum of Understanding is respected;
 8. a clause recognizing that admission to benefits under this Memorandum of Understanding does not constitute a commitment that governmental authorities in either country will grant a licence 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 fulfil 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 country; 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 countries 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.