

AGREEMENT
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE REPUBLIC OF POLAND
ON FILM AND TELEVISION CO-PRODUCTION

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

CONSIDERING that it is desirable to establish a framework for 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 AGREED as follows:

ARTICLE I

1. For the purpose of this Agreement, a "co-production" is a project, irrespective of length, including animation and documentary productions, produced either on film, videotape or videodisc, or in any other format hitherto unknown, for exploitation in theatres, on television, videocassette, videodisc or by any other form of distribution, whether now known or to become known.
2. Co-productions undertaken under the present Agreement must be approved by the following competent authorities:

In Canada:

Minister of Canadian Heritage

In the Republic of Poland:

the Cinematography Committee or the National Radio and Television Council
3. Every co-production proposed under this Agreement shall be produced and distributed in accordance with the national regulations in force in Canada and the Republic of Poland.

4. 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. However, only the Polish co-producer shall be entitled to the benefits accorded to national productions in the Republic of Poland and only the Canadian co-producer shall be entitled to the benefits accorded to national productions in Canada.

ARTICLE II

The benefits of the provisions of this Agreement apply only to co-productions undertaken by producers who, in the opinion of their respective competent authorities, 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 two countries may vary from twenty (20%) to eighty per cent (80%) of the budget for each co-production.
2. Each co-producer shall be required to make an effective technical and creative contribution. In principle, this contribution shall 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 both countries.

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 Polish citizens, or permanent residents of Canada or Poland in accordance with relevant regulations in force in both countries.
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 countries.

ARTICLE V

1. 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 Poland take part in the shooting.
2. Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording must, in principle, be carried out in one or the other of the two co-producing countries.
3. The laboratory work shall be done in either Canada or Poland, 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 countries.

ARTICLE VI

1. The competent authorities of both countries also look favourably upon co-productions undertaken by producers of Canada, Poland and any country to which Canada or Poland is linked by an Official Co-Production Agreement.
2. The proportion of any minority contribution in any multi-party co-production shall be not less than twenty per cent (20%).
3. Each minority co-producer in such co-production shall be obliged to make an effective technical and creative contribution.
4. Except as otherwise expressly provided, the provisions of this Agreement shall apply mutatis mutandis to any co-production submitted to the competent authorities of both countries.

ARTICLE VII

1. The original sound track of each co-production shall be made in either English, French or Polish. 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 French and English, or into Polish shall be carried out respectively in Canada or Poland. Any departures from this principle must be approved by the competent authorities of both countries.

ARTICLE VIII

The original negative material, as well as the final protection and reproduction materials, shall be kept in the location or locations agreed upon by the producers; however, each co-producer shall have access to these materials at all times in order 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 shall:

- (a) facilitate the entry into and temporary residence in their countries 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) facilitate the granting of a permit for temporary entry and re-export of any equipment necessary for the purpose of the co-production.

ARTICLE X

1. Notwithstanding any other provision in this Agreement, for taxation purposes, the legislation and regulations in force in Canada and the Republic of Poland shall apply, subject to the provisions of the Convention between the Government of Canada and the Government of the People's Republic of Poland for the Avoidance of double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property which was signed on May 4, 1987.
2. Customs duties shall be subject to regulations in force in the two countries which are party to this Agreement.

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 the Parties and shall, in any case, be subject to approval by the competent authorities of both countries.

ARTICLE XII

Approval of a co-production proposal by the competent authorities of both countries does not constitute a commitment to either or both of the co-producers that the production will be distributed in either country party to this Agreement.

ARTICLE XIII

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; or
 - (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 paragraphs (a) and (b) hereof.
2. Notwithstanding the stipulations in 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 Agreement shall be as entitled as any other national production of that country to unrestricted entry into the importing country.

ARTICLE XIV

1. A co-production shall, when shown, be identified as a "Canada-Poland Co-production" or "Poland-Canada Co-production" according to the origin of the majority co-producer or in accordance with an agreement between co-producers.
2. Such identification shall appear in the credits, in all commercial advertising and promotional material and whenever this co-production is shown.

ARTICLE XV

In the event of presentation at international film festivals, and unless the co-producers agree otherwise, a co-production shall 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 XVI

The rules of procedure for co-productions taking into account the legislation and regulations in force in Canada and Poland are attached to the present Agreement and constitute an integral part of it.

ARTICLE XVII

1. No restrictions shall be placed on the import, distribution and exhibition of Polish film, television and video productions in Canada or that of Canadian film, television and video productions in Poland other than those contained in the legislation and regulations in force in each of the two countries.
2. The Parties shall make an effort to ensure that the dubbing or subtitling in English and French of each Polish production distributed in Canada be carried out in Canada and that the dubbing or subtitling in Polish of each Canadian production distributed in Poland be carried out in Poland.

ARTICLE XVIII

1. During the term of the present Agreement, an overall balance shall be maintained 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 countries shall resolve any possible difficulties arising from the application of the present Agreement. They shall, as needed, recommend possible amendments with a view to developing film, television and video co-operation between both countries.
3. A Group of Experts is established to look after the implementation of this Agreement. The Group of Experts shall examine if this balance of contributions has been achieved and, in case of the contrary, shall determine the measures deemed necessary to establish such a balance. A meeting of the Group of Experts shall take place as required, and it shall meet alternately in the two countries. The Group of Experts shall meet within twelve (12) months following its convocation by one of the Parties.

ARTICLE XIX

The relevant authority of Poland and any province of Canada may conclude understandings concerning any film and television co-production matter within provincial jurisdiction in Canada such as, for example, the Protocole d'entente sur les relations économiques, scientifiques et culturelles entre le gouvernement du Québec et le gouvernement de la République de Pologne signed on March 14, 1991, provided that those understandings are not inconsistent with the provisions of this Agreement.

ARTICLE XX

1. The present Agreement shall be accepted according to the legislation of each of the Parties, which shall be ascertained through an exchange of Notes. The present Agreement shall come into force on the date of reception of the later Note.

2. The present Agreement shall be valid for a period of three (3) years. A tacit renewal of the Agreement for like periods shall take place unless one or the other country 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 termination or cancellation of this Agreement by either Party, shall continue to benefit fully until completion from the provisions of this Agreement.

DONE in duplicate at Ottawa, this 27th day of May 1996, in the French, English and Polish languages, each version being equally authentic.

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

**FOR THE GOVERNMENT
OF CANADA**

**FOR THE GOVERNMENT OF
THE REPUBLIC OF POLAND**

ANNEX

RULES OF PROCEDURE

Application for benefits under this Agreement for any co-production must be made simultaneously to both administrations at least sixty (60) days before shooting begins. The administration of the country of which the majority co-producer is a national shall communicate its proposal to the other administration within forty-five (45) 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 forty-five (45) days.

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 Polish in the case of Poland:

- 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 detailing the respective shares of the co-producers in any over or underexpenditure, which shares shall 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 VI of the Agreement is respected;
8. a clause recognizing that admission to benefits under this Agreement does not bind the competent authorities in either country to permit distribution of the co-production in either country;
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 distribution of the co-production in either country or its export to a third country;

- (c) either party fails to fulfill its commitments;
 - 10. the period when shooting is to begin;
 - 11. a clause stipulating that the majority co-producer shall 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 of both Parties will keep each other informed of their decisions.