

**AGREEMENT
ON FILM AND VIDEO RELATIONS
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE SWISS FEDERAL COUNCIL
(with Annex)**

**Berne, October 22, 1987
In force provisionally October 22, 1987**

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CONSIDERING that it is desirable to establish a framework for a video and film relations and particularly for co-productions;

CONSCIOUS that quality co-productions can contribute to the development of the film culture of the film and video 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 the relations between the two countries;

HAVE AGREED AS FOLLOWS:

I - CO-PRODUCTIONS

ARTICLE I

For the purposes of this Agreement, the words "film and video co-production", refer to projects irrespective of length or format including animation and documentaries, produced either on film, videotape or videodisc, for distribution in theatres, on television, videocassette, videodisc or any other form of distribution.

Co-productions undertaken under the present Agreement must be approved by the following competent authorities:

In Canada: the Minister of Communications.

In Switzerland: the Federal Office of Culture.

These co-productions are considered to be national productions by and in each of the two countries. Subject to the national legislation and regulations in force in Canada and Switzerland, co-productions are fully entitled to take advantage of the benefits available to the film and video industries or those that may be decreed in each country. These benefits accrue solely to the producer of the country that grants them.

ARTICLE II

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

ARTICLE III

The producers, the writers and the directors of co-production, as well as technicians, performers and other production personnel participating in the production, must be Canadian or Swiss, or permanent residents of Canada or foreigners with Swiss residency permits.

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 IV

The proportion of the respective contributions of the co-producers of the two countries may vary from twenty (20) to eighty (80) per cent of the budget for each co-production.

Location shooting, exterior or interior, in a country not participating in the co-production may be authorized, if the script or the action so requires and if technicians from Canada and Switzerland take part in the shooting. The laboratory work shall be done in either Canada or Switzerland, unless it is technically impossible.

The minority co-producer shall be required to make an effective technical and creative contribution. In principle, the contribution of the minority co-producer in technicians and performers shall be in proportion to his investment. This contribution should comprise the participation of not less than three technicians, one performer in a leading role and two performers in a supporting role. Departures herefrom may be approved by the competent authorities of both countries. The authorities encourage the exchange of trainees.

ARTICLE V

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 Switzerland.

ARTICLE VI

The competent authorities of both countries look favourably upon co-productions undertaken by producers of Canada, Switzerland and countries to which Canada or Switzerland is linked by co-production agreements.

The proportion of the minority contribution in these co-productions shall be not less than twenty (20) percent for each co-production.

The minority co-producers shall be obliged to make an effective technical and creative contribution.

ARTICLE VII

Two copies of the final protection and reproduction material used in the production shall be made for all co-productions. Each co-producer shall be the owner of a copy of the protection and reproduction material and shall be entitled to use it to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with the conditions agreed upon between the co-producers. 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 may be made for low budget productions. In this case, the material would be kept in the country of the majority co-producer. The minority co-producer would have access to the material at all times.

ARTICLE VIII

The original sound track of each co-production shall be made in either English or French or German or Italian. Double shooting in two of these languages may be made. Dialogue in other languages may be included in the co-production as the script requires.

The dubbing or subtitling of each co-production into French, English, German or Italian shall be carried out in Canada or Switzerland. Any departures herefrom must be approved by the competent authorities of both countries.

ARTICLE IX

Subject to their legislation and regulations in force, Canada and Switzerland shall facilitate the entry into and temporary residence in their respective territories of the creative and technical personnel dependent on the co-producer of the other country. They shall similarly permit the temporary entry and re-export of any equipment necessary for the co-production under this Agreement.

ARTICLE X

The sharing of the receipts should, in principle, be proportional to the total contribution of each of the co-producers and shall be subject to approval by the competent authorities of both countries. This sharing consists of either a sharing of receipts or a sharing of markets or a combination of both formulas that takes into account the difference in the volume existing between the markets of the signing countries.

ARTICLE XI

Approval of a co-production proposal by the competent authorities of both countries is in no way binding upon them in respect of the granting of license to show the co-production.

ARTICLE XII

Where a co-production is exported to a country that has quota regulations:

- a) it shall in principle be included in the quota of the country of the majority co-producer;
- b) it shall be included in the quota of the country that has the best opportunity of arranging for its export, if the respective contributions of the co-producers are equal;
- c) it shall be included in the quota of the country of which the director is a national, if any difficulties arise with clause a) and b).

ARTICLE XIII

A co-production shall when shown be identified as a "Canada-Switzerland co-production" or "Switzerland-Canada co-production" according to the origin of the majority co-producer or in accordance with an agreement between co-producers.

Such identification shall appear in the credits, in all commercial advertising and promotional material and whenever this co-production is shown.

ARTICLE XIV

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 XV

The competent authorities of both countries shall jointly establish the rules of procedure for co-productions taking into account the legislation and regulations in force in Canada and Switzerland. These rules of procedure are attached to the present Agreement.

II - EXCHANGE OF FILMS

ARTICLE XVI

No restrictions shall be placed on the import, distribution and exhibition of Swiss film video productions in Canada or Canadian film and video productions in Switzerland other than those contained in the legislation and regulations in force in each of the two countries.

It would be desirable that the dubbing or subtitling in English of each Swiss production distributed and exhibited in Canada be carried out in this country and that dubbing and subtitling in German and Italian of each Canadian production distributed and exhibited in Switzerland be carried out in this country.

III - GENERAL PROVISIONS

ARTICLE XVII

During the term of the present Agreement, an overall balance shall be aimed for with respect to financial participation as well as creative personnel, technicians, performers, and resource technicians (studio and laboratory), taking into account the respective characteristics of each country.

The competent authorities of both countries shall examine the terms of implementation of this Agreement as necessary in order to resolve any difficulties arising from its application. They shall recommend at need possible amendments with a view to developing film and video cooperation in the best interests of both countries.

A Joint Commission is established to look after the implementation of this Agreement. The Joint Commission shall examine if this balance has been achieved and, in case of the contrary, shall determine the measures deemed necessary to establish such a balance. A meeting of the Joint Commission shall take place in principle once every two years and it shall 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 and video industries in one country or the other, or where the application of this Agreement presents serious difficulties. The Joint Commission shall meet within six (6) months following its convocation by one of the two parties.

ARTICLE XVIII

The present Agreement shall be applied provisionally on the date of its signature. It shall come into force when each party has informed the other that its internal ratification procedures been completed.

It shall be valid for a period of three years from the date of its entry into force; 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. Co-productions in progress at the time of notice of termination of the Agreement by either Party, shall continue to benefit fully until completion from the conditions of this Agreement. After expiry of the Agreement its terms shall continue to apply to the liquidation of receipts from completed co-productions.

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

DONE in duplicate at Berne, this 22nd day of October, 1987, in the French and English languages, each version being equally authentic.

Flora Mac Donald
THE GOVERNMENT OF CANADA

Flavio Cotti
THE SWISS FEDERAL COUNCIL

ANNEX

RULES OF PROCEDURE

Application for benefits under this Agreement for any co-production 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 shall 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 shall consist of the following items, drafted in English or French in the case of Canada and in French, German or Italian in the case of Switzerland.

- I. The final script.
- II. A document providing 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 permitted to provide for his replacement if necessary);
4. the budget;
5. the financing plan;
6. the distribution of receipts or markets;
7. 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 IV 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 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 party fails to fulfil 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";
- 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.
- 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.