



# **Canada Feature Film Fund**

## **Guidelines 2004-2005**

**Development, Production and Marketing  
Programs**

— **January 16, 2004** —

# TABLE OF CONTENTS

<b>1. THE CANADA FEATURE FILM FUND (CFFF) .....</b>	<b>2</b>
1.1. GOAL OF THE CFFF .....	2
1.2. SPIRIT AND INTENT OF THE DEVELOPMENT, PRODUCTION AND MARKETING PROGRAMS (MAIN PROGRAMS).....	2
<b>2. ELIGIBLE APPLICANTS.....</b>	<b>3</b>
2.1. BASIC CRITERIA .....	3
2.2. BROADCASTER-AFFILIATED COMPANIES .....	3
2.3. ADDITIONAL CRITERIA FOR DISTRIBUTION COMPANIES.....	4
<b>3. ELIGIBLE PROJECTS .....</b>	<b>5</b>
<b>4. FINANCING FROM THE SELECTIVE COMPONENT .....</b>	<b>6</b>
4.1. PRODUCTION FINANCING FOR PRODUCERS .....	6
4.2. DEVELOPMENT FINANCING FOR PRODUCERS.....	11
4.3. MARKETING FINANCING FOR DISTRIBUTORS .....	15
<b>5. THE PERFORMANCE COMPONENT .....</b>	<b>17</b>
5.1. THE ENVELOPE SYSTEM .....	17
5.2. ACCESSING THE ENVELOPES.....	18
5.3. PRODUCTION FINANCING FOR PRODUCERS .....	19
5.4. FINANCING FOR OTHER ACTIVITIES FOR PRODUCERS .....	20
5.5. DEVELOPMENT FINANCING FOR PRODUCERS.....	20
5.6. MARKETING FINANCING FOR DISTRIBUTORS .....	21
<b>ANNEX I – RECOUPMENT POLICY .....</b>	<b>24</b>
<b>ANNEX II – HOW A PERFORMANCE ENVELOPE IS CALCULATED AND ALLOCATED..</b>	<b>27</b>
PART A: WHAT IS ADJUSTED BOX OFFICE? .....	27
PART B: HOW DOES A FILM QUALIFY? .....	29
PART C: CALCULATING THE ENVELOPE AMOUNT.....	30
PART D: HOW ENVELOPES ARE ATTRIBUTED TO PRODUCTION COMPANIES.....	31
PART E: APPLICATION OF CAPS .....	31

# 1. THE CANADA FEATURE FILM FUND (CFFF)

## 1.1. Goal of the CFFF

The overall goal of the Canada Feature Film Fund is to increase Canadian audiences in theatres for Canadian feature films, aiming to capture 5% of the domestic box office by 2006. In meeting this goal, the Department of Canadian Heritage expects that a more than a proportional increase will occur in the English-language market.

The CFFF includes the Development, Production and Marketing Programs (Main Program); the Screenwriting Assistance Program; the Low Budget Independent Feature Film Assistance Program; the Mini-Treaty Program; and programs for Complementary Activities, including: Canada Showcase (Canadian film festivals); International Festivals and Markets; Versioning; Alternative Distribution and Awards. Collectively, these programs support the key goal of the CFFF, which is to increase the market share of Canadian films. Guidelines for these programs are available at <http://www.telefilm.gc.ca> or by contacting any of Telefilm Canada's Canadian offices.

Telefilm Canada has committed to a *Service Charter for Telefilm Canada's Clients*. This charter is available at <http://www.telefilm.gc.ca/document/en/01/17/charter.pdf> and provides additional information regarding the activities of each of Telefilm Canada's offices.

## 1.2. Spirit and Intent of the Development, Production and Marketing Programs (Main Programs)

The spirit and intent of the Canada Feature Film Fund's Development, Production and Marketing Programs (the Main Program) is to encourage the making and marketing of Canadian feature films that have high box-office potential. At the same time, Telefilm will encourage diversity in feature film production by supporting a range of genres, budgets, companies and regions. Telefilm Canada will also promote the development of partnerships among producers, distributors, exhibitors and international partners. The financial assistance provided will contribute to the overall growth as well as professional and economic development of the Canadian film industry.

In administering the CFFF, Telefilm will seek to support the development, production and marketing of feature films with significant Canadian creative elements, including Canadian stories, characters, setting, themes, talent and technicians, and which reflect the Canadian society and cultural diversity. While Telefilm Canada does not intend to restrict filmmakers in their choices of stories or their natural settings, it will, wherever possible, give priority to projects that present a distinctly Canadian point of view.

The Main Programs are delivered through two instruments: a selective component and a performance component. Resources are reserved for producers and distributors who achieve success at the Canadian box office in the form of performance envelopes. Producers and distributors with envelopes have greater autonomy, discretion and flexibility in the use of their envelope toward the making and marketing of Canadian feature films.

The Selective Component is primarily for producers and distributors without a box-office track record sufficient to obtain a performance envelope. In the Selective Component, Telefilm prioritizes and selects from amongst projects in a highly competitive and oversubscribed environment.

Resources within the Development and Production Program are first allocated on a linguistic basis: one-third for French-language and two-thirds for English-language applications. Within each language allocation, funds are earmarked for those producers qualifying for a performance envelope, with the balance of resources flowing to the selective component. The percentage of resources allocated between the selective and performance components is directly related to the performance of Canadian films at the box office. As the box office grows, so does the size of the performance component to a maximum of 75% of production and 85% of distribution resources.

The resources in the Marketing Program are not allocated on a linguistic basis. Funds are earmarked for distributors qualifying for a performance envelope, and the balance of resources are allocated to the Selective Component.

Telefilm Canada's guidelines are specially designed to reflect the unique realities of the English- and French-language markets. In some areas of the guidelines, differences in the two markets have resulted in asymmetrical policies for each language market.

## **2. ELIGIBLE APPLICANTS**

### **2.1. Basic Criteria**

In order to be considered eligible to apply to the Development, Production and Marketing Programs, an applicant must be a Canadian-controlled corporation with its head office based in Canada, as defined in subsection 1106(1) of the (Draft) *Income Tax Regulations* under the definition of "Canadian." In addition, when assessing an applicant's eligibility, Telefilm Canada may choose to look at such factors as:

- if the Applicant's activities take place in Canada;
- the financial stability of the Applicant (with appropriate exceptions for new production companies without established parent companies); and
- whether or not the Applicant operates principally as a feature film production or distribution entity.

Furthermore, individual producers and other key production personnel exercising financial control over the project must be Canadian citizens, within the definition of the *Citizenship Act*, or permanent residents within the definition of the *Immigration Act (Canada)*.

Eligible production and distribution companies must demonstrate to Telefilm Canada's satisfaction a commitment to producing and/or distributing Canadian feature films and must possess the experience and level of expertise necessary to complete or distribute the production. Telefilm Canada's specific requirements will vary depending on the nature and scope of the project.

### **2.2. Broadcaster-Affiliated Companies<sup>1</sup>**

Broadcaster-affiliated production and distribution companies that meet the basic criteria in section 2.1. are eligible to receive a performance envelope as well as apply for selective marketing assistance. Broadcaster-affiliated production companies are eligible to apply to the English-language selective component.

---

<sup>1</sup> A company is considered to be broadcaster-affiliated if it, or a corporate group of which it is a member, receives more revenue from CRTC-regulated operations (including without limitation, broadcasting, cable, satellite) than from combined production and distribution operations. For the purposes of the above, "corporate group" means two or more affiliated corporations. Telefilm Canada will use the definition of "affiliate" set out in the *Canada Business Corporations Act*.

To ensure fair dealing and to meet the federal government's policy objective to foster a diversity of voices, Telefilm Canada is of the view that safeguards are necessary. These safeguards include limiting the access of broadcaster-affiliated production companies to a maximum of one-third of each of the English-language selective component as well as the English and French performance components.

Telefilm will actively monitor the activities of broadcaster-affiliated companies (production and distribution), in light of concerns that have been or may be raised about potential unfair dealing. In the event that Telefilm determines, based on its own judgment, that a broadcaster-affiliated company has practiced unfair dealing, Telefilm Canada may elect to suspend activity with the company for two years. Telefilm will monitor the impact of this policy on the industry on an annual basis.

### **2.3. Additional Criteria for Distribution Companies**

Telefilm Canada will seek to ensure that each production supported is marketed and distributed as enthusiastically and effectively as possible. As such, Telefilm Canada will require that each film's Canadian distribution be undertaken by a company (or companies) that is in the full-time business of distribution of theatrical feature films.

The following additional eligibility criteria apply to distribution companies seeking to access marketing financing, as well as to those companies "triggering" feature film investments:

- the company has to have been active in theatrical distribution for the last two years, by demonstrating a "sufficient" volume of business: over the past 2 years, the company must have released at least 12 films, of which two had to be Canadian;
- the company has to demonstrate on-going relevant expertise at all times or have one or more senior executives with five years experience in distribution companies of comparable size;
- the company must hold rights to at least three current (produced in the last two years) films to be released within the next 18 months, two of which must be Canadian;
- if affiliated with a Canadian broadcaster, the company must be a separately incorporated entity, distinct from the operations of the broadcaster(s) with which it is affiliated; and
- during the two-year period prior to an application for marketing assistance, and on an ongoing basis, Telefilm Canada expects that the company acquires and theatrically releases a comparable number of Eligible Canadian Films produced by non-related production companies of a similar size and scope.<sup>2</sup>

A start-up company unable to meet all of the above eligibility requirements may nonetheless "trigger" a production financing request or apply for marketing financing if it meets the following conditions: a) has one or more senior executives with 5 years experience in distribution companies of comparable size; b) provides to Telefilm's satisfaction a corporate business plan for the distribution entity that, among other things, describes the plan for how the company will meet the above eligibility requirements; and c) in the case in which a company plans to access marketing assistance, the company will be expected to acquire and theatrically release a comparable number of Eligible Canadian Films produced by non-related production companies of a similar size and scope.

---

<sup>2</sup> Telefilm Canada will use the Handbook of the Canadian Institute of Chartered Accountants as a guide in determining when two companies are related.

Telefilm Canada will monitor the activities of Eligible Distributors in light of concerns about potential reduction in non-related productions. In the event that Telefilm determines, based on its own judgment, that an Eligible Distributor has disproportionately reduced its non-related activity for the benefit of related production, Telefilm Canada may elect to suspend activity with the company until such time as the activities of the Eligible Distributor are rebalanced in favor of non-related production.

### 3. ELIGIBLE PROJECTS <sup>3</sup>

An eligible project is a feature-length fictional film aimed primarily at the Canadian theatrical market.<sup>4</sup> In addition, the project must:

- be under Canadian ownership, that is, its copyright must be beneficially owned by a Canadian (with appropriate exceptions for Official Coproductions);
- be under Canadian financial, distribution and creative control, as well as its rights and options necessary for the full and complete exploitation of the project must be held by an eligible production company (with appropriate exceptions for Official Coproductions);
- with respect to Canadian content certification, be **either**:
  - eligible for certification as a “Canadian Production,” pursuant to the criteria of the Canadian Audio-visual Certification Office (CAVCO), or satisfies the definition of a Canadian program set out by the Canadian Radio-Television and Telecommunications Commission (CRTC) and achieves a minimum of 8 out of 10 points of Canadian content using the CAVCO point scale; **or**
  - eligible to be certified as an Official Coproduction deemed as qualified under established criteria (see Telefilm Canada’s policy document entitled Official Coproductions);
- be written by a Canadian scriptwriter and directed by a Canadian director. Appropriate exceptions will be made for Official Coproductions as well as those otherwise Eligible Projects requesting a lower level of financial participation from Telefilm. Telefilm will consider indicators in determining eligibility that include: the degree of involvement of the Canadian writer (must be meaningful and collaborative); and whether the underlying property and story are Canadian;
- have a Canadian performer in the lead role (with appropriate exceptions allowed by Official Coproductions). Telefilm Canada will continue to allow for flexibility in assessment of the Canadian performer in a lead role in co-protagonist and ensemble situations, as well as where the non-Canadian actor is integral to the market potential of the film (that is, marquee cast). Projects considered to be a vehicle for a non-Canadian star are not eligible;
- not disguise its Canadian location except in cases where it is integral to the telling of a Canadian story;
- if budgeted at more than \$1 million, have a commitment from an eligible Canadian distribution company for theatrical release in Canada within one year of delivery; and
- not contain any elements of serious or gratuitous sexual violence or exploitation, and must not be obscene, indecent or pornographic within the meaning of the Criminal Code, or libelous or in any other way unlawful.

---

<sup>3</sup> The term “eligible project” is used interchangeably with “film” or “project” throughout the Guidelines.

<sup>4</sup> The project is at least 75 minutes in duration. Non-fiction/documentary projects are not eligible. Projects whose first window is more likely home video or television broadcast are ineligible.

## 4. FINANCING FROM THE SELECTIVE COMPONENT

### 4.1. Production Financing for Producers

#### 4.1.1. Selection Process and Evaluation Criteria for English-Language Films

Applications are submitted to Telefilm Canada's local offices. The local office determines the eligibility of the applicant and project, including compliance with standard business practices and recoupment policy.

The evaluation criteria applied to projects depends on the size of the financing request being submitted by the applicant. The higher the level of financing being sought, the more the film will be expected to contribute to reaching the box-office objective. Films that are not expected to be significant contributors to the box-office objective are still eligible for financing but for a smaller amount.

As an investor, Telefilm negotiates its participation, which varies from project to project and may be less than requested.

##### 4.1.1.1. The National Comparative (requests of \$1 million or more)<sup>5</sup>

Projects requesting more than \$1 million are prioritized among projects from across Canada within a National Comparative process that includes representation from all of the offices. In the event that an office is satisfied that the minimum conditions are met as well as that the project is "viable"<sup>6</sup> and stands a reasonable chance of making at least \$1 million in Canadian box-office revenues ("the hurdle"), the project will be presented to the National Comparative.

The goal of this comparative is to identify the projects with the greatest potential to succeed at the box office. All films requesting \$1 million or more will be expected to demonstrate their capacity to meet or exceed a "hurdle" of \$1 million in Canadian box-office receipts.

---

<sup>5</sup> When reference is made in this section to projects seeking \$1 million or more, it is implied that the \$1 million includes combined potential financing from the selective component, a performance envelope and from the CTF-LFP (section 4.1.3.)

<sup>6</sup> The viability of the "package" (as described in this section) refers to the following:

- the likelihood and track record of the producer in bringing the project to fruition, including, for example, securing marquee talent,
- the stability of the proposed financial structure. For example: a financial structure with more than 20% of financial sources unsecured (in addition to the CFFF and LFP requirements) is typically not considered stable.

The criteria used by Telefilm Canada to evaluate the box-office potential of a project are as follows:

<b>EVALUATION CRITERIA</b>	
The domestic "trigger" distributor's capacity, commitment to the project and track record of success	<ol style="list-style-type: none"> <li>1. The marketing plan:               <ol style="list-style-type: none"> <li>a. the detailed description of how the box-office projections are built up given the demographics of the film;</li> <li>b. the proposed release pattern;</li> <li>c. the performance of comparable films;</li> <li>d. the description of the key marketable elements of the film; and</li> <li>e. the description of how the proposed advertising spend drives the box-office projection, including the type of media targeted, the tie-in's, cross-promotions, etc.</li> </ol> </li> <li>2. The size and strength of the distributor's P&amp;A commitment;</li> <li>3. The distributor's risk in the project (minimum guarantee, P&amp;A commitment, pre-sold broadcast licenses); and</li> <li>4. The distributor's track record of success.</li> </ol>
The "package"	<ol style="list-style-type: none"> <li>1. Originality, quality and readiness of the script;</li> <li>2. Marquee value of the potential/planned/budgeted cast;</li> <li>3. Marquee value of other elements of the project (e.g. source material, director);</li> <li>4. Track record of the creative team (primarily producer, director, scriptwriter);</li> <li>5. Director's vision for the film;</li> <li>6. Capacity of the production budget to realize the full potential of the script - production value; and</li> <li>7. Canadian elements - story, character, setting, source of the story, majority producer, writer, director.</li> </ol>
International Attachments	<ol style="list-style-type: none"> <li>1. The degree to which international commitments from distributors, broadcasters and financiers have the potential to enhance the Canadian box office.</li> </ol>

Telefilm also seeks to maximize its access to revenue. Therefore, in addition to ensuring that projects maximize their potential to reach international markets, Telefilm will prioritize between otherwise comparable projects with those with the greatest potential to return revenue to the CFFF.

#### **4.1.1.2. Regional Comparatives (requests of less than \$1 million)<sup>7</sup>**

Projects requesting less than \$1 million are assessed in comparatives held within each of Telefilm's local offices. Projects are in competition with other projects from the same region. Each office, while continuing to place emphasis on the box-office potential of a film will seek to enhance the portfolio of films in which Telefilm invests and, in so doing, will use its resources to encourage a diversity of voices, genres, cultures and regions as well as assist in the development of emerging talent.

<sup>7</sup> When reference is made in this document to projects requesting financing less than \$1 million, it is implied that this includes potential financing from the selective component, amounts from a performance envelope (the CFFF) and the CTF-LFP (Section 4.1.3)



#### **4.1.1.3. Enhancements**

Telefilm Canada's financing from the Selective Component may also be applied to costs for enhancements for films already supported by the CFFF during the production stage. Enhancements are not overages to the production. Enhancements are considered to be extraordinary costs outside the production budget directly related to increasing the Canadian box-office potential for the project (that is, soundtrack, special effects, additional shooting and test marketing).

In assessing applications for financing support for enhancements, Telefilm Canada will use the following evaluation criteria:

- the increase in the market potential of the film, as evidenced by the distributor's revised box office projections;
- the revised marketing plan; and
- the revised P&A commitment.

Telefilm Canada will favour those requests for enhancements where the film has been subjected to a market test screening.

Telefilm Canada expects that its additional investment (as well as any other participants' additional amounts) will recoup preferentially.

#### **4.1.2. Selection Process and Evaluation Criteria for French-Language Films**

French-language projects from across Canada are received, evaluated and compared at the Montreal office of Telefilm Canada. Projects are compared amongst others within the same budgetary range. Due to the box-office success of French-language films, Telefilm is not requiring a minimum box-office threshold as it does for English-language projects. The selection process will nonetheless continue to ensure that a significant portion of projects demonstrate box-office potential.

The CFFF allocates a portion of its French-language resources to projects with budgets of less than \$1.8 million that are compared to other projects of the same language and budgetary range. Telefilm will seek to create a portfolio of lower budget films that encourage diversity of voice, culture and genre, as well as assist in the development of emerging talent.

Projects are assessed based on the following evaluation criteria:

<b>EVALUATION CRITERIA</b>	
Creative	<ol style="list-style-type: none"> <li>1. Originality of the project;</li> <li>2. Quality and production-readiness of the script;</li> <li>3. Director's vision of the project;</li> <li>4. Track record of the Canadian creative team (producer, director, scriptwriter, etc.) and international partners if applicable; and</li> <li>5. Reflection of Canadian society and cultural diversity.</li> </ol>
Audience	<ol style="list-style-type: none"> <li>1. Potential for success in theatres (with consideration given to size and type of film);</li> <li>2. Marquee value of key elements of the project (director, performers, source material, etc.);</li> <li>3. Potential for success in international markets and festivals;</li> <li>4. Distributor's vision of the project and the marketing plan;</li> <li>5. Track record of distributor and producer in reaching box-office results in a similar genre;</li> <li>6. Track record of foreign sales agent; and</li> <li>7. Financial commitment by the distributor to the costs associated with the theatrical release of the film.</li> </ol>
Financial/ Recoupment	<ol style="list-style-type: none"> <li>1. Optimization of available financial sources;</li> <li>2. Projected revenues;</li> <li>3. Favourable recoupment schedule and distribution terms;</li> <li>4. Production budget and production values; and</li> <li>5. Applicant and distributor track records.</li> </ol>
Corporate Development	<ol style="list-style-type: none"> <li>1. Corporate development of producer (business plan, strategic direction);</li> <li>2. Level of creative, financial and distribution control over project; and</li> <li>3. If Official Coproduction: strategic alliances developed between partners.</li> </ol>

As an investor, Telefilm negotiates its participation, which varies from project to project and may be less than requested.

#### **4.1.3. How Much?**

Applicants may apply for production financing from the Selective Component to a per project maximum of \$3.5 million (including any performance envelope money) or 49% of the Canadian production costs, whichever is less. Telefilm's support will generally be provided in the form of an equity investment.

In exceptional circumstances, Telefilm may provide financing in excess of 49%, up to 64% of the eligible Canadian production costs. Any amount above 49% will be provided in the form of a producer equity advance<sup>8</sup>.

<sup>8</sup> A producer equity advance is an interest-free advance to the production company to be invested by it in the production. It is payable on the same schedule as Telefilm Canada's investment, and is recouped by Telefilm Canada under the same conditions as its equity investment.

English-language films seeking greater than 49% must:

- include a hard P&A commitment,<sup>9</sup> from an Eligible Distributor in an amount equivalent to at least 15% of the film's budget;
- demonstrate the highest level of Canadian content (i.e., CAVCO points, setting, character and story); and
- exhibit exceptional creative merit.

French-language films seeking greater than 49% must:

- include a level of P&A commitment commensurate with those typically seen at a similar budget level;
- demonstrate the highest level of Canadian content (i.e., CAVCO points, setting, character and story); and
- exhibit exceptional creative merit.

The **Canadian Television Fund** ([www.canadiantelevisionfund.ca](http://www.canadiantelevisionfund.ca)) provides financing for feature films from the License Fee Program (LFP) and the Equity Investment Program (EIP) to support the objectives of the CFFF. Telefilm administers the EIP resources in support of production activities under the Selective Component (see Section 4).

The LFP can provide additional financing to films in the form of a license fee top-up. The LFP harmonizes its funding decisions with those of Telefilm and supports those projects that:

- meet the minimum broadcast license fee requirements of the LFP;
- receive funding from the Selective Component; and
- receive from Telefilm a positive recommendation for a license fee top-up.

The amount of the license fee top-up is the lesser of: four times the license fee (for English-language features) or eight times the license fee (for French-language films), 20% of the Canadian production costs, or \$500,000 per film.

This license fee top-up amount *is in addition* to the maximum per project participation within the English-language selective component. This license fee top-up amount *is included* in the maximum per project participation with the French-language selective component.

#### **4.1.4. Recoupment**

Telefilm will recoup its financing according to the contract it enters into with the production company.

Telefilm Canada will recoup its participation no less favourably than pro rata and pari passu with all other financial contributions, including:

- producer investment or deferral; private fund and provincial agency investment; broadcaster investment; craft and creative deferrals (whether or not by related parties) and any form of producer-related financial participation that is directly or indirectly supported by producer fees; and corporate overhead or federal or provincial tax credits.

For further details on Telefilm's minimum recoupment expectations, see [Annex 1](#).

---

<sup>9</sup> A hard commitment is a written agreement describing the financial resources the distributor will commit to the project, and includes the assurance that the proposed P&A budget will not be revised downward without the producer's and Telefilm's approval.

## 4.2. Development Financing for Producers

The policies related to the Selective Component of the Development Assistance Program are specially designed to reflect the realities of the English and French language markets. Differences in the two approaches have resulted in separate guidelines being developed for each language market.

Policies related to Eligible Applicants, Projects and Costs are the same in both funding components as well as in English and French.

### 4.2.1. Eligible Applicants

Development financing is available to companies of all sizes, provided that the applicant satisfies all other CFFF criteria for Eligible Applicants. See Section 2., for complete information on Eligible Applicants.

### 4.2.2. Eligible Projects

See Section 3, above, for complete information on Eligible Projects.

### 4.2.3. Eligible Costs

Eligible costs are as follows:

- Costs related to each Stage of Development as explained in detail throughout the guidelines. Standardized development budgets are also available from Telefilm Canada's offices or on its Website at [www.telefilm.gc.ca](http://www.telefilm.gc.ca); and
- For small- and medium-sized companies (SMEs<sup>10</sup>) only, overhead and producer fees may each not exceed 20% of direct allowable costs

Expenses incurred and/or paid previous to submission of the application are normally not eligible.

Only Canadian costs are admissible, with the following exceptions:

- non-Canadian costs allowable in Official Coproductions (See Section 4.2.4, below); and
- For all stages of development, non-Canadian script editors and consultants whose services do not result in any proprietary interest in the script.

---

<sup>10</sup> Small- and medium-sized companies have gross annual consolidated (including related companies) revenues of less than \$25 million, averaged over the past three years or less depending on the age of the company, and are not related to any company that exceeds the above threshold. This definition, amongst other things, excludes large companies that are publicly traded but does not exclude small publicly traded companies. Generally, two companies are related when the reported financial information of one is to be consolidated (full consolidation or equity method) with the audited reported financial information of the other. Telefilm Canada will use the Handbook of the Canadian Institute of Chartered Accountants as a guide in determining when two companies are related. Telefilm is currently reviewing its SME definition. For 2004-2005, any company deemed to be an SME in 2003-2004, will maintain the same status.

#### 4.2.4. Official Coproductions

Telefilm Canada wishes to support the development of projects that may become Official Coproductions, with stories that reflect the cultures of the coproducing countries, while encouraging greater financial participation on the part of the coproducing country's national film financier, equivalent to Telefilm Canada.

During the Scriptwriting Stage, Telefilm Canada will allow writing fees for a non-Canadian writer to be eligible for support when: the project is intended to be an Official Coproduction; the writer is from the coproducing country, and the equivalent national agency to Telefilm in the coproducing country is also financing the development budget. At the Packaging Stage, for projects of this type with a non-Canadian writer attached, Telefilm Canada requires that the attached director must be Canadian.

#### 4.2.5. FINANCING – English-Language Market

Financing is available for three stages of development:

- Scriptwriting;
- Packaging; and
- "Greenlight."

##### 4.2.5.1. Financial Participation

Telefilm Canada's financing will be in the form of a non-interest bearing repayable advance. The maximum level of Telefilm Canada's participation at each stage is 80% of the Development Budget to a maximum amount of:

Stages	Maximum \$
Scriptwriting	\$75,000
Packaging	\$75,000
"Greenlight"	\$150,000
Combined Maximum	\$300,000

- Large production companies, including broadcaster-affiliated production companies are capped at 50% of the Development Budget to the above-mentioned dollar amounts.

Producers who received assistance from Telefilm Canada for the development of English-language projects prior to the publication of these guidelines are eligible to apply for additional support, up to the published maximums for each Stage of Development. Telefilm will take into account all previous commitments in calculating its maximum participation in any Stage of Development as described above.

In the context of significant oversubscription and limited resources, not all eligible applications submitted to the Selective Component will be supported. Telefilm Canada may also support successful projects at an amount less than the maximum.

##### 4.2.5.2. Scriptwriting

The Scriptwriting Stage provides the opportunity for a producer and writer to develop a property to the point where other essential market elements can be attached.

Financial support for scriptwriting is available for all phases of a property's creative development, from concept through to the final draft of a screenplay. Eligible costs at this stage include but are not limited to: the optioning or acquisition of a literary property; writing, script editing and consulting.

#### **4.2.5.2.1. Evaluation Criteria**

Telefilm Canada will base its decisions on the following criteria:

- the originality and quality of the creative materials; and
- the track record of the creative team, in particular the producer and scriptwriter.

#### **4.2.5.2.2. Repayment**

Scriptwriting advances are repayable according to the contract that Telefilm Canada and the producer enter into, generally, on the earlier of: the first day of principal photography (or any other use of the script) or the sale, assignment or other disposition of the rights to the project (including possibly the optioning of the script).

#### **4.2.5.3. Packaging**

The Packaging Stage provides support for the subsequent drafts of a screenplay where market elements have been attached. Applications at this stage must have attached a director (as shown by a fully executed Director's Agreement) and an Eligible Distributor (as defined in Section 2, above). Telefilm Canada will provide financial support toward the further development of: a screenplay that incorporates the director's vision and input from the Eligible Distributor, a business and financing plan as well as a preliminary theatrical marketing plan. The preliminary marketing plan should identify the following: target audience(s), commercial potential and a preliminary theatrical release strategy in Canada.

Telefilm Canada may accept a professional theatrical marketing consultant (Market Expert) in lieu of an Eligible Distributor. In exceptional circumstances, Telefilm Canada may waive the requirement of an Eligible Distributor, where the producer has a distinguished track record in box-office performance. Eligible costs include, but are not limited to: those associated with writing and script editing or consulting; costs associated with the attached director and distributor or market expert; those related to raising financing, casting, preliminary location scouting and budget breakdown; and all other costs typically associated with the development and packaging of a screenplay.

Eligible Distributors who provide their expertise at this Stage of Development may be compensated on a "fee for service" basis **or** receive right of first negotiation for the Canadian distribution rights to the subsequent feature film. The Market Expert may be compensated on a "fee for service" basis.

#### **4.2.5.3.1. Evaluation Criteria**

Telefilm Canada will base its decisions on the following criteria:

- the originality and quality of the creative materials;
- the track record of the creative team, in particular the producer and scriptwriter; and
- the track record and commitment of the attached Eligible Distributor or Market Expert.

#### **4.2.5.3.2. Repayment**

Packaging advances are repayable according to the contract that Telefilm Canada and the producer enter into, generally, on the earlier of: the first day of principal photography (or any other use of the script) or the sale, assignment or other disposition of the rights to the project (including possibly the optioning of the script).

#### **4.2.5.4. Greenlight**

The Greenlight Advance is only available for those feature film projects that have already received an Expression of Interest Letter or Commitment Letter from Telefilm Canada for production financing. Eligible costs at this stage include those associated with the final polish of the screenplay, closing agreements with financial participants, attaching cast and early pre-production; in other words, generally those costs associated with fulfilling the conditions outlined in the Expression of Interest or Commitment Letter.

To assist producers who wish to secure certain “pay or play” arrangements, Telefilm Canada will consider participating beyond the published maximum amount .

##### **4.2.5.4.1. Financial Participation and Repayment**

Telefilm Canada’s financial participation at this stage is in the form of an advance against Telefilm Canada’s production financing.

In the event that the project proceeds into production with financial support from Telefilm Canada this advance will be converted into an equity investment in the production.

In the event that the project does not proceed into production by a defined date, the advance will be treated as a non-equity repayable advance similar to a development advance at the Scriptwriting and Packaging Stages.

#### **4.2.6. FINANCING – French-Language Market**

Financing is available from the optioning or acquisition of a literary property to all phases of a property’s creative development, from concept through to the final draft of a screenplay, and for the search for partners and financing. Applications should normally be made one phase at a time. The development phases normally correspond with the major writing phases such as outline, treatment, first draft, subsequent drafts or rewrites, polishes, etc.

##### **4.2.6.1. Financial Participation**

Telefilm Canada’s financing will be in the form of a non-interest bearing advance up to 60% of the eligible Canadian development costs per phase of scriptwriting, up to \$150,000 per project over all phases.

In the context of significant oversubscription and limited resources, not all eligible applications submitted to the Selective Component will be supported. Telefilm Canada may also support successful projects at an amount less than the maximum.

#### 4.2.6.2. Evaluation Criteria

Telefilm Canada will base its decisions on the following criteria:

- the originality and quality of the creative materials; and
- the track record of the creative team, in particular the producer and scriptwriter.

#### 4.2.6.3. Repayment

Development advances for French-language projects financed through the Selective Component are repayable according to the contract that Telefilm Canada and the producer enter into, generally, on the earlier of: the first day of principal photography (or any other use of the script) or the sale, assignment or other disposition of the rights to the project (including possibly the optioning of the script).

### 4.3. Marketing Financing for Distributors

Financing is available for Canadian theatrical release costs ranging from early stage Canadian marketing costs including, but not limited to, the creation of materials such as posters, teaser trailers and test screenings, to test marketing and campaign creation to prints and advertising (P&A). It is expected that distributors will professionally test market all films at least twice, once before the final cut of the film, and once before the finalisation of the marketing strategy. Telefilm is committed to ensuring that sufficient resources are available for this purpose, and that those films that have the best chance of contributing to the Fund's target of a 5% market share of Canadian box-office revenues receive financial support for P&A.

#### 4.3.1. Selection Process

Applicants must submit an application for financing to their local office. Applications received after the deadline will not be assessed, and funding reserved will be freed up for the benefit of other projects.

	<b>Deadline</b>	<b>Documentation Requirement</b>
For CFFF Productions	30 days following receipt of Telefilm's Commitment Letter	Application Form and Preliminary Marketing Plan
	30 days prior to release of the film	Full Application as well as updated, detailed Marketing Plan
For Non-CFFF Productions	30 days prior to release of the film	Full Application and detailed Marketing Plan

Telefilm will commit resources to successful applications in the year in which the film is to be released, subject to the fiscal constraints of agreements with government within which Telefilm operates. In the event that the distributor receives a performance envelope in the year in which funds have been committed, then these resources will firstly be drawn from the resources of the performance envelope. Any committed amount in excess of the amount available within their performance envelope will be financed from the Selective Component.



Eligible Distributors must include, within their application for marketing assistance, a detailed Marketing Plan for the Canadian theatrical release (to be updated at the completion of production) which provides:

- a detailed description of how the box-office projections are built up given the demographics of the film;
- the proposed release pattern;
- the performance of comparable films;
- a description of the key marketable elements of the film; and
- a description of how the proposed advertising spend drives the box-office projection, including the type of media targeted, tie-in's, cross-promotions, etc.

Telefilm's evaluation of an application will be based on:

- the box-office expectations for the film;
- the detailed Marketing Plan;
- the size and strength of the distributor's P&A commitment;
- the distributor's risk in the project (minimum guarantee, P&A commitment, pre-sold broadcast licenses); and
- the distributor's track record.

Telefilm Canada will prioritize marketing assistance to projects supported in production by the CFFF that are most likely to achieve the box-office objectives, with particular emphasis on projects where distributors made P&A commitments at the production stage.

It is expected that Telefilm's selective marketing resources will be exhausted by these films. Nonetheless, within any remaining resources, Telefilm is prepared to consider marketing support for eligible projects not supported with production financing by the CFFF, or, in exceptional cases, feature documentaries, where such projects are expected to contribute to the box-office objectives of the CFFF.

#### **4.3.2. How Much?**

Telefilm Canada's financing (including any performance envelope money) will be in the form of a non-interest bearing advance up to 75% of the eligible Canadian marketing costs for the release of the film.

#### **4.3.3. Repayment**

For projects whose marketing assistance is contracted with Telefilm Canada in 2004-2005, 35% of Telefilm Canada's financial participation is in the form of a grant not recoupable by either Telefilm Canada or the distributor (and should be reported to producers as a reduction in marketing expenses).

- The remaining 65% of Telefilm Canada's financial participation is repayable from gross distribution revenues, after deduction of allowable distribution fees, but prior to recoupment of any expenses not in the approved budget,<sup>11</sup> and prior to the recoupment of the minimum guarantee, *pari passu* as follows:

---

<sup>11</sup> This is provided, however that if applicable, the costs of versioning the production into the other official language for use in Canada, if supported by Telefilm Canada may be recouped in priority to the advance for marketing.

Tier 1	50% to Telefilm Canada and 50% to the distributor, until recoupment by the distributor of its financial contribution to the approved costs
Tier 2	100% to Telefilm Canada until full repayment of its recoupable portion of the financing

Telefilm will gradually phase-out the grant portion of its marketing financing assistance.<sup>12</sup> Over the next three years, the grant portion of Telefilm’s financial participation will be reduced as follows:

- 2004-2005: 35%
- 2005-2006: 20%
- 2006-2007: 0%

#### **4.3.4. Telefilm Canada’s Corporate Trailer**

Each film receiving Marketing Assistance either through the Selective Component or the Performance Component will be required to attach Telefilm Canada’s corporate trailer at the head of the film for its theatrical release in Canada.

## **5. THE PERFORMANCE COMPONENT**

### **5.1. The Envelope System**

The CFFF recognizes achievement at the Canadian box office by earmarking resources to successful production and distribution companies for their subsequent eligible activities (performance envelopes). The level of resources allocated within the CFFF to performance envelopes is directly related to the box-office performance of Canadian films during the reference period. As the market share of Canadian films increases, so too, will the number of companies that can enjoy the benefits of an envelope.

With this in mind, the following objectives govern the envelope system as a mechanism to achieve the overall goal of the CFFF:

1. envelopes should only be earmarked for those companies with the most distinguished track record of performance at the Canadian box office;
2. performance envelopes must be of a sufficient size that companies need not apply to the selective components for “top-up” resources; and
3. the envelopes should provide these exceptional companies with increased predictability of financial support, autonomy of decision-making and greater flexibility in the use of resources as compared to those that must apply to the selective components.

For a more detailed outline of the calculation of performance envelopes please consult [Annex II](#).

<sup>12</sup> For those projects where Telefilm Canada is participating in production financing, Telefilm Canada will grandfather its marketing assistance under the 2003-2004 guidelines, if it has issued the project a Letter of Interest to participate in production financing prior to January 19<sup>th</sup>, 2004. For those projects where Telefilm Canada is not participating in production financing, Telefilm Canada will grandfather its marketing assistance under the old rules for those projects to be theatrically released in Canada prior to March 31<sup>st</sup>, 2004, where it receives a complete marketing assistance application, including a fully executed acquisition agreement, prior to February 23, 2004.

In the event of changes in management or ownership of a production company for which an envelope has been earmarked, (that is, sale, merger, change in management, etc.) Telefilm will review the degree to which those involved in creating the exceptional track record in Canadian box office remain involved and, thus, merit the increased autonomy and flexibility as provided by performance envelopes. In the event that Telefilm, in its sole discretion, is not satisfied that the ongoing earmarking of the performance envelope will meet the spirit and intent of the CFFF, these funds will be transferred for use in the Selective Component to which all production companies will be eligible to apply.

## **5.2. Accessing the Envelopes**

Producers with performance envelopes have privileges that are not provided to companies that must apply to the highly oversubscribed and competitive selective process.

### **5.2.1. Meaningful Involvement**

Telefilm will ensure that producers access their envelopes in support of projects in which they are meaningfully involved. Telefilm considers meaningful involvement a safeguard to discourage envelopes from being traded as assets. Within this context, the following are Telefilm's requirements for producers' meaningful involvement in a project or projects.

Producers with performance envelopes must:

- a) acquire copyright ownership in the eligible project, at least commensurate with the level of participation from the performance envelope relative to the size of the Canadian production budget, but, in any case, no less than 20% copyright ownership;
- b) receive a share of producer's fees and corporate overhead commensurate with their ownership interest;
- c) retain control commensurate with their ownership in the development, production, marketing and subsequent revenue reporting of the production;
- d) retain future access to a performance envelope commensurate with their ownership interest should the film be successful at the Canadian box office; and
- e) enter into meaningful collaboration with partners prior to commencement of principal photography, as demonstrated by a signed co-ownership or coproduction agreement that includes a description of all of the above.

### **5.2.2. Accessing Financing from the Selective Component<sup>13</sup>**

Producers with envelopes should not split their envelope between two or more eligible projects with the intention of applying for "top up" financing on these projects from the Selective Component.

Telefilm will require that producers that have a performance envelope first contract their envelope before applying for financing from the Selective Component.

A producer with an envelope may request that Telefilm commit resources from their envelope for one project and at the same time, apply with another project for partial or full financing from the Selective Component. In the event that the application to the Selective Component is successful, Telefilm will freeze the committed resources within their

<sup>13</sup> Producers may set aside an appropriate reserve from their performance envelopes for development not to exceed \$100,000.

performance envelope for six months or until September 7, 2004, whichever is sooner. In the event that the film, for which resources were conditionally committed, does not fulfill the conditions and proceeds to contract by the deadline, these funds will not be transferable by the producer. Instead, Telefilm will remove these committed funds from the producer's performance envelope, and apply them to reduce the commitment from the Selective Component of the other project.

Within the Selective Component, Telefilm will prioritize from among applications with a similar box-office expectation, those received from producers without a performance envelope.

Producers who partner with other producers seeking financing from the Selective Component, in addition to demonstrating their meaningful involvement in the Eligible Project (as outlined in Section 5.2.1.), will also be required to provide to the Eligible Project an amount from their envelope that is the lesser of their entire remaining envelope (less reserves for development) and the amount which is their ownership interest in the film multiplied by the total request for production financing to the CFFF (performance and selective).

## **5.3. Production Financing for Producers**

### **5.3.1. How Much?**

Telefilm Canada's financing, from the producer's envelope, will be provided in the form of an equity investment of up to 49% of the eligible Canadian production costs. There is no absolute dollar cap unless the producer is also seeking financing from the Selective Component, in which case the caps to selective financing identified in Section 4.1.3 will apply.

Telefilm's financing from the producer's envelope can increase up to a maximum of 64% of the eligible Canadian production costs, if the project meets the following criteria. Any amount above 49% will be provided in the form of a producer equity advance<sup>14</sup>.

English-language films must:

- include a hard P&A commitment<sup>15</sup> from an eligible distributor in a minimum amount equivalent to the lesser of 15% of the film's budget or \$1 million; and
- those seeking greater than 49% must demonstrate the highest level of Canadian content (i.e., CAVCO points, setting, character and story).

French-language films seeking greater than 49% must:

- include a level of P&A commitment commensurate with those typically seen at a similar budget level; and
- demonstrate the highest level of Canadian content (i.e., CAVCO points, setting, character and story).

---

<sup>14</sup> A producer equity advance is an interest-free advance to the production company to be invested by it in the production. It is payable on the same schedule as Telefilm Canada's investment, and is recouped by Telefilm Canada under the same conditions as its equity investment.

<sup>15</sup> A hard commitment is a written agreement describing the financial resources the distributor will commit to the projects, and includes the assurance that the proposed P&A budget will not be revised downward without the producer's and Telefilm's approval.

Telefilm Canada will have the sole authority to determine if the above criteria have been met.

### **5.3.2. Recoupment**

Telefilm will recoup its financing according to the contract it enters into with the production company.

Telefilm Canada will recoup its participation no less favourably than pro rata and pari passu with all other financial contributions, including:

- producer investment or deferral; private fund and provincial agency investment; broadcaster investment; craft and creative deferrals (whether or not by related parties) and any form of producer-related financial participation that is directly or indirectly supported by producer fees; and corporate overhead or federal or provincial tax credits.

For further details on Telefilm's minimum recoupment expectations, see [Annex 1](#).

## **5.4. Financing for Other Activities for Producers**

Telefilm Canada's financing from the producer's performance envelope may also be applied to costs such as enhancements or breakage for films otherwise supported by the CFFF.

Breakage is considered to be an extraordinary cost directly related to the engagement of a performer(s) with exceptional marquee value. Telefilm will only consider costs related to non-Canadian performers in films with significant Canadian creative elements, including Canadian stories, characters, setting, themes, talent and technicians, and that reflect the Canadian society and cultural diversity.

Enhancements are not overages to the production budget. Enhancements are considered to be extraordinary costs outside of the production budget directly related to increasing the Canadian box-office potential for the project (that is, soundtrack, special effects, additional shooting and test marketing). Telefilm Canada expects that its additional investment (as well as any other participants' additional amount) will recoup preferentially.

### **5.4.1. How Much and Repayment**

Telefilm's participation is in the form of an advance to a maximum of the percentage and dollar caps as outlined in 5.3.1. Telefilm's participation in such cases will be recouped preferentially relative to other investors and no less favorably than pro rata and pari passu with any other participants in such costs.

## **5.5. Development Financing for Producers**

### **5.5.1. Access to Performance Funds for Development**

No track record or creative assessment is made by Telefilm Canada of projects submitted for development financing through a producer's performance envelope. Telefilm Canada will limit its assessment of applications to eligibility criteria.

An envelope earned in one language may be used for the development of a project in the other official language.

### **5.5.2. Multi-phase and Multi-Stage Applications**

Applications covering multiple phases (concept to polish) and stages (Scriptwriting and Packaging) are accepted. For English-language projects, the attachment of an Eligible Distributor at the Packaging Stage is not required.

### **5.5.3. Greenlight Stage**

For French- and English-language projects, an Expression of Interest Letter from Telefilm Canada at the "Greenlight" Stage is not required. To be eligible for financing at the Greenlight Stage, the producer must submit a complete application for production financing, and demonstrate that they have sufficient resources within their envelope to complete the production financing of an otherwise Eligible Project to which an Eligible Distributor is attached.

### **5.5.4. Financial Participation**

The percentage and dollar maximums applicable to the Selective Components in English and French are also applied to the Performance Component (see sections 4.2.5.1. and 4.2.6.1.).

### **5.5.5. Repayment**

Telefilm Canada's financial participation in all stages of development is in the form of an advance against Telefilm Canada's production financing.

In the event that the project proceeds into production with financial support from Telefilm Canada, financed exclusively through the producer's performance envelope, this advance will be converted into an equity investment in the production.

In the event that the project proceeds into production without financial support from Telefilm Canada, or does not proceed into production by a defined date, the advance will be treated as a non-equity repayable advance similar to a development advance in the Selective Component. In this case, the development advance is repayable according to the contract that Telefilm Canada and the producer enter into, generally, on the earlier of: the first day of principal photography (or any other use of the script), or the sale, assignment or other disposition of the rights to the project (including possibly the optioning of the script).

## **5.6. Marketing Financing for Distributors**

Financing is available for Canadian theatrical release costs, ranging from early stage Canadian marketing costs including, but not limited to, the creation of materials such as posters, teaser trailers and test screenings, to test marketing and campaign creation to prints and advertising (P&A). It is expected that distributors will professionally test market all films at least twice, once before the final cut of the film, and once before the finalisation of the marketing strategy. A distributor with an performance envelope has the discretion to use their envelope in support of a feature film that will not receive production financing from the CFFF, but is otherwise an eligible project.

Telefilm Canada expects that distributors will manage the use of their envelopes in a manner that ensures adequate resources are available to subsequently released projects supported by the CFFF for which the distributor has made a marketing commitment. Telefilm Canada will commit resources for successful applications in the year in which the film is to be released, subject to the fiscal constraints of agreements with the government under whom Telefilm operates. Resources will first be drawn down from the distributors performance envelope to meet these commitments. Telefilm Canada will require that distributors that have a performance envelope first utilize their envelope before applying for financing from the Selective Component.

Applicants must submit an application for financing to their local office.

	<b>Deadline</b>	<b>Documentation Requirement</b>
For CFFF Productions	30 days following receipt of Telefilm’s Commitment Letter	Application Form and Preliminary Marketing Plan
	30 days prior to release of the film.	Full Application as well as updated, detailed Marketing Plan
For Non-CFFF Productions	30 days prior to release of the film	Full Application and detailed Marketing Plan

Eligible Distributors must include, within their application for marketing assistance, a detailed Marketing Plan for the Canadian theatrical release (to be updated at the completion of production) which provides:

- a detailed description of how the box-office projections are built up given the demographics of the film;
- the proposed release pattern;
- the performance of comparable films;
- a description of the key marketable elements of the film; and
- a description of how the proposed advertising spend drives the box-office projection, including the type of media targeted, tie-in’s, cross-promotions, etc.

In exceptional cases, Telefilm is prepared to consider marketing support for feature documentaries, where such projects are expected to contribute to the box-office objectives of the CFFF.

### **5.6.1. How Much?**

Telefilm Canada’s financing will be in the form of a non-interest bearing advance up to 75% of the eligible Canadian marketing costs for the release of the film.

### **5.6.2. Repayment**

For projects whose marketing assistance is contracted with Telefilm Canada in 2004-2005, 35% of Telefilm Canada’s financial participation is in the form of a grant not recoupable by either Telefilm Canada or the distributor (and should be reported to producers as a reduction in the marketing expenses).

The remaining 65% of Telefilm Canada’s financial participation is repayable from gross distribution revenues, after deduction of allowable distribution fees, but prior to recoupment

of any expenses not in the approved budget,<sup>16</sup> and prior to the recoupment of the minimum guarantee, *pari passu* as follows:

Tier 1	50% to Telefilm Canada and 50% to the distributor, until recoupment by the distributor of its financial contribution to the approved costs
Tier 2	100% to Telefilm Canada until full repayment of its recoupable portion of the financing

Telefilm will gradually phase-out the grant portion of its marketing financing assistance.<sup>17</sup> Over the next three years, the grant portion of Telefilm's financial participation will be reduced as follows:

- 2004-2005: 35%
- 2005-2006: 20%
- 2006-2007: 0%

### **5.6.3. Telefilm Canada's Corporate Trailer**

Each film receiving Marketing Assistance, either through the Selective Component or the Performance Component, will be required to attach Telefilm Canada's corporate trailer at the head of the film for its theatrical release in Canada.

---

<sup>16</sup> This is provided, however that if applicable, the costs of versioning the production into the other official language for use in Canada, if supported by Telefilm Canada may be recouped in priority to the advance for marketing.

<sup>17</sup> For those projects where Telefilm Canada is participating in production financing, Telefilm Canada will grandfather its marketing assistance under the 2003-2004 guidelines, if it has issued the project a Letter of Interest to participate in production financing prior to January 19<sup>th</sup>, 2004. For those projects where Telefilm Canada is not participating in production financing, Telefilm Canada will grandfather its marketing assistance under the old rules for those projects to be theatrically released in Canada prior to March 31<sup>st</sup>, 2004, where it receives a complete marketing assistance application, including a fully executed acquisition agreement, prior to February 23, 2004.



# ANNEX I – RECOUPMENT POLICY

## Minimum Recoupment Practices for Production Investment

Telefilm Canada will recoup its investments no less favourably than pro rata and pari passu with all other financial contributions (except as noted below), including:

- producer investment or deferral; private fund and provincial agency investment; broadcaster investment; craft and creative deferrals (whether or not by related parties) and any form of producer-related financial participation which is directly or indirectly supported by producer fees; corporate overhead or federal or provincial tax credits.

For projects whose financing structures include distribution advances, minimum guarantees, pre-sales for non-Canadian territories or other similar forms of participation including gap financing, the producer must offer Telefilm Canada a deal that will not unfairly limit Telefilm Canada's ability to recoup its investment, and that will permit a reasonable expectation of recoupment.

Although a producer may sell worldwide distribution rights in return for an advance or minimum guarantee to be included in the project's financial structure, the advance or guarantee may not recoup from worldwide revenues ahead of Telefilm Canada's investment. The following are the two most typical kinds of recoupment arrangements that can satisfy the requirement:

<b>Open territory</b>	A major territory or territories is or are excluded from the recoupment of the advance/guarantee to allow for Telefilm Canada's investment to recoup in first position (shared with other investors entitled to recoup in the same position as Telefilm Canada) from net revenue generated from these territories, without being subject to prior recoupment of the advance/guarantee. The open territory must be a territory or territories that represents reasonable revenue potential to Telefilm Canada. An open territory arrangement does not mean that the provider (usually a distributor) of the advance/guarantee cannot be granted the right to sell in the open territory, simply that the advance/guarantee does not recoup from the open territory.
<b>Revenue corridor</b>	The producer negotiates a deal with the provider of the advance/guarantee (usually the distributor) such that the advance/guarantee is recoupable, not from 100% of revenue but from some lesser share of the revenue. The remaining portion of revenue flows to Telefilm Canada (and other investors entitled to the same position as Telefilm).

When an advance or guarantee is provided by a company related to or affiliated with the producer, Telefilm Canada may require a recoupment position for the advance or guarantee that is more consistent with that of other financial contributions (i.e., pro rata and pari passu) in consideration of the benefit derived by the related company from the production budget and projected revenues.

Since financing structures, distribution arrangements, marketability and most other elements vary considerably from project to project, Telefilm Canada considers different deals acceptable on a case-by-case basis. In every case, Telefilm Canada is seeking a reasonable expectation of recoupment in light of its objectives as outlined above.

Approved budget over-runs and service deferrals (deferred payments to commercial laboratories, equipment rental companies and post-production facilities) may be recouped only after Telefilm Canada has recouped.

For productions where Telefilm Canada deems certain budget items to be excessive (including producer's fees and corporate overhead), Telefilm Canada requires a recoupment position that ensures that such items do not negatively affect Telefilm Canada's recoupment.

### **Incentive for Producers of Low Budget English-Language Productions**

To encourage wider distribution of projects produced by non-integrated SMEs producing low budget English-language productions (thereby improving their capitalization through recoupment), Telefilm Canada provides the following incentives.

Where the production budget of an English-language project produced by a non-integrated SME does not exceed \$1 million, Telefilm Canada will forego recoupment of 25% of its investment in favour of the producer. Producers will be allowed to recoup this amount as their own, in addition to whatever other investment they may have in the project, pro rata and pari passu with all other investments.

### **Incentive to Encourage Private Investment**

In order to encourage producers seeking non-traditional sources of private financing for their projects, Telefilm Canada will offer the following incentive to productions benefiting from such funding.

Until full recoupment of eligible private investments, eligible private investors may receive 50% of revenues pro rata and pari passu. The other 50% will be shared pro rata and pari passu with the remaining first tier investors.

Such a preferred position will not apply to: suppliers deferring payments; broadcasters and other CRTC licensees; funds established as a requirement of the CRTC; and Canadian investors eligible to receive accompanying benefit from their participation, such as distribution or licensing rights, payment for services provided to the production or the fulfillment of regulatory requirements.

Applicants should note that, for the most part, financing provided by private investors who may be granted this preferential recoupment position will render a project ineligible for tax credits.

The government of Canada has recently indicated its intention to amend the Income Tax Act to permit third-party equity investments to be included in the calculation of film production tax credits. If and when the proposed legislation is adopted, Telefilm Canada's above-described policy allowing third-party private investors to recoup preferentially will immediately cease to apply.

### **Special Recoupment Requirements of Private Funds**

Certain private production funds require, as a condition of investment, that a percentage of their investments be guaranteed, by pre-sales or by the production company's corporate resources.

While Telefilm Canada may permit the producer to over-finance the production as

reasonably required to finance such revenue guarantees, in no event will Telefilm Canada accept an arrangement that provides less favourable recoupment than pro rata and pari passu with all other financial contributions included in the financial structure for the production.

### **Breakage**

For productions in which Telefilm has made a commitment to invest, with a recoupment schedule as described herein (open territory(ies) or corridor(s)), Telefilm will consider, on a case-by-case basis, allowing third-party financing of extraordinary costs directly related to the engagement of a performer(s) with exceptional marquee value to recoup more preferentially than indicated herein. This exception is made in keeping with the Fund's objective of increasing Canadian box-office and audiences generally for Canadian feature films, and in recognition of industry practice regarding the financing and recoupment of "breakage." Telefilm will only agree to such an arrangement in cases where there continues to be a reasonable expectation of recoupment, or indeed an increased expectation given the value of the performer in the marketplace.

### **Incentive for Producers of French-Language Productions**

In recognition of the difficulties faced by producers of French-language productions in gaining access to the global marketplace, and therefore in contributing to the capitalization of their companies through recoupment, Telefilm Canada provides the following incentive:

- until full recoupment by the producer of a provincial tax credit and an investment made by a producer used towards financing a French-language production, the producer will receive 50% of net production revenues. The other 50% will be shared pro rata and pari passu among the remaining investors.

### **Standard Distribution Terms and Conditions**

Telefilm Canada may impose caps or limitations on deductible distribution fees and expenses.

Telefilm Canada is exploring ways to standardize its recoupment policy and distribution contract terms as well as has planned consultations with the industry in this regard.

## ANNEX II – HOW A PERFORMANCE ENVELOPE IS CALCULATED AND ALLOCATED

The method used in the calculation of performance envelope amounts for production and distribution companies is described in this annex.

For purposes of these calculations, **Gross Canadian Box Office** is defined as the box-office figures supplied to Telefilm by the Motion Picture Theatre Association of Canada (MPTAC). The **Adjusted Box Office** is defined as the Gross Canadian Box Office as it is adjusted per the description contained in Part A below.

Part B describes the process of how Telefilm identifies the films that will qualify a producer or distributor for an envelope. Part C details the calculation and methodology applied in arriving at the amount of an envelope. Part D describes how envelopes are attributed to companies. Finally, Part E outlines the caps that are applied to companies with envelopes.

### Allocation of Resources

The French market has had a very successful year at the box office. This success translates into a movement of resources from the Selective Component to the Performance Component. This year, the CFFF will achieve its target allocation of 75% of resources (excluding revenues generated by recoupment) to the Performance Component for French-language production. In order to offset the potentially destabilizing effects that a large shift of resources in a short timeframe could produce in the French-language market, Telefilm Canada will apply a minimum of \$4 million of its anticipated revenues directly to the Selective Component, resulting in an overall split between the Performance and Selective Component in French that will be roughly the same as in 2003-2004.

The calculation and allocation of envelopes in the English-language envelopes remains unchanged.

### PART A: WHAT IS ADJUSTED BOX OFFICE?

The Gross Canadian Box Office is the primary criterion used for the calculation of envelope amounts. However, these amounts are adjusted for a film whose primary audience is children, and are further adjusted depending on the film's level of Canadian content, the number of screenings as well as awards received at festivals and award ceremonies. The result of these adjustments is the Adjusted Box Office used by Telefilm to determine which films qualify their producer(s) for an envelope and to what extent.

#### Adjustment # 1: Children's Films Adjustment

A film aimed primarily at a children's audience is disadvantaged when compared with other films because of the ticket price differential. In order to compensate for this differential, Telefilm Canada adjusts the Gross Canadian Box Office of a film for children up by 25%.

It is the responsibility of the producer to advise Telefilm whether they wish their film to be considered as a children's film, with appropriate documentation in support of the claim. Notification should be made three months following the theatrical release of the film.

Telefilm Canada, in its sole discretion, will use indicators to help identify children's films for the purposes of a Gross Canadian Box Office adjustment, including, but not limited to:

- films that are officially presented in at least two internationally recognized children's film festivals (a list of Telefilm-recognized children's festivals can be found at Telefilm's Website, [www.telefilm.gc.ca](http://www.telefilm.gc.ca));
- films based on a pre-existing property (such as a book), generally recognized to be aimed at children;
- average ticket price, applicable to films released in Quebec. Telefilm is working toward identifying a similar indicator for films released in the rest of Canada.

### **Adjustment # 2: Canadian Content Weighting**

Companies that make the greatest use of Canadian talent will have their envelope amounts weighted as follows:

- a Canadian film with an 8/10 CAVCO score or a minority Official Coproduction will have its Gross Canadian Box Office multiplied by 0.8;
- A Canadian film with a 9/10 CAVCO score or a 50% Canadian Official Coproduction will have its Gross Canadian Box Office multiplied by 0.9; and
- A Canadian film with a CAVCO score of 10/10 or a majority Canadian Official Coproduction will have its Gross Canadian Box Office multiplied by 1.0

### **Adjustment # 3: Festivals and Awards Bonus**

To acknowledge critical acclaim and excellence in addition to Canadian box office, the Gross Canadian Box Office will be weighted favourably based on the number of screenings and awards at selected international film festivals, awards at selected Canadian film festivals, as well as nominations and awards at selected Canadian and international awards ceremonies. Each such screening, nomination or award will result in a bonus of 5% towards the Gross Canadian box office amount for the eligible film, to a maximum of 20%. These festivals and awards include:

- screenings in the official program(s) (including recognized sidebars) of the major international festivals listed below;
- awards received at the major international festivals listed below;
- awards received for Best Motion Picture and Achievement in Direction at Les Prix Jutra and the Academy of Canadian Cinema and Television Film Awards (Genies);
- selected awards received at key Canadian festivals listed below; and
- nominations and awards received at the Academy Awards (Oscars®), the Golden Globe Awards and the Césars.

### **International Festivals**

1. Internationale Filmfestspiele Berlin
2. Festival International du Film, Cannes
3. Rotterdam International Film Festival
4. Sundance Film Festival
5. La Biennale di Venezia – Mostra Internazionale del Cinema, Venice
6. New York Film Festival
7. Berlin International Film Festival (Kinderfilmfest)
8. Giffoni Film Festival, Salerno
9. Cinekid, Amsterdam

10. International Film Festival for Children and Youth , Zlin
11. The Children's and Young People's Film Festival in Malmo
12. Chicago International Children's Film Festival

### **Canadian Festivals (Awards)**

1. World Film Festival (Grand Prix des Amériques, Prix Air Canada, Golden Zenith for Best Canadian Film, Award for Most Popular Canadian Film)
2. Toronto International Film Festival (People's Choice Award, the Toronto City Award for Best Canadian Feature Film, the City TV Award for Best Canadian First Feature Film, the Discovery Award and the FIPRESCI Award)
3. Atlantic Film Festival (People's Choice Awards for Best Feature and Best Canadian Feature)
4. Vancouver International Film Festival (Most Popular Canadian Film).

## **PART B: HOW DOES A FILM QUALIFY?**

### **The Reference Period**

Performance envelopes for fiscal 2004-2005 will be based on Canadian films released in Canadian theatres between July 1, 2000 and June 30, 2003, and that are at least 8/10 on the CAVCO scale or are Official Coproductions.

A film qualifies its producer(s) for an envelope if it meets both of the two following performance criteria:

#### *English-language productions*

1. the film ranks within the top 15% of films in the list of all eligible films, as measured by the Adjusted Box Office;<sup>18</sup>
2. the film earned at least \$1 million in Gross Canadian Box Office, adjusted only for children's films.

#### *French-language productions*

1. A film qualifies its producer(s) for an envelope if it ranks within the top 15% of films in the list of all eligible films, as measured by the Adjusted Box Office<sup>18</sup>.

Note: Because resources are limited and to encourage a more expedient use of envelopes, Telefilm Canada will look at the possibility to shorten the reference period for the calculation of French- and English-language performance envelopes in 2005-2006 from three years to two.

### **Distribution**

Films that qualify a distribution company for a distribution envelope for calculation purposes are those that rank within the top 15% in the applicable reference period in each linguistic market, as measured by Adjusted Box Office.

---

<sup>18</sup> Films with box office of less than \$2000 will not be counted.

## **PART C: CALCULATING THE ENVELOPE AMOUNT**

When a film is deemed qualified, it entitles its producer(s) and distributor(s) to a performance envelope subject to the following:

The performance envelope(s) generated by each film is calculated as described below. In the case of envelopes for production, a reward ratio is applied.

### **English-Language Production**

Each film that qualifies for the purpose of an English-language production envelope generates for its producer(s) an amount of envelope equivalent to the Adjusted Box Office multiplied by \$0.86 for its English-language box office, and \$0.34 for its French-language box office. The producer(s) of record is identified for each qualifying film, and the amount of the film envelope determined is attributed to the appropriate production company(ies). The results are cumulative, such that multiple qualifying films may result in the allocation of multiple amounts to the same production company(ies).

Note: In 2005-2006, the reward ratio will be reduced from \$0.86 for each dollar in Adjusted Box Office to \$0.50 for each dollar of Adjusted Box Office.

### **French Language Production**

Each film that qualifies for the purpose of a French-language production envelope generates for its producer(s) an amount of envelope equivalent to the Adjusted Box Office multiplied by \$0.34 for its French-language box office, and \$0.86 for its English-language box office. The producer(s) of record is identified for each qualifying film, and the amount of the film envelope determined is attributed to the appropriate production company(ies). The results are cumulative, such that multiple qualifying films may result in the allocation of multiple amounts to the same production company(ies).

In the case of double shoots, where the film earns both a French-language and an English-language production envelope, the production company will advise Telefilm of the preferred language of production for the envelope. Such envelopes will continue to be calculated based on reward ratios in effect in each language market in which the film earns its box office receipts.

### **Distribution**

Initial funds available for the distribution performance component (85% of total resources allocated to distribution) are allotted among all qualifying films on a pro rata basis according to the Adjusted Box Office of each film. Funds that are unallocated due to the application of the cap or floor will be moved to the Selective Component. The distributor of record is identified for each qualifying film, and the amount of the film envelope determined according to the pro rata allocation is attributed to the appropriate distribution company(ies). The results are cumulative, such that multiple qualifying films may result in the attribution of multiple amounts to the same distribution company(ies).

**Distribution Envelope Floor:** If the total amount of the envelope, for which a distribution company is otherwise entitled, does not reach at least \$500,000, the envelope will not be attributed to the company and those funds will be moved to the Selective Component.

## **PART D: HOW ENVELOPES ARE ATTRIBUTED TO PRODUCTION COMPANIES**

Envelopes are attributed to the Canadian company or companies that own the copyright in the film. If more than one company owns the copyright, the attribution is made pro rata to the copyright ownership unless the copyright owners have entered into another arrangement for the sharing of an envelope between them.

In the event that the copyright in the film is owned by a single purpose company, that is in turn wholly owned by another company, the envelope to which that single purpose company is entitled may be transferred to the other company, provided that Telefilm Canada is satisfied with the documentation supporting such ownership. In the event that more than one individual or company owns the production company of record (which owns the copyright in the film), Telefilm Canada will attribute the envelope value of the qualifying film among the companies on record as the copyright owners, according to the ownership information on record.

## **PART E: APPLICATION OF CAPS**

Telefilm Canada will limit the annual amount allocated in the performance-based calculations as follows:

- a production company, together with any related company(ies), may not be allocated more than \$3.5 million based on the calculation using English-language films;
- a production company, together with any related company(ies), may not be allocated more than \$3.5 million based on the calculation using French-language films;
- a distribution company, together with any related company(ies), may not be allocated more than \$2.5 million.

While a company may be eligible to be allocated three separate performance based envelopes in the same year (English-language production, French-language production and distribution), the total amount that may be allocated to one company, together with any related company(ies), will not be allowed to exceed \$6 million. In the case where this cap is to be applied, Telefilm Canada will consult with the company in determining how to apply it.