



CANADIAN CONTENT IN THE 21<sup>ST</sup> CENTURY  
IN FILM AND TELEVISION PRODUCTIONS:

A MATTER OF CULTURAL IDENTITY

*JUNE ■ 2003*

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FRANÇOIS MACEROLA

The Honourable Sheila Copps  
Minister of Canadian Heritage

Dear Minister:

Last year at this time, the Department of Canadian Heritage entrusted me with a broad mandate that is fundamentally linked to Canada's cultural fabric: to review the definition of Canadian content as it applies to film and television production and its relationship to public funding. The mandate extended to international treaty coproduction and theatrical distribution as well.

My colleagues and I have studied and assessed the existing system and we have identified its strengths and weaknesses. We have compared Canada with other countries and we have extensively consulted the industry, its key players and associations, the Canadian public and representatives of federal and provincial cultural agencies.

One fact was immediately evident: the current system is based on both cultural and industrial criteria with no specific indication as to which takes precedence. This required that a choice be made, since our initial position would directly influence the direction of our review. As I firmly believe that content belongs to creators, priority was given to the cultural aspect.

The Canadian content system of the 21<sup>st</sup> century must permit creators to enrich our collective imagination, to be part of Canada's cultural life. This objective can be met only through the dynamic cooperation of the public and private sectors and with the financial support of the Canadian government.

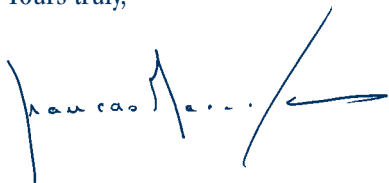
We have found the current system to be inadequate. We therefore propose a new approach, one that offers both a new definition and a new form of administration. This approach of course takes the industrial infrastructure of Canadian feature film and television production into account, but its foundation and purpose are fundamentally cultural.

We hope that this report will serve as a starting point for a discussion involving all stakeholders and that everyone concerned will find the new model more efficient, easier to administer and better able to meet the needs of Canada's creators, industry and general public.

In closing, my sincere thanks go to Marc Séguin and Carole Desjardins. Without their involvement, enthusiasm, knowledge and energy, this report would not have been possible.

I also thank Natalija Marjanovic, Maria De Rosa, Deborah Drisdell, Michel Houle, Suzan Ayscough and Peter Katadotis for their invaluable contribution.

Yours truly,

A handwritten signature in black ink, appearing to read 'François Macerola', with a long horizontal stroke extending to the right.

François Macerola

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# 1

**THE REVIEW PROCESS  
AND STAKEHOLDER  
COMMENTS**

## Review Methodology

On April 2, 2002, the Minister of Canadian Heritage, the Honourable Sheila Copps, announced a review of the definition of Canadian content as it applies to film and television production. The scope of the review extended to coproduction and theatrical distribution as well. The Minister mandated Mr. François Macerola to consult with all stakeholders, assess whether the current system was up-to-date and well suited for the challenges ahead, and make recommendations in a comprehensive report by spring 2003.

Concurrent with this review, the Standing Committee on Canadian Heritage has been assessing the present state of the Canadian broadcasting system and preparing recommendations that will undoubtedly have a bearing on Canadian content. At the same time, the CRTC has commissioned Trina McQueen to examine the state of television drama production in Canada, a key area of Canadian content concern.

Our review methodology included three distinct phases. Phase 1 entailed a multifaceted national consultation process with all stakeholders, including individual Canadians, from May 2002 to November 2002. Phase 2, from November 2002 to February 2003, was dedicated to researching and evaluating various aspects of the Canadian content system. Phase 3, from February 2003 to April 2003, consisted of developing and testing new proposals, briefing stakeholders and drafting this final report.

### Focus on Canadian content

The national consultation process involved several specific initiatives. The first was the release of a discussion paper entitled *Canadian Content in the 21<sup>st</sup> Century*, researched and drafted by the Department of Canadian Heritage. The paper was intended to initiate a public dialogue on Canadian content. In addition to detailing the scope of the review, providing context for the discussion of Canadian content and recapitulating the evolution of policy and program initiatives, the discussion paper highlighted some policy considerations and posed a number of questions.

All interested Canadians were invited to provide written briefs in two separate rounds of submissions. The first round provided an opportunity to address the questions raised in the discussion paper and drew some 57 submissions from a vast array of stakeholders across Canada. Unless otherwise specified by the submitter, each brief was posted on the Department of Canadian Heritage's Web site in its original language. The second round was designed to allow for comments on the submitted briefs. During this round, an additional 22 written briefs were received. They, too, were posted on the Canadian Heritage Web site.

All submissions were carefully considered, analyzed and evaluated.

The second consultation initiative involved face-to-face roundtable meetings with a broad cross-section of stakeholders, ranging from representatives of the

creative, production and distribution/broadcasting sectors to individual Canadians having an interest in Canadian content. Held in 15 cities across Canada (Vancouver, Edmonton, Regina, Winnipeg, Toronto, Windsor, Sudbury, Hamilton, Ottawa, Montréal, Quebec City, Rimouski, Moncton, Halifax and St. John's), these meetings allowed people to openly share their views and debate the issues.

A third consultation initiative was developed in order to delve further into certain areas. It included meetings with animation and documentary filmmakers, Aboriginal producers and members of minority communities. In each instance, a group representative was asked to prepare a written brief assembling the views of participants and providing specific recommendations.

Throughout the consultation process, we held meetings at the request of stakeholders and initiated others in order to explore various topics in greater detail.

During Phase 2 of the review, we researched the Canadian content system and related areas. Specifically, we closely examined information on Canadian content certification

provided by the Canadian Audio-Visual Certification Office (CAVCO) and the Canadian Radio-television and Telecommunications Commission (CRTC). In addition, we asked the Department of Canadian Heritage to commission two studies. The first was intended to assess the degree to which Canadian creators have participated in international coproductions. The objective of the second was to examine a number of foreign countries with a view to ascertaining whether lessons could be learned from their policy approach to determining national content.

Phase 3 of the review involved developing and testing new proposals. Once the proposals were determined, briefing sessions were held with stakeholders gathered in Montréal, Ottawa, Toronto and Vancouver.

This report represents the culmination of all work carried out in the three phases.





## Stakeholder Comments

The comments received from all stakeholders, either in writing or in meetings, are summarized in Annex B, grouped under the following headings, which reflect the major concerns and areas of interest addressed:

- i) The current system and the balance between cultural and industrial objectives;
- ii) The current system vs. a new approach;
- iii) The parameters of a new model;
- iv) Intellectual property;
- v) Citizenship and residency;
- vi) Production and post-production expenditures;
- vii) Coproduction;
- viii) Distribution;
- ix) Administration of the system.

Our analysis of this invaluable and wide-ranging stakeholder input can be summarized as follows:

### ■ Virtually everyone agrees that:

- The government should continue to actively support a broad diversity of Canadian content.
- More public resources are needed for production and distribution.
- Canadian content must reach larger Canadian audiences.
- The definition of Canadian content should be objective, predictable, flexible and efficiently administered.

### *Stakeholder views on Canadian content, question by question, answer by answer*




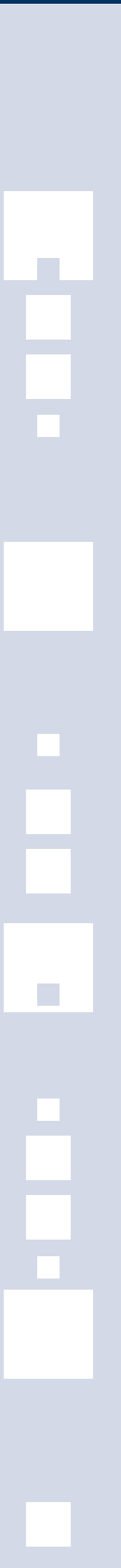
- Official coproductions are important and should continue to be considered Canadian content.
- The current ownership, control and citizenship requirements should not change.
- A dedicated, independent, national organization should be responsible for certifying all Canadian content, ensuring coherence across government, providing industry intelligence and coordinating the promotion of Canadian content.

### ■ Views diverge with respect to:

- Minimum level of key creative positions held by Canadians (i.e., points);
  - Minimum level of production and post-production expenditures;
  - Distribution requirements;
  - How best to administer, monitor and evaluate Canadian content.
- Aboriginal producers feel particularly disadvantaged in the current system.
- Minority communities (visible, linguistic and regional) believe bonuses should be incorporated into the Canadian content definition as a means of “levelling the playing field.”

# 2

CANADIAN CONTENT  
IN PERSPECTIVE



**T**his chapter puts Canadian content into perspective with respect to how it is currently administered and defined and what it represents in terms of production activity. It also analyzes in detail the degree to which the current definition, and more specifically the 10-point key creative system, responds to today's realities. Further, with a view to comparing the Canadian system within the broader international context, it provides information on how some foreign countries promote and determine their national content. Last, we highlight what we consider to be the major weaknesses in the current Canadian content system.

## How Canadian Content is Administered and Defined

This subsection provides a general overview of the main organizations that administer Canadian content: the Canadian Radio-television and Telecommunications Commission, the Canadian Audio-Visual Certification Office, Telefilm Canada and the Canadian Television Fund. For each, it gives the current requirements that must be satisfied in order for a film or television production

to be recognized as Canadian. In the case of the financial support programs, the focus is limited to the minimum eligibility criteria; the ranking and evaluation criteria used to select projects are not addressed.

### Canadian Radio-television and Telecommunications Commission

The Canadian Radio-television and Telecommunications Commission (CRTC) is responsible for regulating and supervising all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in the *Broadcasting Act*. Among the many objectives of the broadcasting policy is a requirement that each element of the Canadian broadcasting system contribute in an appropriate manner to the creation and presentation of Canadian programming. Further, the policy specifically notes that “each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of

*This subsection gives the current requirements of each main organization that must be satisfied in order for a film or television production to be recognized as Canadian*

the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources.”<sup>1</sup>

All conventional television, pay television and specialty television licensees in Canada are required to broadcast a certain percentage of

Canadian content. The CRTC monitors compliance by requiring licensees to maintain program logs in which all Canadian programming they have broadcast is identified. What may qualify as Canadian content for broadcasting purposes is set out in the Commission’s Public Notice 2000-42. The main elements of this Notice are as follows.

### Excluded Production and Automatic Recognition

Infomercials and advertisements, as well as promotional and corporate videos/films do not qualify as Canadian content and, therefore, are not recognized by the Commission in determining whether licensees have met their Canadian content quotas.

Certain types of production are automatically recognized as Canadian content by the Commission without a formal review or evaluation process. These include: i) news and public affairs programs produced solely by licensees; ii) programs produced solely by licensees which meet the criteria and for which the drama credit is not being

<sup>1</sup> Subsection 3(1)(e) and subsection 3(1)(f) of the *Broadcasting Act*, 1991.

requested; iii) productions which have received certification from the Canadian Audio-Visual Certification Office (CAVCO) of Canadian Heritage and for which the drama credit is not being requested; iv) music video clips of five minutes or less which meet the criteria; v) federal and provincial government productions; vi) public service announcements; and vii) interstitials of less than five minutes in duration that meet the criteria for certification applicable to longer programs.

### Basic Canadian Content Requirements

All other productions must apply to the Commission for certification. To qualify, productions must meet basic requirements in three key areas: i) producer ownership and control; ii) key creative points; and iii) production and post-production/laboratory costs.

#### *Producer Ownership and Control*

To meet the requirements in this area, the producer, and anyone fulfilling a producer-related function, must be Canadian.<sup>2</sup> Further, the producer must control and be the central decision maker of the production from beginning to end.

While non-Canadians may receive courtesy or vanity credits for producer-related functions, their aggregate remuneration may not exceed the remuneration of the Canadian producer. Moreover, foreign executive producers must limit their time on the set to 25% of principal photography, and their role solely to that of observers. The Commission requires that the duties of foreign executive producers shall be limited to non-creative, non-production-related functions. Such functions could include arranging financing and foreign distribution.

#### *Key Creative Points*

To meet the requirements in this area, a minimum number of key creative functions must be performed by Canadians. Points are allocated when a Canadian performs the function or, in some cases, when the activity is undertaken in Canada.

For live action productions and continuous-action animated productions, a minimum of six points must be achieved pursuant to Table 1.

**Table 1**  
**Key Creative Points System**  
(Live Action and Continuous-Action  
Animated Productions)

Key Creative Function	Points
Director	2
Screenwriter	2
First Lead Performer (or first voice)	1
Second Lead Performer (or second voice)	1
Production Designer	1
Director of Photography	1
Music Composer	1
Picture Editor	1

Notwithstanding the above minimum points requirements, either the director or the screenwriter function must be performed by a Canadian. In addition, at least one of the two lead performer<sup>3</sup> positions must be held by a Canadian.

Where there are compelling reasons, and upon application by the producer, some exceptions to the above rules are possible. Provided all other positions are

<sup>2</sup> A Canadian is a person who is a Canadian citizen as defined in the *Citizenship Act*, at the time of the commencement of the person's duties in relation to the production, and for the entire course of the filming or taping and post-production. Also eligible are permanent residents (landed immigrants who are not yet Canadian citizens) who have received their "Record of Landing" Certificate at the time described above.

<sup>3</sup> Billing, screen-time and remuneration are taken into account in determining lead performer positions. In non-dramatic productions, the second lead must have at least 50% of the on-screen time (or off-screen time where narrators or interviewers are involved) and 50% of the remuneration of the first lead, plus billing appropriate for a second lead. Individuals not meeting these criteria are considered as filling minor roles.

filled by Canadians, the Commission may certify a production where both the director and the writer positions are performed by non-Canadians. Similarly, provided all other positions are filled by Canadians, certification may be granted where both lead performers are non-Canadian.

All other animation productions (i.e., not including continuous-action animated productions) must earn a minimum of six points based on the following key creative functions (Table 2) being performed either by Canadians or, where applicable, in Canada, or both. In the case of camera operator (person) and operation (location), both must be met to earn the point.

**Table 2**  
**Key Creative Points System**  
(Animated Productions)

Key Creative Function	Points
Director	1
Scriptwriter and Storyboard Supervisor	1
First or Second Voice (or first or second lead performer)	1
Design Supervisor	1
Layout and Background (location)	1
Key Animation (location)	1
Assistant Animation/In-Betweening (location)	1
Camera Operator (person) and Operation (location)	1
Music Composer	1
Picture Editor	1

For most types of animation, the Commission mandatorily requires that the following persons, locations or both be Canadian: i) director or the combination of scriptwriter and storyboard supervisor (persons); ii) key animation (location) (excluding pixillation); iii) first or second voice (or first or second lead performer); and iv) camera operator (person) and operation (location), for pixillation only.

### *Production and post-production/laboratory costs*

To meet the criteria in this area, minimum expenditure requirements must be met with regard to both production costs and post-production/laboratory costs.

At least 75% of the total production cost must be paid to Canadians. In calculating whether this requirement has been met, the following costs are excluded:

- Remuneration for producer(s) and coproducer(s) (except for producer-related positions);
- Remuneration for key creative personnel eligible for points;
- Post-production/lab costs;
- Accounting and legal fees;
- Insurance brokerage and financing costs;
- Indirect expenses;
- Contingency costs;
- Goods purchased, such as film/videotape supplies;
- Other costs not directly related to production.

In addition, at least 75% of the post-production/laboratory costs must be paid for services provided in Canada by Canadians or Canadian companies. This does not include costs attributed to the picture editor.

### **Series**

As elements related to each episode within a series can vary and some of the individual episodes may not meet the minimum key creative points requirements, the Commission allows for some flexibility by looking at the entire series.

For a producer to claim Canadian content certification for any episodes in a series that might not meet the minimum points requirement, at least 60% of the series' episodes must meet or exceed the six-point minimum and the entire series must attain an average of six points per episode.

That said, for live action or continuous-action animated series, each episode must meet the two mandatory requirements for writer or director, and first or second lead performer. For animated series, each episode must fulfil the three mandatory requirements for scriptwriter and storyboard supervisor or director, first or second voice/performer, and key animation (location).

### **Special Recognition for Co-ventures**

Co-ventures are defined as international coproductions not included under the treaties administered by Telefilm Canada. These include all ventures with coproducers of a foreign country that does not have a film or television production treaty with Canada. These also include ventures with coproducers of a treaty country where such ventures are not specifically covered by a treaty.

Even where some of the producer functions are performed by non-Canadians, certification of the program as Canadian is possible. When broadcast or distributed by a licensee of the CRTC, such co-ventures will qualify for special recognition if co-venture agreements and other documentation substantiate that the Canadian production company:

- i) has no less than an equal measure of decision-making responsibility with other co-venture partners on all creative elements of the production; and
- ii) is responsible for the administration of not less than the Canadian element of the production budget.

The decision-making responsibility for the production is considered to be in the hands of a Canadian production company when that company:

- i) has sole or co-signing authority on the production bank account;
- ii) has financial participation in the production and the entitlement to profit-sharing;

- iii) is at financial risk and has budgetary responsibility; and
- iv) has at least an equal measure of approval over all elements of the production with the co-venture partners, regardless of the number of foreign persons fulfilling the functions of executive producer or producer.

A co-venture involving a coproducer from a Commonwealth or French-speaking country, or a country with which Canada has a film or television production treaty, may be considered for special recognition. Canadian certification may be granted if, in addition to meeting the foregoing requirements, the program achieves at least five key creative points, at least 50% of the production costs are paid to Canadians, and at least 50% of post-production/laboratory costs are paid for services provided in Canada by Canadians or by Canadian companies. That notwithstanding, the director or the writer and at least one of the two lead performers must be Canadian. All other criteria for certification of a Canadian program apply to such co-ventures.

Any other co-venture will be required to meet the minimum six key creative points and expenditure requirements as a domestic production.

### **Production Packages**

A production package is defined as two or more coproductions or co-ventures, undertaken by a Canadian production company, together with one or more non-Canadian production companies, where a production with minor foreign involvement that qualifies as a Canadian production is matched with a foreign production with minor Canadian involvement.

A twinning involves matching a fully Canadian production with a foreign production, with virtually no Canadian involvement other than a financial one.



The Commission may accept production packages and twinnings as Canadian, under the following conditions:

- i) the Canadian copyright for both productions must be held by Canadians;
- ii) the budgets of both Canadian and foreign productions must be approximately equal, within 15%;
- iii) coproduction agreements/contracts between the Canadian production company and foreign producers must be submitted to the Commission with the applications;
- iv) the Canadian production company must have financial participation and profit-sharing (at least 20%) in the Canadian and foreign productions;
- v) a broadcaster may receive credit for a production with fewer Canadian elements if it broadcasts the production with more Canadian elements at an equitable time;
- vi) all productions in a production package must fall within the same program category;
- vii) production package programs are acceptable only in the categories of drama and comedy, variety, documentary and children's. Animated productions are excluded;
- viii) twinned productions must be approximately equal in duration;
- ix) twinned productions must receive equitable scheduling on the same Canadian station or network; and
- x) ten-point productions in production packages will not qualify for the dramatic program credit of 150%.

### **Dubbing**

Where a foreign program is produced in an official language of Canada or a native Canadian language, and the audio portion of that program is converted into the other official language of Canada or a native Canadian language by a process of lip synchronization done in Canada, using Canadian resources, 25% of the program time is recognized as Canadian.

Where a foreign program is produced in a language other than an official language of Canada or a native Canadian language, and the audio portion of that program is converted into an official language of Canada or a native Canadian language by a process of lip synchronization done in Canada, using Canadian resources, 50% of the program time (to a maximum of 50 hours during each six-month reporting period) is recognized as Canadian.

### **Canadian Audio-Visual Certification Office**

The Canadian Audio-Visual Certification Office (CAVCO) co-administers the Canadian Film or Video Production Tax Credit provided for under Section 125.4 of the *Income Tax Act* with the Canada Customs and Revenue Agency. A Canadian film or video production is a production that meets the requirements of Section 1106 of the draft Income Tax Regulations.

### **Excluded Production**

These Regulations list the following genres as "Excluded Productions." As such, they are not considered Canadian content by CAVCO and are ineligible for the tax credit program:

- i) news, current events or public affairs programming, or a program that includes weather or market reports;
- ii) talk show;
- iii) production in respect of a game, questionnaire or contest (other than a production directed primarily at minors);
- iv) sports event or activity;
- v) gala presentation or an awards show;
- vi) production that solicits funds;
- vii) reality television;
- viii) pornography;
- ix) advertising;



- x) production produced primarily for industrial, corporate or institutional purposes;
- xi) production, other than a documentary, all or substantially all of which consists of stock footage;
- xii) production for which public financial support would, in the opinion of the Minister of Canadian Heritage, be contrary to public policy.

### **Basic Canadian Content Requirements**

CAVCO may certify as Canadian content all productions other than Excluded Productions. To qualify, productions must meet the same basic requirements as those required by the CRTC in the three key areas: i) producer ownership and control; ii) key creative points; and iii) production and post-production/laboratory costs. There are, however, some differences, as outlined below.

#### *Qualified Corporation*

The applicant must be Canadian-controlled as determined pursuant to sections 26 to 28 of the *Investment Canada Act*. Further, the applicant must be a Qualified Corporation for a taxation year, which means a corporation that is throughout the year a prescribed taxable Canadian corporation the activities of which in the year are primarily the carrying on through a permanent establishment in Canada of a business that is a Canadian film or video production business.

#### *Canadian Film or Video Production*

In order to be eligible for the Canadian Film or Video Tax Credit, a production must be certified by CAVCO as a Canadian film or video production. A Canadian film or video production means a film or video production, other than an Excluded Production, that is produced by a prescribed taxable Canadian corporation and is either:

- i) a treaty coproduction; or

- ii) a film or video production that meets the basic requirements related to producer ownership and control, key creative points and production/post-production/laboratory costs (i.e., the same basic requirements as those noted above under the CRTC).

In the case of a documentary production not involving performers or other functions such as art director or music composer, a production may be deemed to have met the key creative requirements even if the production has not achieved the minimum six points, provided all existing creative positions are performed by Canadians.

#### *Ownership and Distribution*

To be considered a Canadian film or video production, the Qualified Corporation must be the exclusive worldwide copyright owner in the production for all commercial exploitation purposes for the twenty-five year period beginning when the production has been completed and is commercially exploitable.<sup>4</sup> Further, the Qualified Corporation must also control the initial licensing of commercial exploitation and retain a share of revenues from the exploitation of the production in non-Canadian markets.

For a film or video production to qualify for certification by CAVCO, there must be an agreement in writing to have the production shown in Canada within two years with either: i) a Canadian corporation that is a distributor of film or video productions; or ii) a corporation that holds a broadcasting licence issued by the CRTC for television markets.

### **Series**

Unlike the CRTC, for CAVCO to consider a series Canadian content, each episode must meet the minimum requirements.

<sup>4</sup> Treaty coproductions are exempt from this requirement.

## **Dubbing, Co-Ventures and Production Packages**

CAVCO does not certify foreign productions that are dubbed in Canada. Further, it does not recognize co-ventures or production packages.

## **Telefilm Canada (Canada Feature Film Fund)**

Telefilm Canada is responsible for the administration of the Canada Feature Film Fund (CFFF). The CFFF's overall goal is to increase Canadian audiences in theatres for Canadian feature films, aiming to capture 5% of the domestic box office by 2006.

The CFFF supports development, production and marketing activities related to Canadian feature-length fictional films aimed at the Canadian theatrical market. In administering the CFFF, Telefilm seeks 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 Canadian society and cultural diversity. Telefilm Canada, wherever possible, gives priority to projects that present a distinctly Canadian point of view.

To qualify, productions must meet the same basic requirements as those required by either the CRTC or CAVCO in the three key areas: i) producer ownership and control; ii) key creative points; and iii) production and post-production/laboratory costs. There are, however, some differences, which are outlined below.

### *Eligible Applicants*

In addition to being Canadian-controlled as per sections 26 to 28 of the *Investment Canada Act*, the company must have its head office and undertake its activities in Canada. The company must demonstrate financial stability (with some exceptions for new production companies) and operate principally as a feature film production entity.

### *Eligible Projects*

To be eligible, a project must achieve a minimum of eight key creative points. At a minimum, the project must be written<sup>5</sup> and directed by Canadians. Further, while some flexibility is provided, generally the project must have a Canadian performer in the lead role.

The project may not disguise its Canadian location except in cases where it is integral to the telling of a Canadian story.

Projects containing any elements of serious or gratuitous sexual violence or exploitation, that are obscene, indecent or pornographic within the meaning of the *Criminal Code*, or libellous or in any other way unlawful, are not eligible.

## **The Canadian Television Fund**

Created in 1996, the Canadian Television Fund (CTF) supports the production and broadcast of culturally significant television programs and films. The CTF supports a large volume of distinctively and identifiably Canadian broadcast programming, reflecting Canadian culture, stories and themes. These productions are in English, French and Aboriginal languages and include documentary, children's and youth, variety and performing arts, and especially prime-time dramatic programming.

The CTF is composed of two funding programs: the Equity Investment Program (EIP), which is administered by Telefilm Canada, and the Licence Fee Program (LFP).

Certain genres of productions are not eligible for funding under the CTF. These include sponsored productions, sports, news, game shows, current affairs, public affairs, human interest or lifestyle productions, "how-to" productions, reality television, instructional television, infomercials, music videos, formal or curriculum-based educational programming, format buys, magazine productions, talk shows, *talkshows culturels*, award shows, galas, reporting and current

<sup>5</sup> Films that are co-written by a Canadian and non-Canadian may be eligible, subject to Telefilm's evaluation.

events, religious programming, fund-raising productions, benefits, tributes, promotional productions, pep-rallies, travelogues and interstitials.

To qualify, a production must meet all of the following Essential Requirements,<sup>6</sup> in order of importance:

- i) The project speaks to Canadians about, and reflects, Canadian themes and subject matter.
- ii) The project has 10/10 points (or the maximum number of points appropriate to the project), as determined by the CTF using the CAVCO scale.
- iii) Underlying rights are owned, and significantly and meaningfully developed, by Canadians.
- iv) The project is shot and set primarily in Canada.

Official coproductions are eligible for the CTF. In this regard, the Essential Requirements are interpreted so as to treat the treaty coproduction partner as “Canadian.”

Eligible applicants must be a Canadian-controlled corporation as defined in the draft Regulations of the *Income Tax Act*. In addition, the applicant must be headquartered in Canada, carry out its activities in Canada, demonstrate financial stability (with appropriate exceptions for new production companies), and operate principally as a television or film production entity.

In addition to the Essential Requirements, a project must meet the following criteria to qualify:

- i) It is under Canadian ownership and Canadian executive and creative control.

- ii) It is under the financial control of Canadian citizens or permanent residents.
- iii) It is, and has been, controlled creatively and financially by a Canadian production company during all phases of production, from development through post-production, and all distribution and exploitation rights are owned and initially controlled by a Canadian production company.
- iv) A project formerly produced in-house by a broadcaster is eligible as long as the applicant is an independent production company and the applicant has full control of the proposed project.
- v) The Canadian producer retains and exercises all effective controls or approvals consistent with those of a producer. This includes control and final approval of creative decisions and production financing, distribution and exploitation, and preparation and final approval of budget, subject to reasonable and standard approval rights customarily required by arm’s-length financial participants, including Canadian broadcasters and distributors.
- vi) The production company owns all rights (including copyright) and options necessary for the production and its distribution in Canada and abroad, and retains an ongoing financial interest in the project.

Eligible projects must have an acceptable Canadian broadcast licence.

<sup>6</sup> Exceptions can be made for certain genres.

## Analysis of Canadian Content Production

To illustrate as completely as possible the magnitude of what Canadian content represents, we provide an overview of production dollar value, the way it breaks down into different categories and genres, and the relevant trends that can be observed over time.

Further, we present the results of an in-depth analysis related to key creative positions and the degree to which Canadians perform in each of those positions when they exist.

### Data Limitations

Any detailed analysis of Canada's film and television sectors is hampered by several factors, all of which hold true when looking at issues related to Canadian content.

*Despite the pursuit of common objectives, each organization operates independently. As such, they have developed their own terminology, internal procedures and data collection methodologies*

The largest repositories of information on these sectors are CAVCO, the CRTC, Telefilm Canada and the Canadian Television Fund. Given the high cost of producing films and television programs, most Canadian content projects receiving support from Telefilm Canada (through the Canada

Feature Film Fund) or from the Canadian Television Fund also apply to CAVCO for tax credit support. However, certain production genres do not qualify for tax credit assistance but are nonetheless recognized as Canadian content by the CRTC (sports, news, game shows, reality television, etc.).

The difficulty in obtaining an accurate picture of the combined CAVCO and CRTC universes rests in the way

these organizations categorize and measure the Canadian content they either financially support (CAVCO) or recognize for broadcast regulation purposes (CRTC).

Despite the pursuit of common objectives, each organization operates independently. As such, they have developed their own terminology, internal procedures and data collection methodologies, and designed their own computer systems to best suit their particular needs. Moreover, although they have adopted very similar Canadian content definitions, the two organizations use different annual measuring time frames. The CRTC collects and reports its data relative to the broadcast year, which begins in September and ends in August. CAVCO, because it provides public financial assistance, uses the federal government's fiscal year, which begins in April and ends in March.

Not having a national standard for defining, administering and measuring Canadian content makes it next to impossible to obtain an accurate picture of the Canadian content production sector, or to establish performance indicators to measure performance over time.

### Overview

The film and television production industry is most often broken down into four categories:

- i) Foreign Location Shooting represents film and television production that is undertaken at least in part in Canada, the intellectual property for which is ultimately owned by foreign companies (e.g., Hollywood studios).
- ii) CAVCO-certified production represents film and television production that is considered Canadian content for purposes of qualifying for the Canadian Film or Video Production Tax Credit (CPTC).

- iii) Non-CAVCO production largely represents independent film and television production that is certified by the CRTC for broadcast purposes.
- iv) Broadcaster In-House production is film and television production that is undertaken entirely by CRTC-licensed broadcasters.

Figure 1<sup>7</sup> shows the degree to which the film and television production industry has grown over the last eight years in terms of total production dollars spent in Canada. Calculated in constant 2001 dollars, the industry experienced real growth of 89% between 1994-95 and 2001-02, from \$2.7 billion to \$5.1 billion.

Foreign Location Shooting has shown the greatest growth by far, increasing by 184% between 1994-95 and 2001-02, from \$619 million to \$1.8 billion. While an important part of Canada's film and television industry, contributing to employment and infrastructure, Foreign Location Shooting does not qualify as Canadian content and, therefore, is not considered in this report.

Looking specifically at Canadian content in the three remaining categories, CAVCO-certified production grew by 82% between 1994-95 and 2001-02, from \$1.1 billion to just over \$2 billion. As mentioned above, short of undertaking a title-by-title analysis, it is not possible to segment out the Canadian projects certified by CAVCO and those certified by the CRTC. As a result, the value of Non-CAVCO production is estimated to be about 15% of the CAVCO-certified volume, with growth mirroring that of the CAVCO-certified volume.

Broadcaster In-House production has also shown an increase over the eight-year time frame, albeit to a much lesser degree compared with the other sectors – by slightly more than 30%, from \$746 million in 1994-95 to \$973 million in 2001-02. That said, this is the only category that experienced any growth in 2001-02 over the previous year.

<sup>7</sup> *Profile 2003 – An Economic Report on the Canadian Film and Television Production Industry* (hereafter *Profile 2003*). Canadian Film and Television Production Association and the Association des producteurs de films et de télévision du Québec. (Note: all figures converted to constant 2001 dollars.)

**Figure 1 – Growth of Film and Television Production Financing by Sector**  
(Constant 2001 Dollars)

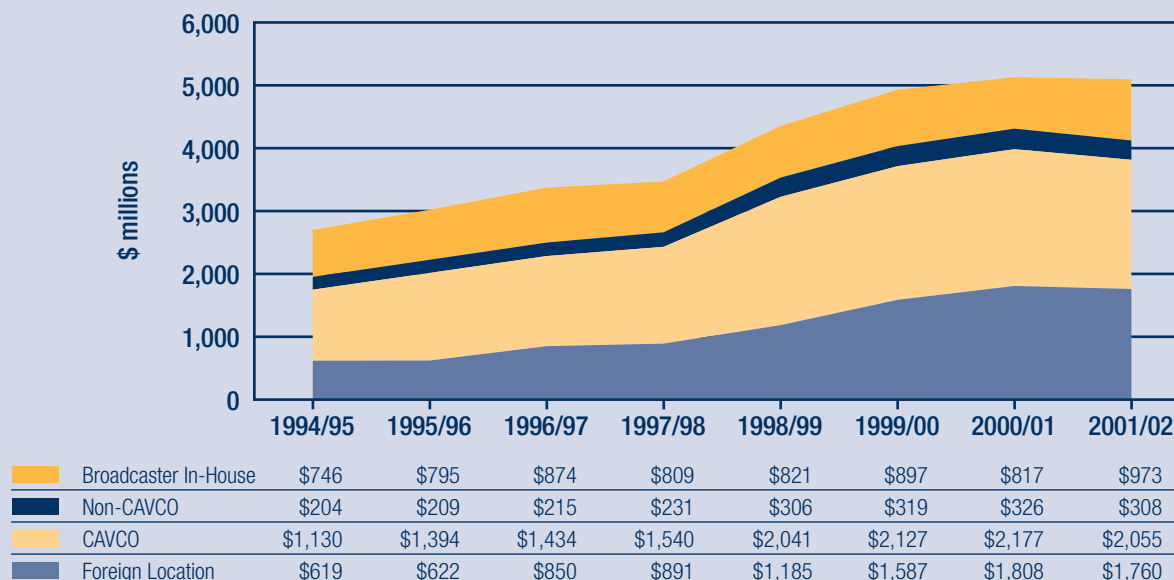


Figure 2<sup>8</sup> looks at all four categories with regard to their slice of the total production pie in each year from 1994-95 to 2001-02. The overall share of CAVCO-certified production remained relatively consistent over the period, at 43.5% of the total production activity on average. Broadcaster In-House activity, however, experienced a decrease in its overall share of the production market, from a high of 27.6% of total production in 1994-95 to 19% in 2001-02. The greatest increase in production sector market share has been that activity related to Foreign Location Shooting, from a low of 23% in 1994-95 up to 34.5% in 2001-02.

Figure 3<sup>9</sup> presents total CAVCO-certified production financing broken out by genre over the six-year period from 1996-97 to 2001-02. The genre representing the largest share is fiction (drama), accounting on average for 60% of the total over the period. Children's and

documentary accounted for, on average, 17% and 12% of the total, respectively. The smallest production expenditure shares relate to educational/instructional and magazines (as a group) at 7% and music, performing arts and variety (as a group) at 5%.

While not likely a surprise to anyone involved in the production sector, significant trends can be observed over the last six years with regard to the relative importance of each genre within the CAVCO-certified production universe. These shifts are important to consider as they reflect, to a large degree, the marketplace demand.

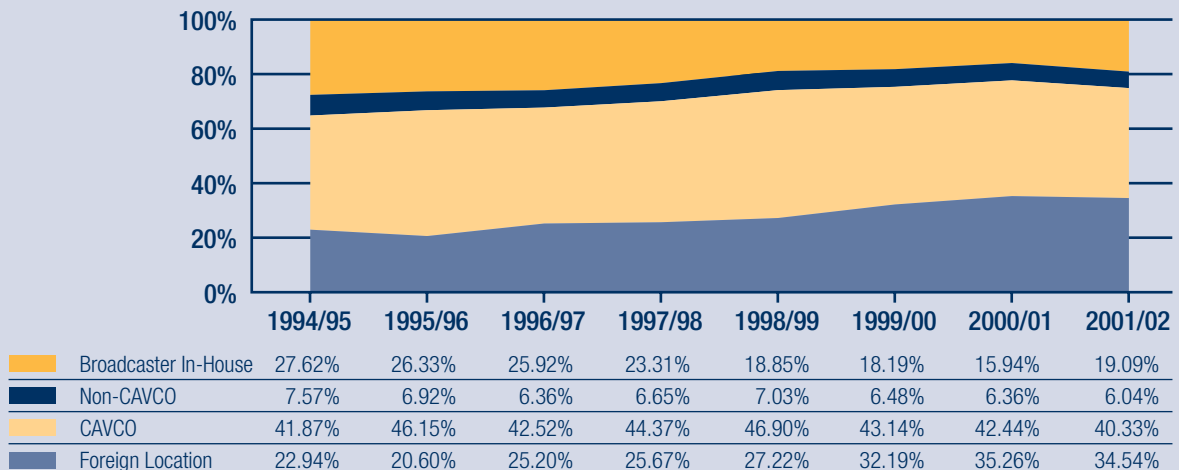
As Figure 4<sup>10</sup> demonstrates, fiction as a proportion of total CAVCO-certified production has decreased steadily, from 66.4% in 1996-97 to 52% in 2001-02. Filling the gap are the documentary, educational/instructional and magazines, music, performing arts and variety genres.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

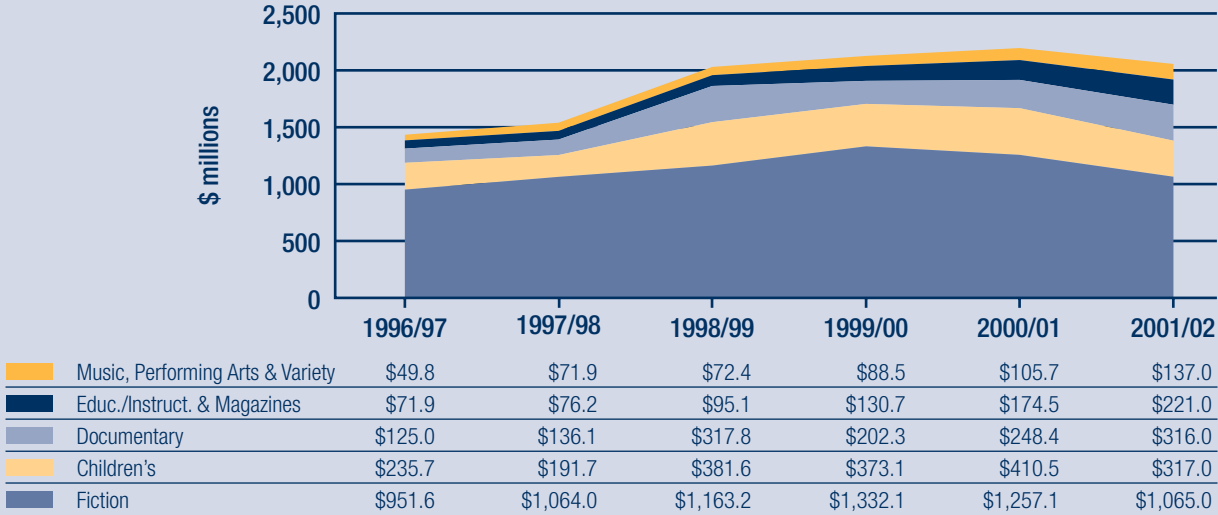
<sup>10</sup> Ibid.

**Figure 2 – Share of Total Production Financing by Sector**  
(Constant 2001 Dollars)

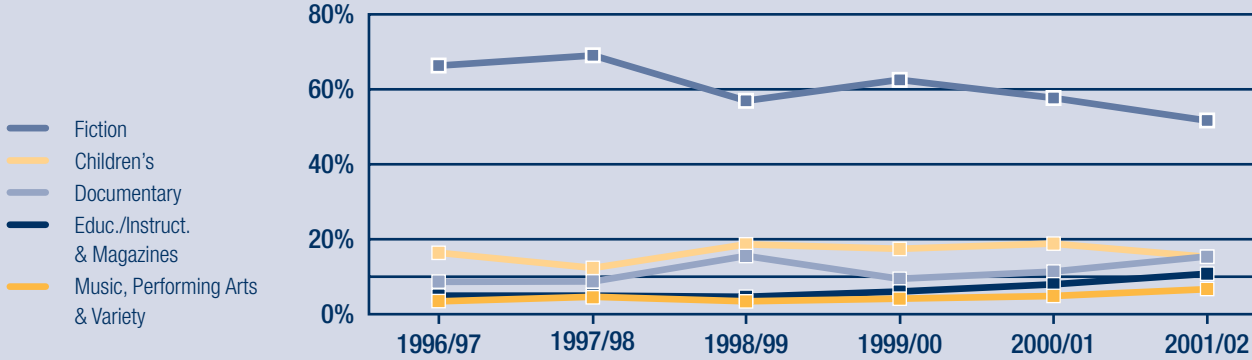




**Figure 3 – CAVCO-Certified Production Financing by Genre**  
(Constant 2001 Dollars)



**Figure 4 – CAVCO-Certified Production by Genre and Share of Total Financing**  
(Constant 2001 Dollars)



Looking at growth trends over the 1996-97 to 2001-02 period, the genres showing the greatest increases in total production financing are educational/instructional and magazines (as a group), up by 207% from \$72 million to \$221 million. Music, performing arts and variety (as a group) increased by 174%, from \$50 million to \$137 million. And documentaries grew by 153%, from \$125 million to \$316 million.

While production financing and the relative market shares of each category and genre are valid indicators

of the overall health of various aspects of the Canadian film and television production industry, the focus of this report relates to the definition of Canadian content. Therefore, it is important to provide an accurate picture of the degree to which the current key creative points system – maximum ten points based on eight or ten positions/locations – is compatible with the different production genres. It is also extremely relevant to assess the extent to which productions certified as Canadian make use of Canadians in each key creative position.

## CAVCO-Certified Productions

Published reports disagree as to the extent to which CAVCO-certified productions make use of Canadians in the key creative positions.

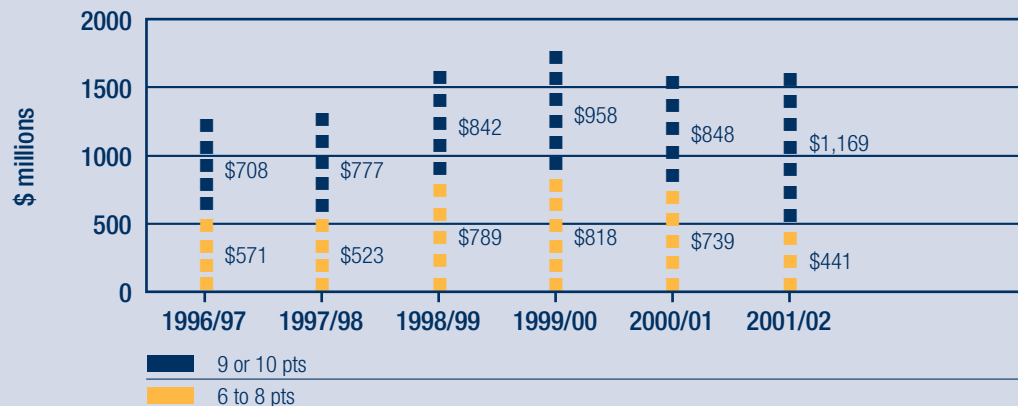
The *Profile 2003* report notes that between 1997-98 and 2001-02, nine- and ten-point productions accounted for an average of 58% of the total CAVCO-certified production financing, while productions achieving six to eight points made up the difference of 42%. CAVCO,<sup>11</sup> however, notes a different result, despite the same time frame and, presumably, the same base of measure.

<sup>11</sup> CAVCO 2001-02 Activity Report.

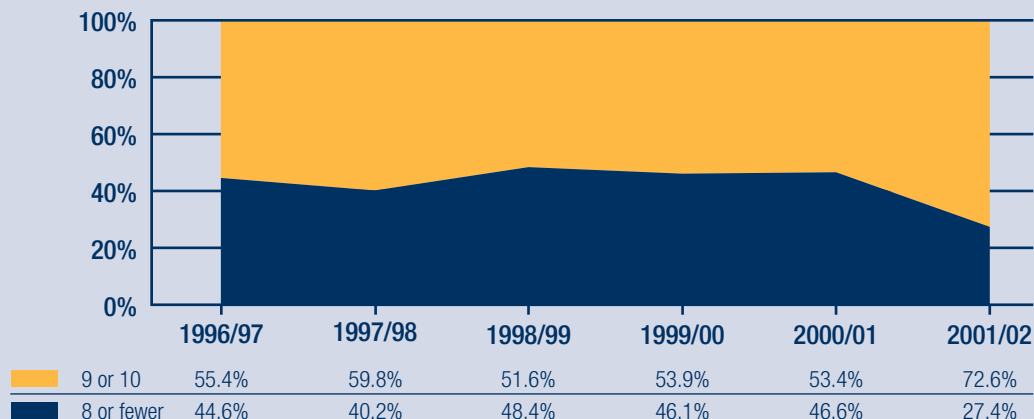
According to the CAVCO report, the total budgets of nine- and ten-point productions accounted for 71% of the total CAVCO volume. Figure 5 presents the results as published in *Profile 2003*.

Looking at the total budgets of CAVCO-certified productions in terms of the share of nine- and ten-points productions versus those achieving fewer than nine points, we observe that between 1996-97 and 2000-01, the balance between the two groups held relatively constant at about 55% and 45%, respectively. There is a considerable shift, however, between 2000-01 and 2001-02, where the share of nine- and ten-point productions rose to almost 73% (Figure 6).

**Figure 5 – CAVCO Certified Production Financing by Points**  
(Constant 2001 Dollars)



**Figure 6 – Share of CAVCO-Certified Production Financing by Points**  
(Constant 2001 Dollars)





To glean a better picture of just how many key creative points CAVCO-certified productions actually obtained, we requested from CAVCO special statistical runs providing details related to volume, genre and language of production, as well as the degree to which each key creative position existed and how often it was filled by a Canadian when it did exist.

One of the most important findings relates to how CAVCO has historically reported data related to the number of Canadian content points. These data are then often quoted by others, including *Profile 2003*. The way these data have been reported suggests that all key creative positions exist all the time, and that Canadians perform in enough of them to achieve at least six points. This is simply not the case. In generating its statistics, CAVCO prorates the number of Canadians performing in the key creative positions relative to how many of the positions actually existed (e.g., a six to seven point production is prorated to a nine to ten point production).

Based on a detailed analysis of virtually all productions certified by CAVCO<sup>12</sup> between 1994-95 and January 2003, the following tables illustrate the degree to which the key creative positions existed in the various genres

and how often Canadians performed in them when they did exist, by genre and by language:<sup>13</sup>

■ **Only 33.6% of all CAVCO-certified, non-animation productions were potentially eligible for ten key creative points.**

While the documentary genre accounted for the largest number of productions certified as Canadian by CAVCO, ironically, it represented the smallest percentage of those having the eight creative positions that would make them eligible for all ten points.

The educational/instructional, music and magazine genres follow documentaries in terms of the degree to which the ten-point system is well suited, with only 10.7%, 11.8% and 13.5% of the total number of productions eligible for ten key creative points.

With respect to the figures in Table 3, it is noteworthy that only 89.7% of the fiction productions included all of the eight positions. In other words, more than 10% (111 productions) of the genre for which the CAVCO non-animation ten-point system was originally designed did not fit the mould.

**Table 3**  
**CAVCO-Certified Non-Animation Productions with All Eight Creative Positions**

Genre	Total Productions Certified	No. of Productions with 8 Positions	%
Children's	255	178	69.8
Documentary	1842	101	5.5
Educational/Instructional	122	13	10.7
Fiction	1074	963	89.7
Magazine	673	91	13.5
Music	51	6	11.8
Performing Arts	88	25	28.4
Variety	452	153	33.8
<b>Combined</b>	<b>4557</b>	<b>1530</b>	<b>33.6</b>

<sup>12</sup> Includes all productions receiving either a Canadian Film or Video Certificate (Part A) or a Certificate of Completion (Part B). Our analysis revealed virtually no change with regard to key creative positions between Part A certificates and Part B certificates.

<sup>13</sup> Television series were examined as a whole; as a result, there may be a relatively small margin of error.

**Table 4**  
**CAVCO-Certified Non-Animation Productions**  
 The Degree to Which Each Key Creative Position Did Not Exist

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
Children's	0.8%	9.8%	0.0%	1.6%	12.5%	2.0%	1.6%	8.2%
Documentary	24.4%	76.4%	0.4%	4.5%	83.2%	3.0%	19.5%	0.5%
Educ./Instr.	1.6%	61.5%	0.8%	9.8%	45.9%	4.1%	16.4%	8.2%
Fiction	1.2%	2.0%	0.1%	1.4%	3.9%	0.3%	3.4%	0.4%
Magazine	0.9%	41.0%	1.0%	20.2%	59.7%	5.8%	26.7%	7.9%
Music	2.0%	15.7%	3.9%	47.1%	33.3%	0.0%	82.4%	3.9%
Perform. Arts	2.3%	20.5%	0.0%	28.4%	25.0%	1.1%	42.0%	1.1%
Variety	2.0%	19.7%	0.2%	21.5%	18.4%	3.5%	42.7%	9.7%
<b>Combined</b>	<b>10.6%</b>	<b>42.1%</b>	<b>0.4%</b>	<b>8.7%</b>	<b>48.0%</b>	<b>2.7%</b>	<b>19.2%</b>	<b>3.2%</b>

Breaking out data by key creative position, we see which ones were less likely to exist by genre (Table 4). Overall, the Art Director position was least likely to exist (48% of the total). In 42% of the total, the 2nd Lead Actor position did not exist. The Music Composer and 1st Lead Actor follow, not existing in 19.2% and 10.6% of all non-animation productions, respectively.

*Impact of documentaries*

The documentary genre strongly impacts the overall totals of the data in the above table because of the large number of certified projects and the degree to which the ten-point system does not correspond. By removing documentaries from the mix, the results change significantly, as seen in Table 5.

**Table 5**  
**CAVCO-Certified Non-Animation Productions**  
 The Degree to Which Each Key Creative Position Did Not Exist (Excluding Documentary)

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
Children's	0.8%	9.8%	0.0%	1.6%	12.5%	2.0%	1.6%	8.2%
Educ./Instr.	1.6%	61.5%	0.8%	9.8%	45.9%	4.1%	16.4%	8.2%
Fiction	1.2%	2.0%	0.1%	1.4%	3.9%	0.3%	3.4%	0.4%
Magazine	0.9%	41.0%	1.0%	20.2%	59.7%	5.8%	26.7%	7.9%
Music	2.0%	15.7%	3.9%	47.1%	33.3%	0.0%	82.4%	3.9%
Perform. Arts	2.3%	20.5%	0.0%	28.4%	25.0%	1.1%	42.0%	1.1%
Variety	2.0%	19.7%	0.2%	21.5%	18.4%	3.5%	42.7%	9.7%
<b>Combined</b>	<b>1.3%</b>	<b>18.9%</b>	<b>0.4%</b>	<b>11.5%</b>	<b>24.1%</b>	<b>2.5%</b>	<b>18.9%</b>	<b>5.0%</b>

Most noteworthy is the change with respect to the 1st Lead Actor, 2nd Lead Actor and Art Director positions – that is, they are considerably more likely to exist. Inversely, the absence of a writer position increases slightly, due to the results in the magazine, music, performing arts and variety genres.

#### *Language of production*

When segmented by language of production, there are notable differences with respect to the absence of key creative positions (Table 6).

For example, there was no 2nd Lead Actor position in 36.3% of all French-language productions, compared with 46.5% in English-language productions. Inversely, there was no Writer position in 13.7% of French-language productions, compared with only 5% of English-language productions. Similarly, the Music Composer position existed less often in French-language productions (25.8% of the cases) than it did in English-language productions (14%) (Table 7). And finally, the positions of Editor and Director of Photography (DOP) existed slightly less often in productions in French.

**Table 6**  
**CAVCO-Certified Non-Animation Productions**  
**(French-Language Production)**  
The Degree to Which Each Key Creative Position Did Not Exist

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
Children's	0.0%	9.3%	0.0%	2.8%	8.3%	1.9%	0.9%	15.7%
Documentary	29.6%	68.5%	0.0%	6.1%	84.0%	3.7%	24.4%	1.4%
Educ./Instr.	10.0%	40.0%	0.0%	20.0%	40.0%	30.0%	20.0%	20.0%
Fiction	0.3%	2.8%	0.0%	2.0%	8.1%	0.8%	4.2%	0.6%
Magazine	0.7%	36.8%	0.0%	25.0%	54.7%	6.9%	31.7%	10.3%
Music	3.6%	3.6%	3.6%	75.0%	42.9%	0.0%	96.4%	7.1%
Perform. Arts	0.0%	17.9%	0.0%	42.9%	32.1%	3.6%	46.4%	3.6%
Variety	1.6%	23.3%	0.0%	21.8%	16.7%	3.5%	45.4%	12.6%
<b>Combined</b>	<b>10.2%</b>	<b>36.3%</b>	<b>0.1%</b>	<b>13.7%</b>	<b>46.1%</b>	<b>3.8%</b>	<b>25.8%</b>	<b>6.2%</b>

**Table 7**  
**CAVCO-Certified Non-Animation Productions**  
**(English-Language Production)**  
The Degree to Which Each Key Creative Position Did Not Exist

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
Children's	1.4%	10.3%	0.0%	0.7%	15.8%	2.1%	2.1%	2.7%
Documentary	21.7%	80.5%	0.6%	3.7%	82.5%	2.6%	16.9%	0.1%
Educ./Instr.	0.9%	63.4%	0.9%	8.9%	46.4%	1.8%	16.1%	7.1%
Fiction	1.7%	1.7%	0.1%	1.1%	1.7%	0.0%	3.1%	0.3%
Magazine	1.4%	49.3%	3.2%	10.9%	69.7%	3.2%	16.3%	3.2%
Music	0.0%	30.4%	4.3%	13.0%	21.7%	0.0%	65.2%	0.0%
Perform. Arts	3.5%	21.1%	0.0%	22.8%	21.1%	0.0%	36.8%	0.0%
Variety	3.1%	11.5%	0.8%	20.0%	22.3%	3.1%	36.2%	2.3%
<b>Combined</b>	<b>10.9%</b>	<b>46.5%</b>	<b>0.7%</b>	<b>5.0%</b>	<b>49.2%</b>	<b>1.8%</b>	<b>14.0%</b>	<b>1.0%</b>

## Fiction

Fiction has long been regarded as a high public policy priority in film and television. In order to gain a better grasp of the current situation in this area, we carried out a specific analysis of non-animation fiction productions by position, type and intended market.

Table 8 shows the breakdown of certified non-animation fiction productions by type and intended market from 1994-95 to January 2003.

**Table 8**  
**CAVCO-Certified Non-Animation Fiction Productions**

Genre	Number of Productions	Share of Total
<b>Feature Films</b>		
Theatrical	291	27.2%
Television	81	7.5%
Non-Theatrical	11	1.0%
Home Video	1	0.1%
<b>Series</b>		
Television	383	35.7%
<b>MOWs/MFT</b>		
Television	138	12.8%
Non-Theatrical	1	0.1%
<b>Short Films</b>		
Theatrical	11	1.0%
Television	85	7.9%
Non-Theatrical	4	0.4%
Home Video	1	0.1%
<b>Miniseries</b>		
Television	42	3.9%
<b>Pilots</b>		
Television	25	2.3%
<b>Combined</b>	<b>1074</b>	<b>100.0%</b>

The largest non-animation fiction genre is television series (35.7%), followed by theatrical feature films (27.2%). Movies-of-the-week/made-for-TV productions, geared exclusively to the television market, make up the third largest group, at 12.8%.

Particularly curious in these data is the low number of television pilots. Averaged out over the 1994-95 to 2002-03 period, CAVCO has certified fewer than three pilots per year. Given the attention focused of late on the need to increase the amount of Canadian drama on television, one would expect the production of television pilots to be more vibrant. While usually expensive to produce, pilots are nonetheless widely recognized as an essential “prospecting” tool in the television series production business. The more pilots produced each year, one could argue, the better the chances of achieving success in reaching television audiences, since broadcasters would have a greater pool of potential series from which to choose.

Using the available data, we analyzed the degree to which each key creative position was absent in each production type, by intended market.<sup>14</sup>

Among feature films intended for the theatrical market (i.e., movie houses), no Music Composer or Art Director was used in 2.4% of the cases (7 out of 291); there was no Writer in two cases (0.7%) and no 1st Lead Actor in only three (1%). Feature films targeted to the television market had a higher incidence of key creative positions not being used. For example, there was no Music Composer in nine of out of 81 cases (11.1%) and no Writer in five cases (6.2%) (see Table 9).

Among fiction series made for television, the Art Director position did not exist 5% of the time (19 out of 383 cases), the 2nd Lead Actor position was absent in 13 cases, and the Music Composer in ten cases.

<sup>14</sup> The data for markets with a very low number of productions (e.g., home video shorts) have been excluded.

**Table 9**  
**CAVCO-Certified Non-Animation Productions (Fiction)**  
 The Degree to Which Each Key Creative Position Did Not Exist

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
<b>Feature Films</b>								
Theatrical	1.0%	0.3%	0.0%	0.7%	2.4%	0.0%	2.4%	0.3%
Television	2.5%	1.2%	0.0%	6.2%	3.7%	0.0%	11.1%	0.0%
Non-Theatrical	18.2%	0.0%	0.0%	9.1%	0.0%	0.0%	0.0%	0.0%
<b>Series</b>								
Television	0.5%	3.4%	1.6%	0.8%	5.0%	0.5%	2.6%	0.5%
<b>MOWs/MFT</b>								
Television	1.4%	0.0%	0.0%	1.4%	0.0%	0.0%	1.4%	0.7%
<b>Short Films</b>								
Theatrical	0.0%	9.1%	9.1%	0.0%	9.1%	0.0%	0.0%	0.0%
Television	1.2%	5.9%	0.0%	0.0%	10.6%	1.2%	7.1%	0.0%
<b>Miniseries</b>								
Television	2.4%	0.0%	0.0%	2.4%	4.8%	0.0%	2.4%	0.0%
<b>Pilots</b>								
Television	0.0%	4.0%	0.0%	0.0%	4.0%	0.0%	4.0%	0.0%
<b>Combined</b>	<b>1.2%</b>	<b>2.0%</b>	<b>0.1%</b>	<b>1.4%</b>	<b>3.9%</b>	<b>0.3%</b>	<b>3.4%</b>	<b>0.4%</b>

■ **Animation productions fare better than non-animation productions in terms of potential eligibility for ten creative points.**

While animation productions do, in fact, fare better than non-animation productions, 24.8% of those in the combined children's and fiction genres still did not have the potential to achieve ten key creative points (Table 10).

The positions least existing overall in animation productions are Camera Operator, Design Supervisor and Assistant Animation/In-Betweening.

Looking specifically at the genres, the positions least existing for children's are Design Supervisor (8.5% of the time), Camera Operator (7.4%) and Assistant Animation/In-Betweening (6.4%). The situation is slightly

**Table 10**  
**CAVCO-Certified Animation Productions with All Ten Creative Positions/Functions**

Genre	Total Productions Certified	No. of Productions with 10 Positions	%
Children's	94	71	75.5
Fiction <sup>15</sup>	23	17	73.9
<b>Combined</b>	<b>117</b>	<b>88</b>	<b>75.2</b>

<sup>15</sup> Animation productions in the fiction genre are targeted to audiences other than children.

different in fiction, where the positions least likely to exist are Camera Operator (17.4% of the time) and 1st Lead Voice (8.7%).

Some notable differences are apparent when the data are segmented by language of production.

The Camera Operator position existed the least often in both French- and English-language productions

(Table 11). It was absent in one-third of the cases in French-language children’s productions (Table 12) but in only 5.7% of English-language children’s productions (Table 13). The inverse seems to be true with regard to fiction, where the Camera Operator is far more likely to exist in French-language productions.

**Table 11**  
**CAVCO-Certified Animation Productions**  
The Degree to Which Each Key Creative Position Did Not Exist

Genre	1st or 2nd Lead Voice	Dir.	Writer	Design Super.	Music Comp.	Editor	Layout and Backgr.	Ass. Anim. and In-Bet.	Key Anim.	Cam. Oper.
Children’s	1.1%	1.1%	0.0%	8.5%	4.3%	1.1%	0.0%	6.4%	0.0%	7.4%
Fiction	8.7%	0.0%	0.0%	0.0%	4.3%	4.3%	0.0%	0.0%	0.0%	17.4%
<b>Combined</b>	<b>2.6%</b>	<b>0.9%</b>	<b>0.0%</b>	<b>6.8%</b>	<b>4.3%</b>	<b>1.7%</b>	<b>0.0%</b>	<b>5.1%</b>	<b>0.0%</b>	<b>9.4%</b>

**Table 12**  
**CAVCO-Certified Animation Productions (French-Language Production)**  
The Degree to Which Each Key Creative Position Did Not Exist

Genre	1st or 2nd Lead Voice	Dir.	Writer	Design Super.	Music Comp.	Editor	Layout and Backgr.	Ass. Anim. and In-Bet.	Key Anim.	Cam. Oper.
Children’s	0.0%	0.0%	0.0%	16.7%	0.0%	0.0%	0.0%	0.0%	0.0%	33.3%
Fiction	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>Combined</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>9.1%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>18.2%</b>

**Table 13**  
**CAVCO-Certified Animation Productions (English-Language Production)**  
The Degree to Which Each Key Creative Position Did Not Exist

Genre	1st or 2nd Lead Voice	Dir.	Writer	Design Super.	Music Comp.	Editor	Layout and Backgr.	Ass. Anim. and In-Bet.	Key Anim.	Cam. Oper.
Children’s	1.1%	1.1%	0.0%	8.0%	4.6%	1.1%	0.0%	6.9%	0.0%	5.7%
Fiction	11.8%	0.0%	0.0%	0.0%	5.9%	5.9%	0.0%	0.0%	0.0%	23.5%
<b>Combined</b>	<b>2.9%</b>	<b>1.0%</b>	<b>0.0%</b>	<b>6.7%</b>	<b>4.8%</b>	<b>1.9%</b>	<b>0.0%</b>	<b>5.8%</b>	<b>0.0%</b>	<b>8.7%</b>

A number of positions are likely to be absent in English-language productions but always used in French-language productions. These include 1st/2nd Lead Voice, Director, Music Composer, Editor and Assistant Animation/In-Betweening.

The Design Supervisor position exists less frequently in French-language productions than in English-language productions.

■ **When the key creative positions exist in non-animation productions, Canadians perform in them to a very high degree.**

When all genres are combined, Canadians perform in the key creative positions of non-animation productions no less than 92% of the time (Table 14). The positions least likely to be performed by a Canadian overall are 1st Lead Actor and 2nd Lead Actor, followed by Writer. The Director position is most likely to be filled by a Canadian (99% of the time).

We note that fiction scores significantly low in the use of Canadians in the Lead Actor and Writer positions, obviously producing a downward draw on the combined totals.

Looking at productions by language reveals differences in the use of Canadians in the key creative positions.

Comparing Tables 15 and 16, French-language productions overall are more likely to make use of Canadians in almost all key creative positions. This is particularly true with respect to Actor and Writer.

The difference between the linguistic markets is striking in the fiction genre. Canadians are used only two-thirds of the time in the 1st Lead Actor position in English-language productions, compared with 99% of the time in French-language productions. Similarly, Canadians hold the Writer position in 77% of English-language productions, compared with 99% in French-language productions.

While the difference in the children's genre is not as great as in fiction, Canadians are far more likely to hold the 1st Lead Actor position in productions in French than in those in English.

**Table 14**  
**CAVCO-Certified Non-Animation Productions**  
The Degree to Which Canadians Perform in Each Key Creative Position

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
Children's	92.1%	93.9%	100.0%	92.8%	96.4%	98.8%	97.6%	97.9%
Documentary	98.9%	93.3%	99.8%	99.8%	93.9%	98.0%	97.7%	99.2%
Educ./Instr.	99.2%	93.6%	100.0%	98.2%	100.0%	98.3%	95.1%	98.2%
Fiction	77.3%	94.3%	96.9%	84.3%	98.2%	98.0%	96.2%	98.8%
Magazine	98.2%	95.7%	99.4%	98.3%	95.2%	96.1%	97.0%	95.2%
Music	92.0%	86.0%	91.8%	100.0%	85.3%	100.0%	100.0%	100.0%
Perform. Arts	96.5%	95.7%	100.0%	98.4%	93.9%	97.7%	92.2%	96.6%
Variety	95.7%	93.1%	100.0%	94.6%	98.1%	98.4%	88.0%	94.1%
<b>Combined</b>	<b>92.2%</b>	<b>94.0%</b>	<b>99.0%</b>	<b>94.7%</b>	<b>96.8%</b>	<b>97.8%</b>	<b>96.4%</b>	<b>97.9%</b>



**Table 15**  
**CAVCO-Certified Non-Animation Productions**  
**(French-Language Productions)**

The Degree to Which Canadians Perform in Each Key Creative Position

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
Children's	100.0%	92.9%	100.0%	100.0%	94.9%	98.1%	99.1%	96.7%
Documentary	98.2%	94.9%	100.0%	99.8%	89.0%	98.8%	97.5%	98.7%
Educ./Instr.	100.0%	83.3%	100.0%	100.0%	100.0%	85.7%	100.0%	100.0%
Fiction	99.2%	98.6%	99.7%	98.9%	97.9%	99.2%	97.4%	98.3%
Magazine	99.3%	95.4%	99.8%	97.6%	95.1%	95.4%	96.7%	95.0%
Music	88.9%	88.9%	96.3%	100.0%	93.8%	100.0%	100.0%	100.0%
Perform. Arts	100.0%	95.7%	100.0%	100.0%	94.7%	100.0%	93.3%	96.3%
Variety	96.5%	91.4%	100.0%	93.5%	98.5%	97.7%	86.7%	93.5%
<b>Combined</b>	<b>98.4%</b>	<b>95.0%</b>	<b>99.8%</b>	<b>98.3%</b>	<b>96.2%</b>	<b>97.9%</b>	<b>96.1%</b>	<b>96.9%</b>

Other areas where Canadians are more likely to perform in the key creative positions of French-language productions include Director and Art Director in the music genre and Writer in children's.

There are only two areas where a Canadian is more likely to be used in English than in French: DOP and 2nd Lead Actor, both in the educational/instructional genre.

**Table 16**  
**CAVCO-certified Non-Animation Productions**  
**(English-Language Productions)**

The Degree to Which Canadians Perform in Each Key Creative Position

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
Children's	86.1%	94.7%	100.0%	87.6%	97.6%	99.3%	96.5%	98.6%
Documentary	99.0%	91.5%	99.6%	99.7%	95.7%	97.4%	97.7%	99.4%
Educ./Instr.	99.1%	95.1%	100.0%	98.0%	100.0%	99.1%	94.7%	98.1%
Fiction	65.9%	92.3%	95.5%	76.9%	98.3%	97.5%	95.6%	99.0%
Magazine	95.9%	96.4%	98.6%	99.5%	95.5%	97.2%	97.3%	96.3%
Music	95.7%	81.3%	86.4%	100.0%	77.8%	100.0%	100.0%	100.0%
Perform. Arts	96.4%	95.6%	100.0%	97.7%	95.6%	96.5%	91.7%	96.5%
Variety	93.7%	96.5%	100.0%	97.1%	97.0%	100.0%	90.4%	95.3%
<b>Combined</b>	<b>87.6%</b>	<b>93.1%</b>	<b>98.3%</b>	<b>92.3%</b>	<b>97.3%</b>	<b>97.7%</b>	<b>96.5%</b>	<b>98.7%</b>



As in our analysis of the degree to which the key creative positions existed in the fiction genre, we analyzed the degree to which Canadians performed in them when they did exist. Details are provided in Table 17.

Overall, these figures indicate that Canadians were used least often in the position of 1st Lead Actor (77.3% of the cases). In the subgroups of feature films and MOWs/MFTs intended for the television market, this percentage drops considerably, with Canadians performing in the 1st Lead Actor position in only 58% of the productions. Canadians fared slightly better in feature films intended for the theatrical market, filling the 1st Lead Actor position 66% of the time.

Another position less likely to be held by a Canadian is Writer. In feature films and MOWs/MFTs intended for the television, the Writer position was held by Canadians just 75% and 63.2% of the time, respectively.

■ **When the key creative positions exist in animation productions, Canadians perform in them to a high degree.**

With the exception of the In-Betweening, Writer and Camera Operator positions, Canadians performed in the key creative positions in no fewer than 96.4% of the cases (Table 18). The relatively low instance of a Canadian performing the In-Betweening function is explained by the tendency of producers to outsource this activity to foreign countries where labour is considerably less expensive.

Particularly noteworthy is the fact that Canadians held the position of Writer in just under 72% of the cases and of Camera Operator in 84% of the cases.

**Table 17**  
**CAVCO-Certified Non-Animation Productions (Fiction)**  
The Degree to Which Canadians Perform in Each Key Creative Position

Genre	1st Actor	2nd Actor	Director	Writer	Art Director	DOP	Music Comp.	Editor
<b>Feature Films</b>								
Theatrical	66.3%	92.1%	95.9%	84.8%	97.2%	96.9%	93.7%	99.3%
Television	58.2%	91.3%	93.8%	75.0%	96.2%	98.8%	94.4%	100.0%
Non-Theatrical	0.0%	100.0%	90.9%	80.0%	90.9%	81.8%	100.0%	100.0%
<b>Series</b>								
Television	91.3%	96.2%	99.5%	89.5%	99.5%	99.2%	98.1%	99.5%
<b>MOWs/MFT</b>								
Television	58.1%	93.5%	96.4%	63.2%	100.0%	99.3%	97.1%	97.8%
<b>Short Films</b>								
Theatrical	90.9%	90.0%	100.0%	90.9%	100.0%	100.0%	90.9%	100.0%
Television	100.0%	96.3%	98.8%	96.5%	96.1%	96.4%	96.2%	94.1%
<b>Miniseries</b>								
Television	90.2%	95.2%	97.6%	92.7%	97.5%	100.0%	100.0%	97.6%
<b>Pilots</b>								
Television	84.0%	95.8%	100.0%	88.0%	95.8%	96.0%	95.8%	100.0%
<b>Combined</b>	<b>77.3%</b>	<b>94.3%</b>	<b>96.9%</b>	<b>84.3%</b>	<b>98.2%</b>	<b>98.0%</b>	<b>96.2%</b>	<b>98.8%</b>

Comparing animation by language of production, we observe fewer dissimilarities between French- and English-language productions than in non-animation.

Canadians virtually always performed in the position of 1st/2nd Lead Voice in English-language productions but only 91% of the time in French-language productions

(Table 19). Inversely, the Writer position was held by a Canadian in all French-language productions but in only 68% of English-language productions (Table 20).

For the Assistant Animation and In-Betweening functions, English-language productions use non-Canadians far more frequently than do French-language productions.

**Table 18**  
**CAVCO-Certified Animation Productions**  
The Degree to Which Canadians Perform in the Key Creative Positions

Genre	1st or 2nd Lead Voice	Dir.	Writer	Design Super.	Music Comp.	Editor	Layout and Backgr.	Ass. Anim. and In-Bet.	Key Anim.	Cam. Oper.
Children's	98.9%	98.9%	67.0%	97.7%	96.7%	100.0%	97.9%	45.5%	100.0%	82.8%
Fiction	100.0%	100.0%	91.3%	100.0%	95.5%	100.0%	100.0%	82.6%	100.0%	89.5%
<b>Combined</b>	<b>99.1%</b>	<b>99.1%</b>	<b>71.8%</b>	<b>98.2%</b>	<b>96.4%</b>	<b>100.0%</b>	<b>98.3%</b>	<b>53.2%</b>	<b>100.0%</b>	<b>84.0%</b>

**Table 19**  
**CAVCO-Certified Animation Productions (French-Language Productions)**  
The Degree to Which Canadians Perform in the Key Creative Positions

Genre	1st or 2nd Lead Voice	Dir.	Writer	Design Super.	Music Comp.	Editor	Layout and Backgr.	Ass. Anim. and In-Bet.	Key Anim.	Cam. Oper.
Children's	83.3%	100.0%	100.0%	60.0%	100.0%	100.0%	100.0%	83.3%	100.0%	75.0%
Fiction	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	80.0%	100.0%	80.0%
<b>Combined</b>	<b>90.9%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>80.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>81.8%</b>	<b>100.0%</b>	<b>77.8%</b>

**Table 20**  
**CAVCO-Certified Animation Productions (English-Language Productions)**  
The Degree to Which Canadians Perform in the Key Creative Positions

Genre	1st or 2nd Lead Voice	Dir.	Writer	Design Super.	Music Comp.	Editor	Layout and Backgr.	Ass. Anim. and In-Bet.	Key Anim.	Cam. Oper.
Children's	100.0%	98.8%	64.4%	100.0%	96.4%	100.0%	97.7%	42.0%	100.0%	82.9%
Fiction	100.0%	100.0%	88.2%	100.0%	93.8%	100.0%	100.0%	82.4%	100.0%	92.3%
<b>Combined</b>	<b>100.0%</b>	<b>99.0%</b>	<b>68.3%</b>	<b>100.0%</b>	<b>96.0%</b>	<b>100.0%</b>	<b>98.1%</b>	<b>49.0%</b>	<b>100.0%</b>	<b>84.2%</b>

## CRTC-Certified Productions

Unfortunately, it is not possible to carry out the same kind of detailed analysis of CRTC-certified Canadian content as that done for CAVCO-certified productions. As previously noted, the Commission categorizes productions differently and recognizes a greater range of programming genres. Further, it does not gather detailed information on Broadcaster in-house productions, since they receive automatic Canadian content recognition without a formal review. Rendering a detailed analysis of CRTC-certified productions still more challenging is the fact that the Commission's electronic database is not as comprehensive as CAVCO's.

Based on the information available electronically, we are nonetheless able to provide a reliable overview of the volume of CRTC-certified productions and the degree to which the ten-point key creative system is compatible with each program category.

The following concerns all productions certified by the Commission between September 1998 and August 2002.<sup>16</sup>

All programs certified by the Commission are grouped into three separate classes: Class "C" programs are those meeting the basic Canadian content requirements; "SR" programs have received special recognition as

co-ventures; "D" programs are foreign productions related to which the audio portion was dubbed in Canada into one of the official languages or a native Canadian language. Table 21 provides the number of productions certified in each class.

Over 90% of all CRTC certifications over the five-year period were in the "C" class. Dubbed programming made up the second largest group with 526 productions, or 8% of the total volume. The "SR" class accounted for the smallest share at less than 1% (50 productions).

Table 22 provides a breakdown of class "C" certified programming by category over the 1998 to 2002 period.

As these data indicate, the overall number of "C" certifications issued by the CRTC grew significantly between 1998 and 2000 (by almost 60%), from 946 to 1,500. However, it has steadily decreased since 2000, falling from 1,500 to 1,037 in 2002.

The largest number of certifications is in Category 2 programming (analysis and interpretation, and long-form documentary), with 1,916 over the five-year period. In 2000, Category 2 programming was broken down into two separate categories – i) analysis and interpretation and ii) long-form documentary – to allow for the separate tracking and monitoring of each of these genres.

**Table 21**  
**Volume of CRTC-Certified Productions by Class**

Class	1998	1999	2000	2001	2002	Total
"C" Programming	946	1253	1500	1405	1037	6141
"SR" Programming	3	12	3	15	17	50
"D" Programming	104	84	87	113	138	526
<b>Total</b>	<b>1053</b>	<b>1351</b>	<b>1590</b>	<b>1534</b>	<b>1192</b>	<b>6720</b>

<sup>16</sup> Includes only productions for which the CRTC has issued a "C," "SR" or "D" number. Accordingly, Broadcaster In-House productions are not included.

**Table 22**  
**Volume of Type “C” Certifications by Program Category**

Program Category		1998	1999	2000	2001	2002	Total
News	1	2	1	2	0	2	7
Analysis and Interpretation and Long-Form Documentary	2	265	375	279	10	0	929
Analysis and Interpretation	2A	0	0	67	101	56	224
Long-Form Documentary	2B	0	0	85	374	304	763
Reporting and Actualities	3	13	18	13	10	3	57
Religion	4	13	33	39	32	38	155
Formal Education and Preschool	5A	34	17	14	11	15	91
Informal Education/Recreation and Leisure	5B	146	257	349	238	152	1142
Sports	6	66	100	118	0	0	284
Sports – Professional	6A	0	0	23	65	49	137
Sports – Amateur	6B	2	1	9	72	63	147
Drama/Comedy – Ongoing Dramatic Series	7A	35	40	56	42	26	199
Drama/Comedy – Ongoing Comedy Series	7B	14	11	24	24	20	93
Drama/Comedy – Specials, Miniseries and Made-for-TV Feature Films	7C	113	157	146	115	57	588
Drama/Comedy – Theatrical Feature Films Aired on TV	7D	15	19	13	35	26	108
Drama/Comedy – Animated TV Programs and Films	7E	17	20	28	17	14	96
Drama/Comedy – Comedy Sketches, Improvisations, Unscripted Works, Stand-up Comedy	7F	17	24	24	22	26	113
Drama/Comedy – Other Drama	7G	18	20	48	79	57	222
Music and Dance, Music Video Clips, Music Video Programs	8	77	57	69	0	0	203
Music and Dance	8A	0	0	7	44	26	77
Music Video Clips	8B	0	0	0	2	3	5
Music Video Programs	8C	0	0	0	2	12	14
Variety	9	13	13	11	20	9	66
Game Shows	10	5	5	7	4	1	22
General Entertainment and Human Interest	11	81	85	69	86	78	399
<b>Total</b>		<b>946</b>	<b>1253</b>	<b>1500</b>	<b>1405</b>	<b>1037</b>	<b>6141</b>

The second largest number of certifications is in informal education, recreation and leisure (category 5B), totalling 1,142.

Drama comes third, with 1,117 productions certified as Canadian content.

Both the sports and the music and dance, music video clips, music video programs categories were broken down in 2000 to allow for better tracking of each subcategory.

Table 23 shows the volume of class “SR” certified programming by category over the five-year period.

Just a little over one quarter of the 50 productions certified “SR” over the five years were in the ongoing dramatic series program category. Seven of these, all certified in 2002, were the same French-language series (in seven separate 12-episode runs).

Table 24 shows the volume of class “D” projects that have received certification, by program category and by Canadian content credit awarded, over the five-year period.

Foreign programming whose original language was either one of Canada’s official languages or a native Canadian language represented the lion’s share (96.2%) of all class “D” certifications.

The programming category receiving the greatest number of “D” certifications is theatrical feature films aired on TV, with 451 productions (85.7% of the total) over the 1998 to 2002 period. Animation programming ran a distant second in terms of the number of “D” certifications, with 61 productions.

Applying the Canadian content credit percentage to the above volume of “D” certifications, we conclude that the dubbed foreign programming certified by the Commission for broadcast purposes was equal to 136 Canadian content projects over the five-year period, or an average of 27 such projects per year.

**Table 23**  
**Volume of Type “SR” Certifications by Program Category**

Program Category		1998	1999	2000	2001	2002	Total
Analysis and Interpretation and Long-Form Documentary	2	0	2	1	0	0	3
Long-Form Documentary	2B	0	0	1	7	1	9
Reporting and Actualities	3	0	0	0	2	0	2
Formal Education and Preschool	5A	0	2	1	0	1	4
Informal Education/Recreation and Leisure	5B	0	0	0	0	1	1
Drama/Comedy – Ongoing Dramatic Series	7A	1	3	0	1	8	13
Drama/Comedy – Ongoing Comedy Series	7B	2	0	0	1	1	4
Drama/Comedy – Specials, Miniseries and Made-for-TV Feature Films	7C	0	0	0	0	1	1
Drama/Comedy – Theatrical Feature Films Aired on TV	7D	0	1	0	2	1	4
Drama/Comedy – Animated TV Programs and Films	7E	0	0	0	2	3	5
Music and Dance, Music Video Clips, Music Video Programs	8	0	4	0	0	0	4
<b>Total</b>		<b>3</b>	<b>12</b>	<b>3</b>	<b>15</b>	<b>17</b>	<b>50</b>

**Table 24**  
**Volume of Type “D” Certifications by Program Category and Canadian Content Credit Awarded**

Program Category		1998	1999	2000	2001	2002	Total
<b>25% Canadian Content Credit</b>							
Drama/Comedy – Theatrical Feature Films Aired on TV	07D	88	71	77	89	124	449
Drama/Comedy – Animated TV Programs and Films	07E	8	8	5	14	9	44
Formal Education and Preschool	05A	0	2	1	1	0	4
Drama/Comedy – Specials, Miniseries and Made-for-TV Feature Films	07C	0	0	0	4	0	4
Long-Form Documentary	02B	0	0	0	1	1	2
Drama/Comedy – Ongoing Dramatic Series	07A	0	1	0	0	0	1
Religion	4	0	0	1	0	0	1
Drama/Comedy – Ongoing Comedy Series	07B	0	0	1	0	0	1
Subtotal		96	82	85	109	134	506
<b>50% Canadian Content Credit</b>							
Drama/Comedy – Theatrical Feature Films Aired on TV	07D	0	0	0	0	2	2
Drama/Comedy – Animated TV Programs and Films	07E	8	1	2	4	2	17
Drama/Comedy – Ongoing Dramatic Series	07A	0	1	0	0	0	1
Subtotal		8	2	2	4	4	20
<b>Grand Total</b>		<b>104</b>	<b>84</b>	<b>87</b>	<b>113</b>	<b>138</b>	<b>526</b>

■ **Only 20.4% of all CRTC-certified “C” productions were potentially eligible for ten key creative points.**

The data in Table 25 indicate that ongoing dramatic series (Category 7A) had the greatest number of productions with the potential to achieve ten creative points. However, just 92% of them had all eight creative positions, despite the fact that the ten-point system was originally designed for drama. These results are substantially better than the results of CAVCO-certified productions over the

same period. Among the fiction series intended for the television market certified by CAVCO between 1998-99 and 2002-03, 226 (86.6%) of the total 261 productions were potentially eligible for ten points.

Theatrical feature films aired on TV and ongoing comedy series are the next most compatible with the ten-point creative system. Of the productions in these categories, 81.5% and 80.6%, respectively, had the potential to achieve ten key creative points.

**Table 25****CRTC-Certified Productions with All Creative Positions/Locations  
Class “C” Certifications**

Program Category		Total Productions	No. of Prods. With All Pos./Loc.	%
Drama/Comedy – Ongoing Dramatic Series	7A	199	184	92.5
Drama/Comedy – Theatrical Feature Films Aired on TV	7D	108	88	81.5
Drama/Comedy – Ongoing Comedy Series	7B	93	75	80.6
Drama/Comedy – Specials, Miniseries and Made-for-TV Films	7C	588	384	65.3
Reporting and Actualities	3	57	30	52.6
Drama/Comedy – Other Drama	7G	222	99	44.6
Drama/Comedy – Comedy Sketches, Improvisations, Unscripted Works, Stand-up Comedy	7F	113	50	44.2
Variety	9	66	21	31.8
Drama/Comedy – Animated TV Programs and Films	7E	96	28	29.2
News	1	7	2	28.6
Formal Education and Preschool	5A	91	25	27.5
Religion	4	155	26	16.8
Music and Dance	8A	77	12	15.6
Music and Dance, Music Video Clips, Music Video Programs	8	203	23	11.3
General Entertainment and Human Interest	11	399	40	10.0
Informal Education/Recreation and Leisure	5B	1142	98	8.6
Analysis and Interpretation	2A	224	14	6.3
Sports – Amateur	6B	147	6	4.1
Analysis and Interpretation and Long-Form Documentary	2	929	26	2.8
Long-Form Documentary	2B	763	20	2.6
Sports – Professional	6A	137	2	1.5
Sports	6	284	2	0.7
Music Video Clips	8B	5	0	0.0
Music Video Programs	8C	14	0	0.0
Game Shows	10	22	0	0.0
<b>Total</b>		<b>6141</b>	<b>1255</b>	<b>20.4</b>



Sixty-five percent of the specials, miniseries and made-for-TV films (category 7C) had all eight creative positions, as did 30 of the 57 reporting and actualities programs (52.6%) certified in category 3.

Fewer than 50% of the productions in all other program categories, including other drama, had fewer than eight of the key creative positions.

■ **Fewer than 30% of animation “C” projects were potentially eligible for ten creative points.**

Only 28 of the 96 animated TV programs and films (category 7E) certified by the CRTC during the 1998-2002 period – barely over 29% – had all the creative positions. These results diverge significantly from those observed at CAVCO, where 77.8% of the projects certified between 1994-95 and January 2003 had the potential to achieve ten points. Even within the CRTC

time frame (1998-2002), 71.4% of the CAVCO-certified animated productions had the potential to achieve ten creative points.

■ **A majority of “SR” projects were potentially eligible for ten creative points.**

As seen in the data in Table 26, and as has been consistently the case throughout our analysis, documentary productions rarely make use of all the key creative positions. None of the nine long-form documentary projects that received Special Recognition from the Commission over the 1998-2002 period had the necessary key creative positions to achieve ten points. Removing the documentaries from the mix, we found that 93% of the productions had the potential to achieve ten points.

**Table 26**  
**CRTC-Certified Productions with All Eight Creative Positions**  
**Class “SR” Certifications**

Program Category		Total Productions	No. of Prods. with All 8 Positions	%
Analysis and Interpretation and Long-form Documentary	2	3	1	33.3
Long-Form Documentary	2B	9	0	0.0
Reporting and Actualities	3	2	2	100.0
Formal Education and Preschool	5A	4	4	100.0
Informal Education/Recreation and Leisure	5B	1	1	100.0
Drama/Comedy – Ongoing Dramatic Series	7A	13	13	100.0
Drama/Comedy – Ongoing Comedy Series	7B	4	4	100.0
Drama/Comedy – Specials, Miniseries and Made-for-TV Films	7C	1	1	100.0
Drama/Comedy – Theatrical Feature Films Aired on TV	7D	4	4	100.0
Drama/Comedy – Animated TV Programs and Films	7E	5	4	80.0
Music and Dance, Music Video Clips, Music Video Programs	8	4	4	100.0
<b>Total</b>		<b>50</b>	<b>38</b>	<b>76.0</b>



**Table 27****CRTC-Certified “C” Productions**

The Degree to Which Canadians Perform in Certain Key Creative Positions

Year	1st Actor	2nd Actor	Director	Writer
1997-98	95.5%	100.0%	100.0%	100.0%
1998-99	100.0%	93.9%	100.0%	95.3%
1999-00	100.0%	100.0%	100.0%	100.0%
2000-01	100.0%	96.2%	93.9%	95.4%
2001-2002	95.6%	96.3%	97.9%	100.0%
<b>Combined</b>	<b>98.2%</b>	<b>97.3%</b>	<b>98.3%</b>	<b>98.2%</b>

- **When the Writer, Director, 1st and 2nd Lead Actor positions exist in Class “C” programs, Canadians perform in them to a very high degree.**

Based on a sample of information supplied by CRTC staff from paper-based files held at the Commission, we have established the degree to which Canadians performed in the positions of Writer, Director, 1st Lead Actor and 2nd Lead Actor.

As the above sample data demonstrate, when the positions exist, Canadians fill them no less than 97% of the time (Table 27). Unfortunately, these data were not available by program category, so a more detailed analysis was not possible.

- **When the Writer, Director, 1st and 2nd Lead Actor positions exist in Class “SR” programs, Canadians perform in them to a high degree.**

In interpreting the findings in Table 28, it is important to keep in mind that only 50 productions were certified “SR” between 1998 and 2001. Consequently, when a position was filled by a non-Canadian, the relative effect on the overall percentage is considerably more pronounced than it is in the case of “C” certifications, where the overall numbers are far greater.

While observing that Canadians performed in the four key creative positions in 76.6% of the “SR” productions, we note that no Canadian talent was used in the 1st Lead Actor position of category 2, 7C, and 7D programming.

**Table 28****CRTC-Certified “SR” Productions**

The Degree to Which Canadians Perform in Certain Key Creative Positions

Program Category		1st Actor	2nd Actor	Director	Writer
Analysis and Interpretation and Long-form Documentary	2	0.0%	100.0%	100.0%	100.0%
Long-Form Documentary	2B	71.4%	75.0%	100.0%	100.0%
Reporting and Actualities	3	100.0%	100.0%	100.0%	0.0%
Formal Education and Preschool	5A	100.0%	100.0%	100.0%	100.0%
Informal Education/Recreation and Leisure	5B	100.0%	100.0%	0.0%	100.0%
Drama/Comedy – Ongoing Dramatic Series	7A	100.0%	92.3%	100.0%	76.9%
Drama/Comedy – Ongoing Comedy Series	7B	75.0%	100.0%	100.0%	25.0%
Drama/Comedy – Specials, Miniseries and Made-for-TV Films	7C	0.0%	100.0%	100.0%	100.0%
Drama/Comedy – Theatrical Feature Films Aired on TV	7D	0.0%	75.0%	100.0%	100.0%
Drama/Comedy – Animated TV Programs and Films	7E	80.0%	100.0%	100.0%	80.0%
Music and Dance, Music Video Clips, Music Video Programs	8	100.0%	0.0%	100.0%	100.0%
<b>Combined</b>		<b>76.6%</b>	<b>92.5%</b>	<b>98%</b>	<b>81.3%</b>

# 2.3

## *How Other Countries Define Their National Content*

Recognizing that the current Canadian content definition – and more specifically the ten-point key creative position system – is clearly not responding to production realities in Canada, we commissioned a study<sup>17</sup> to look at how other countries define their national content, our hope being to draw from their approach. Examining the systems used by other countries also allowed us to gauge whether the requirements currently imposed by the Canadian government are on a par with those of the international community.

These countries were chosen for their sustained partnership activity with Canada and for their diverse levels of production and market share: France, Australia, the United Kingdom, Denmark, Ireland, Italy and Spain.

Several multilateral initiatives and agreements were also examined due to their increasing prevalence, particularly in Europe, and their impact on domestic content in the signatory countries. These include the Television Without Frontiers Directive, the European Convention on Cinematographic Coproduction, and the Conferencia de As Autoridades Cinematografica de Ibéroamérica (C.A.C.I.).

As the reader will glean from the information on each country, no two national governments use the same approach. Each has implemented its own unique policy strategy and the film and television content requirements best suited to its particular objectives, priorities and production realities. Some countries use objective criteria through key creative points systems and expenditure requirements, while others have adopted a more subjective approach.

However, there are two common aspects that stand out in our view. First is the fact that the countries reviewed all prioritize in one way or another the three key creative positions of Writer, Director and Performer. Second, and in many ways much more significant, is the fact that most are signatories to multilateral production treaties that provide for cross-national recognition of creators. These treaties extend the notion of nationality across all member states, thus effectively and significantly expanding access to creative and financial resources.

Another facet we find interesting is the practice of combining creators into groups and applying specific criteria to a particular group as a whole. This approach is used by the French and Italian governments and is also prevalent in the multilateral treaties. It recognizes the distinct groups of functions that need to be carried out in the course of making a production, from the conceptual stage through to the end product. It also allows for the prioritization of individual groups relative to their level of creative input to a production. Further, it enables the establishment of minimum requirements in each group.

The details on each country are provided as follows.

*No two national governments use the same approach*

<sup>17</sup> *International Comparative Study of Public Policy Measures in the Film and Television Sector*, Drisdell Consulting Inc. (December 2002).

## France

The Centre national de la cinématographie (CNC) is the agency in France responsible for the administration of support mechanisms in the audiovisual sector. Like Canada, France has a well-developed mix of policy instruments through which it encourages its audiovisual sector, including both automatic and selective funding mechanisms. Support is targeted to development, production, distribution, promotion and exhibition.

France uses several different systems for defining French productions depending on the public benefit provided. It has one set of criteria for financing support and a separate set of requirements for the allocation of automatic assistance. It is also a signatory to the Television Without Frontiers Directive and, as such, uses the same system for this purpose as it does for its financing support.

Generally, a French national is considered to be an individual who either: i) has French nationality; ii) is a national of a member state of the European Community; iii) is a national of a country that is signatory to the

European Convention on Transfrontier Television of the Council of Europe; or iv) is a national of a third European country with which the European Community has concluded agreements relating to the audiovisual sector. Foreigners who are not nationals of a member state of the European Community may be considered French nationals if they meet residency requirements.

To be eligible for financing, the production company must be established in France and must hold the necessary authorization provided for by law. If the company is a corporation, its president, directors and/or managers must be French nationals. The production company may not be controlled by anyone who is not a national of a member state. With regard to the project itself, authors, actors and technicians generally must be French nationals (authors are considered to include the writers of the script, adaptation, dialogue and music as well as the director). Key creators must perform in enough of the positions to achieve a minimum number of points, as follows in Table 29.

**Table 29**  
**Points System for Financing and for the Implementation of the Television Without Frontiers Directive in France**

Feature Films (Minimum 14 pts out of the following)		Animation (Minimum 14 pts out of the following)		Documentary (Minimum 9 pts out of the following)	
Position	Points	Position	Points	Position	Points
Director	3	Conception or Author	1	Director	2
Script	2	Script	2	Author	1
Other authors	1	Drawing of the Characters	2	Cameraman	1
First Role	3	Music	1	Sound Recordist	1
Second Role	2	Director	2	Editor	1
50% of other actors	1	Storyboard	2	50% of other labour costs	4
Cameraman	1	Art Director	1	50% of shooting and post-production technical costs	4
Sound Recordist	1	Scene Painting	1		
Editor	1	Animation Positioning	2		
Art Director	1	50% of labour costs of tracer colourists	2		
Laboratory, Studio	2	Caption Stand	1		
		Post-Production	2		

In addition to meeting the points requirements, and while some exceptions are possible, shooting generally must be done within the territory of a member state of the European Community. Laboratory and technical work must be undertaken with the collaboration of services established in France, a member state of the European Community, a state party to the European Convention on Transfrontier Television of the Council of Europe, or in a third European country with which the European Community has concluded agreements relating to the audiovisual sector.

Projects seeking automatic assistance must meet the basic financing requirements. However, the amount of support disbursed under this program is determined relative to how the project ranks based on the points system detailed in Tables 30 and 31. For example, a project obtaining a minimum of 80 points receives its full level of assistance, while those achieving fewer than 80 points receive a level of assistance that is proportionately less on a decreasing scale and relative to how many points are received. The minimum number of points to be eligible for assistance is usually 25, although the Director General of the CNC may reduce the minimum to 20.

**Table 30**  
**Points System for Feature Films and Documentaries**

Group	Points
1) Production undertaking	<b>10</b>
2) Language of shooting	<b>20</b>
3) Authors (if French law is applicable to the contract)	<b>10, divided as follows:</b> Director – 5 Authors – 4 Composer of original music – 1
4) Performers	<b>20, divided as follows:</b> Performers in leading roles – 10 Performers in secondary roles – 10 (Note: leading roles are defined as when the performer is required for at least 50% of the scenes)
5) Technicians who are creative collaborators	<b>14, divided as follows:</b> field of directing, other than the director – 2 field of administration and production management – 2 field of shooting – 3 field of scenery – 2 field of sound – 2
6) Workers	<b>6, divided as follows:</b> belonging to the shooting team – 4 belonging to the construction team – 2
7) Shooting and post-production	<b>20, divided as follows:</b> shooting location – 3 laboratory location – 2 camera equipment – 2 lighting equipment – 2 machinery – 1 sound post-production undertakings – 5 image post-production undertakings – 5

Some exemptions may be provided with regard to groups 3 to 7. If granted, the points are considered to be achieved.

**Table 31**  
**Points System for Animation**

Group	Points
1) Production undertaking	<b>10</b>
2) Authors (if French law is applicable to the contract)	<b>25, divided as follows:</b> Director – 10 Authors – 10 Composer of original music – 5
3) Technicians who are creative collaborators	<b>10, divided as follows:</b> First Assistant Director – 5 Production Manager – 5
4) Pre-production	<b>25, divided as follows:</b> creation of storyboard – 7 main character drawing – 6 set design – 5
5) Production	<b>20, divided as follows:</b> animation – 4 scene painting – 1 tracing, digitization or modelization – 5 painting or colourization – 5 caption stand or checking – 5
6) Post-production	<b>10, divided as follows:</b> sound post-production – 5 image post-production – 5

Some exemptions may be provided with regard to groups 2 to 6 for artistic and technical reasons. If granted, the points are considered to be achieved.

In addition to Canada, France has bilateral coproduction treaties with over 40 countries worldwide: Germany, Argentina, Austria, Belgium, Bulgaria, Burkina-Faso, Cameroon, Chile, Colombia, Ivory Coast, Denmark, Egypt, Spain, Finland, Georgia, United Kingdom, Greece, Guinea, Hungary, India, Iceland, Israel, Italy, Lebanon, Morocco, Mexico, New Zealand, the Netherlands, Poland, Portugal, Romania, Senegal, Sweden, Switzerland, the Czech and Slovak Republics, Tunisia, Turkey, the states of the former Soviet Union, Venezuela and the states of the former Yugoslavia.

## Australia

The film and television policy approach adopted by the Australian national government is similar to that implemented by the Government of Canada. To encourage the supply of Australian content productions, financial support instruments have been put in place, including both direct funding programs (e.g., development assistance, equity investments) and indirect

funding mechanisms (e.g., 100% tax writedowns for investors). With a view to stimulating demand in the television sector, Australian commercial television stations are required to broadcast a minimum percentage of Australian content in peak viewing hours. There are also specific broadcast quotas for drama, documentaries and children's programming.

Unlike Canada, Australia uses different approaches to defining Australian content depending on the public benefit being sought by the applicant. Australia uses one system for broadcast purposes, a separate system for access to public financing, and yet another system specifically for its official coproductions. Common to all its approaches, however, is the fact that support is limited to individuals who are either Australian citizens or permanent residents of Australia.

With respect to broadcast quotas, Australian content is defined as a production that is under the creative control of Australians. To be considered Australian content for

this purpose, all producers of the production must be Australian. Moreover, either the director or the writer must be Australian. In cases where more than one director is involved, or more than one writer, each must be Australian. With regard to leading actors or on-screen presenters, not fewer than 50% must be Australians. In the case of drama programs, at least 75% of the major supporting cast roles must be performed by Australians. Looking at animation, three out of the following five key creative positions must be filled by an Australian: i) production designer; ii) character designer; iii) supervising layout artist; iv) supervising storyboard; and v) key background artist.

To determine eligibility for tax-related support, several elements are considered, including who exercises creative control over the project and who holds the copyright. The ownership of the companies involved in the production, the subject matter of the production, and where the film is made are also taken into account. Further, sources of financing and production expenditures are considered. Last, there is a provision allowing for the assessment of “any other matters the Minister considers relevant.”

The main funding agency in Australia, the Australian Film Commission (AFC), will only support projects that

demonstrate “significant Australian content.” In carrying out its assessment of projects, the AFC considers the subject matter of the program and where the program is made as well as the nationality and place of residence of: i) the individuals who take part in the making of the program, including authors, composers, actors, scriptwriters, editors, producers, directors and technicians; ii) the people who own the shares or stock in the capital of the company concerned in the making of the program; and iii) the people who hold the program’s copyright. Further, the AFC considers the project’s financing sources as well as any other related matters that it believes to be relevant.

The Australian government, more specifically the AFC, applies a point system to coproductions. Producers, who must be Australian, are required to achieve a certain number of points in proportion to their level of financing in the coproduction. For example, in a 50/50 coproduction, the producer is required to achieve at least half (50%) of the points in the relevant genre, as demonstrated in Table 32.

In addition to Canada, Australia has bilateral coproduction agreements with the United Kingdom, Italy, Israel, and Germany, and has Memoranda of Understanding with France and New Zealand.

**Table 32**  
**Australia’s Points System for Coproductions**

Drama (Total of 12 points)		Documentary (Total of 10 points)		Animation (Total of 12 points)	
Position	Points	Position	Points	Position	Points
Director	2	Director	2	Director	2
Writer	2	Researcher/Writer	2	Writer	2
DOP	1	DOP	1	Layout Director/Artist	1
Composer	1	Sound Recordist	1	Storyboard Artist	1
Editor	1	Film or Off-line Editor	2	Character Designer	1
Production Designer	1	Composer	1	Key Animation or Director of Animation	1
Four major cast roles	1 for each	On-screen Presenter	1	Composer	1
				Three lead voices	1 for each



## United Kingdom

To support its film and television sector, the United Kingdom has adopted a number of policy instruments, ranging from tax-based mechanisms to direct financial assistance via a host of programs administered by the Film Council, and including venture capital initiatives encouraged through lottery funds.

The United Kingdom is signatory to the European Convention on Cinematographic Coproduction.

The certification of a British film is the responsibility of the Films Branch of the Secretary of State for Culture, Media and Sport (Table 33). To qualify for Film Council support, projects must qualify as a British Film under the *Films Act* of 1985. EC Certificates of Nationality

may also be issued under a provision of the 1963 EC First Films Directive, which established uniform criteria for the recognition of the nationality of films from EC member states.

The requirements for a Certificate of EC Nationality are detailed in Table 34. For the purpose of such productions, British nationals include nationals from countries considered to be within the cultural domain of the United Kingdom. Moreover, EC nationals include nationals of all member states, as well as Iceland, Norway and Liechtenstein, which are members of the European Free Trade Agreement (the EFTA contains a non-discrimination clause).

**Table 33**  
**UK's Requirements for Certification as a British Film**

Area	Requirement
Ownership of the production company	The production undertaking must be, throughout the time the film is being made, either: i) a person ordinarily resident in a member state; ii) a company registered in a member state, provided that the central management of the company and the control of the business of the company are exercised in a member state. "Control" is considered to mean the power of a person or a group of persons to secure that the affairs of the company are conducted in accordance with their wishes either by means of the holding of shares or the possession of voting power, or by virtue of powers conferred by the articles of association or any other document regulating the company or any other body corporate.
Key creative personnel	A qualifying person is considered to be a citizen of either the European Union, the Commonwealth, the European Economic Area or the United Kingdom. One of the following two conditions must be met in order meet the requirements in this area: i) After deducting one non-qualifying person, 70% of total labour costs must be paid to qualifying persons; ii) After deducting two non-qualifying persons (one of whom must be an actor), 75% of labour costs must be paid to qualifying persons.
Location of shooting and laboratory work	If studio work is done, it must be done in the UK, the Republic of Ireland or a Commonwealth country.
Expenditures	A minimum of 70% of total production expenditures must be made with respect to activities taking place in the United Kingdom. Acquisition and/or licensing costs, financing or interest costs, and any business overhead costs are excluded.

**Table 34**  
**UK's Requirements for Certificate of EC Nationality**

Area	Requirement
Key creative personnel: <ul style="list-style-type: none"> <li>• Authors of the scenario, adaptation and dialogue</li> <li>• Composers of music specially written for the film</li> <li>• Principal cast</li> <li>• Executive producer or production manager</li> <li>• Director of photography</li> <li>• Sound engineer</li> <li>• Editor</li> <li>• Art director</li> <li>• Chief of wardrobe</li> </ul>	EC nationals must generally perform these positions. However, if any of the labour costs related to these key creative positions are paid to nationals from other countries, then the following conditions must be met: <ol style="list-style-type: none"> <li>i) when the director <b>is</b> a British or EC national, the nationals from other countries cannot account for more than 40% of the people in all positions;</li> <li>ii) when the director <b>is not</b> a British or EC national, all the authors and the composers must be British or EC nationals. Moreover, the nationals from other countries cannot account for more than 20% of the people employed in all other positions.</li> </ol>
Location of shooting	Studio filming must take place in studios situated in the EC territory. If outdoor scenes are filmed in a third country, up to 30% of the studio scenes can also be shot in the third country.

In addition to Canada, the United Kingdom has signed bilateral coproduction treaties with France, Italy, Germany, Norway, New Zealand and Australia.

## Denmark

The Danish Film Institute (DFI) is the national agency responsible for film and cinema culture in Denmark. In carrying out its mandate, the DFI provides support to project development and production, distribution and marketing. It also supports a number of archives, library and cinematheque activities.

A Danish film is defined as one made by a Danish producer. A person is considered to be Danish if he/she holds Danish citizenship or resides in Denmark. For a company to be considered Danish, it must be registered in Denmark. If a limited liability company, the management and the majority of the members of the board must be Danish. A foreign company may also be considered Danish if it has a branch registered in Denmark and its branch manager is Danish. To be eligible for funding, either the original language of the

film must be Danish or the film must have special artistic or technical features that contribute to the promotion of film art and film culture in Denmark.

Denmark is a signatory to the European Convention on Cinematographic Coproduction. It has bilateral coproduction treaties with Canada and France.

## Ireland

Ireland supports its film and television sector mainly through the Irish Film Board (IFB) and through an income tax depreciation-based program. The IFB provides support through loans and equity investment to independent Irish filmmakers. While most of its support is focused on project development and production, some assistance is provided for marketing initiatives.

As a member of the European Union, Ireland is a signatory to the Television Without Frontiers Directive. It is also a signatory to the European Convention on Cinematographic Coproduction and a member of Eurimages and the Media Program.

In assessing which projects to support, the IFB employs a strict set of criteria, selecting only projects that show a high level of support to the Irish industry. Moreover, it considers the writer and director to be central to the film's creative texture; consequently, the involvement of Irish nationals in these roles is a crucial criterion for support. The IFB also considers the level of employment of Irish workers in all technical and creative roles, as well as the degree to which Irish services are used in all stages of production.

For access to its income tax depreciation-based program, more elaborate criteria have been developed. Eligible production companies must be incorporated in the country, be resident in the country and not resident elsewhere, and exist solely for the purpose of producing and distributing one qualifying film. While a key creative points system is not used, other factors are taken into consideration, such as: i) the number of Irish residents employed in all aspects of the production and their ratio to all non-resident personnel; and ii) training opportunities offered by the production. Not less than 75% of the work of the production has to be carried out in Ireland, though some exceptions are provided in the case of coproductions. With regard to expenditure requirements, the production must demonstrate benefit to the national economy and to the Irish industry. In assessing the economic benefits, the authorities take into account direct expenditures on Irish services, facilities and goods, including hotels, transport and catering. Looking at industry benefit, the use of Irish producers, directors, scriptwriters, principal cast and crew, studio facilities, equipment and post-production facilities are all taken into account.

In addition to Canada, Ireland has a bilateral coproduction agreement with Australia.

## Italy

The Italian government supports its filmmakers largely through loans and loan guarantees. Automatic assistance linked to success achieved at the domestic box office is also provided. This assistance is remitted to producers and intended to help repay existing loans or finance future films.

Italy distinguishes between two types of national productions. The first is deemed a "film of national production," and minimum key creative requirements must be satisfied to qualify. Films of the second type are considered to be productions "of cultural interest." Public financial assistance is usually more generous in this latter group, and the minimum key creative requirements are more demanding. Table 35 outlines the minimum requirements that must be met to qualify.

Besides one with Canada, Italy has bilateral coproduction agreements with Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cuba, Egypt, Hungary, Israel, Spain, France, Germany, the former Yugoslavia, the former Czechoslovakia, the former USSR, Morocco, Mexico, New Zealand, Portugal, Romania, Sweden, Venezuela, Switzerland and the United Kingdom.

## Spain

The Spanish national government has adopted a number of policy measures in support of its film and television sector. These range from financial support programs to both distribution and screen quotas.

As a member of the European Union, Spain is a signatory to the Television Without Frontiers Directive. It is also a signatory to the European Convention on Cinematographic Coproduction and a member of Eurimages and the Media Plus program. Furthermore, with its cultural ties to Latin America, Spain also participates in the Ibermedia program and is a signatory to the multilateral coproduction agreement with C.A.C.I.

**Table 35**  
**Italy's Requirements for Access to Financing**

Area	Requirement
Ownership of the production company	<p>Must be an Italian company:</p> <ul style="list-style-type: none"> <li>• A majority of its capital must be owned by individuals having Italian nationality.</li> <li>• Its registered office and its residence for tax purposes must be in Italy.</li> <li>• Its directors must have Italian nationality.</li> <li>• Its principal place of business must be in Italy.</li> </ul>
Language	Live sound recording must be in Italian.
<p>Authors:</p> <ul style="list-style-type: none"> <li>• Director</li> <li>• Author of the story, or a majority of the authors</li> <li>• Scriptwriter, or a majority of the scriptwriters</li> </ul>	<p>i) To qualify as a “film of national production,” 2 out of the 3 authors must have Italian nationality.</p> <p>ii) To qualify as a “film of cultural interest,” all 3 authors must have Italian nationality.</p>
Composer of the Score	<p>i) To qualify as a “film of national production,” the composer must have Italian nationality, unless at least two of the following has Italian nationality: director of photography, editor, art director or costume designer.</p> <p>ii) To qualify as a “film of cultural interest,” the composer must have Italian nationality, unless all four of the positions noted above are Italian.</p>
Actors	<ul style="list-style-type: none"> <li>• A majority of the actors in leading roles must have Italian nationality;</li> <li>• Three-quarters of the actors in secondary roles must have Italian nationality.</li> </ul>
<p>Director of Photography</p> <p>Editor</p> <p>Art Director</p> <p>Costume Designer</p>	<p>Three out of these four positions must be held by Italian nationals, unless:</p> <p>i) if the composer is Italian, then two of the four positions must be held by Italian nationals; or</p> <p>ii) if the composer and technical industries are Italian, then one of the four positions must be held by Italian nationals.</p>
Technical industries	The definition is the same as for production companies.
Location of shooting and laboratory work	Both the majority of exterior and interior shooting as well as studio shooting must be carried out in Italy. However, if the film is made with the collaboration of Italian technical industries, only one of the above requirements has to be met.

The Director General of the Institute for Cinematography and Audiovisual Arts, a division of the Ministry of Culture, is responsible for certifying Spanish films. Certification is based on whether the project meets the requirements summarized in Table 36.

In addition to Canada, Spain has bilateral coproduction treaties with Argentina, Germany, Austria, Brazil, Chile, Cuba, France, Italy, Morocco, Mexico and Portugal.

**Table 36**  
**Spain's Requirements for Access to Financing**

Area	Requirement
Ownership of the production company	Must be established in Spain, and either have Spanish nationality or be a "national" of a member state of the European Community.
Language	The original version must be in Spanish or one of the other official languages of Spain.
Authors: <ul style="list-style-type: none"> <li>• Director</li> <li>• Authors of the adaptation</li> <li>• Authors of the script</li> <li>• Authors of the scenario or dialogue</li> <li>• Authors of the musical composition specially created for the film</li> </ul>	At least 75% must either have Spanish nationality or be nationals of a member state of the European Community.
Staff: <ul style="list-style-type: none"> <li>• Principal actors</li> <li>• Production manager</li> <li>• Director of photography</li> <li>• Sound engineer</li> <li>• Editor</li> <li>• Art director</li> <li>• Chief costume designer</li> <li>• Other members of the artistic and technical teams</li> </ul>	At least 75% must either have Spanish nationality or be nationals of a member state of the European Community.
Location of shooting	A majority of the shooting must take place in Spain.
Location of laboratory work	All laboratory and studio work must take place in Spain.

## Multilateral Initiatives and Agreements

A number of multilateral initiatives and agreements in the audiovisual sector, particularly in Europe, have been established since the early 1960s. These agreements are designed to encourage free trade in the audiovisual production sectors of the signatory countries. The multi-partner projects produced under these agreements generally have access to policy support measures in their respective countries.

### Council Directive

The first multilateral instrument was the Council Directive of 1963. The Directive was developed to ease restrictions on the circulation of films among all European member states. A film is deemed to have the nationality of the member state if it meets a number of content requirements, as outlined in Table 37.

**Table 37**  
**Council Directive**

Production company	<ul style="list-style-type: none"> <li>• If a natural person, the producer must be a national or resident of a member state.</li> <li>• If a legal person (corporation), it must be constituted according to the laws of a member state and have its registered office, its central management or its principal place of business in a member state, or if its registered office is not in a member state, then its activity must be “effectively and permanently linked to the economy of a member state.”</li> </ul>
Language	Must be recorded in one of the languages of the member state in question.
Director	Must be a national of a member state or belonging to its cultural domain. (Exception can be granted if at least 4/5 of the authors are nationals from member states.)
Authors of the screenplay, the adaptation, the dialogue, and the musical score if specifically composed for the film	Must be a national of a member state or belonging to its cultural domain. (Exceptions can be granted if at least 3/5 of the authors are nationals and the director is a national, or at least 4/5 of the authors are nationals.)
<ul style="list-style-type: none"> <li>• Actors in leading roles</li> <li>• Production manager</li> <li>• Director of photography</li> <li>• Sound engineer</li> <li>• Editor</li> <li>• Art director</li> <li>• Chief costume designer</li> </ul>	The majority of the creative team must be nationals of a member state or belonging to its cultural domain. (Exceptions can be made where a minimum of 3/5 of the creative team are nationals.)
Location of shooting	Studio shooting must take place in a member state. (Exceptions can be made for 30% of studio work in a third country if exterior shooting in a third country is required.)
Coproductions	<ul style="list-style-type: none"> <li>• Coproductions are assimilated to national films.</li> <li>• Films regarded as made in cooperation with third countries are assimilated to national films.</li> <li>• In both cases, the artistic and technical contribution from member states must be at least 30%.</li> </ul>

### Television Without Frontiers Directive

The Television Without Frontiers Directive provides the legal framework for television broadcasting activities in the European Union, based on the coordination of certain provisions established by law, regulation or administrative action in the member states.

One of the fundamental principles of the Directive requires broadcasters in partner countries to reserve a majority of their transmission time to European works by independent producers, excluding time allocated to news, sports events, games, advertising, teletext services and teleshopping.

Individual partner countries are responsible for determining how to implement the Directive. Some countries have incorporated it into their domestic legislation, while others, such as France, have chosen to establish distinct definitions or points systems.

Unlike the certification of national films, there is no one certification process for European productions under the Directive. It is the responsibility of the national authorities in each country to monitor compliance, based on statistics provided by broadcasters. The requirements are outlined in Table 38.

**Table 38**  
**Television Without Frontiers Directive Requirements**

Nationality	<p>The following works are regarded as “European works,” subject to the qualification of the production. The criteria however, distinguish between the following:</p> <ul style="list-style-type: none"> <li>A) works originating in a member state;</li> <li>B) works originating in states that are not members of the European Union but are party to the European Convention on Transfrontier Television of the Council of Europe;</li> <li>C) works originating in other European states.</li> </ul> <p>Works must originate in a member state, a state party to the European Convention on Transfrontier Television of the Council of Europe or in any other European state (as described above).</p>
Ownership • Production Company	<p>The production undertaking must comply with one of the following three conditions:</p> <ul style="list-style-type: none"> <li>A) If originating in a member state:               <ul style="list-style-type: none"> <li>• made by one or more producers established in one or more states;</li> <li>• the production is supervised and actually controlled by one or more producers established in one or more states;</li> <li>• the contribution of coproducers of the states to the total coproduction costs is preponderant and one or more producers established outside those states do not control the coproduction.</li> </ul> </li> </ul> <p>The same three requirements must be met if a production is:</p> <ul style="list-style-type: none"> <li>B) originating in a state party to the European Convention of the Council of Europe;</li> <li>C) originating in other European states.</li> </ul>
<b>Key Creative Personnel</b>	
Authors	<ul style="list-style-type: none"> <li>• If originating in a member state, must be made “mainly” with the collaboration of authors residing in one or more member states.</li> <li>• If originating in a state party to the European Convention of the Council of Europe, must be made “mainly” with the collaboration of authors residing in one or more of the states party to the Convention.</li> <li>• If originating in other European states, must be made “mainly” with the collaboration of authors residing in one or more European states.</li> </ul>
Staff (technicians)	<ul style="list-style-type: none"> <li>• If originating in a member state, must be made “mainly” with the collaboration of workers residing in one or more member states.</li> <li>• If originating in a state party to the European Convention of the Council of Europe, must be made “mainly” with the collaboration of workers residing in one or more of the states party to the Convention.</li> <li>• If originating in other European States, must be made “mainly” with the collaboration of workers residing in one or more European States.</li> </ul>
Location – shooting	None
Location – laboratory work	None
Expenditures	None



## **The European Convention on Transfrontier Television**

Like the Television Without Frontiers Directive, the European Convention requires broadcasters in each signatory country to reserve, where practicable, a majority of their transmission time for European works.

The definition of European works under the convention is quite summary. It states that a “European Audiovisual work” is a creation whose making or coproduction is controlled by persons or legal entities that are European.

The member states of the European Community apply the Television Without Frontiers Directive. The European Convention is used for states that are not covered by the Directive, or for coproductions between member states and parties that are not signatories to the Directive.

## **The European Convention on Cinematographic Coproduction**

Signatories to the Convention include Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Russia, Slovakia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey and the United Kingdom.

The Convention is part of the actions of the Council of Europe in favour of the development of multilateral coproductions in Europe. The Convention seeks to facilitate coproductions by entitling multilateral coproductions within Europe to benefit from the same advantages as granted to national films in the countries participating in the coproduction. It is also designed to

facilitate the entry, residence and work of those involved in the coproduction in all the countries participating in the coproduction.

Generally, the Convention applies to coproductions involving at least three producers established in different countries party to the Convention. The minimum points requirements are summarized in Table 39.

## **The Conferencia de As Autoridades Cinematografica de Ibéroamérica (C.A.C.I.)**

There are two main elements to the C.A.C.I.: i) the Ibermedia Program; and ii) a multilateral coproduction agreement involving the signatory countries. The countries include Argentina, Bolivia, Brazil, Columbia, Cuba, Chile, Spain, Mexico, Peru, Portugal, Uruguay and Venezuela.

Created in 1997 to foster the development, production and coproduction of audiovisual works, the Ibermedia Program provides financial assistance to independent producers having registered businesses in one of the signatory countries. Eligible productions include feature films and long-form documentaries that are coproduced between three member countries. Further, all authors, technicians and actors must be from the member countries. However, some exceptions can be made with justification.

The multilateral coproduction agreement provides for minimum financing participation levels. A production undertaken under the agreement must involve the creative and artistic contribution only of nationals of a signatory country.

**Table 39**  
**European Convention on Cinematographic Coproduction Requirements**

Copyright	Must be jointly owned by the coproducers
<p><b>Creative group:</b></p> <ul style="list-style-type: none"> <li>• Director – 3 points</li> <li>• Scriptwriter – 3 points</li> <li>• Composer – 1 point</li> </ul> <p><b>Performing Group:</b></p> <ul style="list-style-type: none"> <li>• First role – 3 points</li> <li>• Second role – 2 points</li> <li>• Third role – 1 point</li> </ul> <p><b>Technical craft group:</b></p> <ul style="list-style-type: none"> <li>• Cameraman – 1 point</li> <li>• Head of sound recording – 1 point</li> <li>• Editor – 1 point</li> <li>• Art director – 1 point</li> <li>• Studio or shooting location – 1 point</li> <li>• Post-production location – 1 point</li> </ul>	<ul style="list-style-type: none"> <li>• A film will qualify if it achieves at least 15 points out of the total of 19.</li> <li>• A film achieving fewer than 15 points may nevertheless benefit from the Convention if the competent authorities of the states involved grant it an exemption, considering that the work “reflects a European identity.”</li> </ul>
Participation and expenditures	<ul style="list-style-type: none"> <li>• In a multilateral coproduction, the minimum participation is 10% and the maximum participation is 70%.</li> <li>• In a bilateral coproduction, the minimum participation is 20% and the maximum participation is 80%.</li> <li>• If the minimum participation is less than 20% a member state may take measures to bar the coproduction from accessing its support schemes.</li> </ul>
Third-party countries	Coproducers established outside the member states may join a coproduction established under the Convention, but their total contribution may not exceed 30% of the total cost of the production.
Notes	There is a provision for financial-only coproductions; the participation must be between 10% and 25%, with a strong majority partner from a member state. The majority partner’s maximum participation is 70%.

# 2.4

## Evaluation of the Canadian Content System

Having undertaken comprehensive consultations with Canadians (a summary of which is provided in Chapter 1), examined the current Canadian content policy infrastructure, assessed relevant data and evaluated the national content approaches used by other countries, we conclude that there are a number of key weaknesses in the current Canadian content system. These weaknesses occur on two distinct levels, with regard to: i) the definition itself; and ii) administration.

### ■ The current Canadian content definition lacks a cultural focus.

There are three main tests under the current Canadian content definition (key creative talent, production expenditures and post-production expenditures). In our view, the three tests confound both cultural and economic goals. More specifically, they impart a certain degree of ambiguity to the main objectives the federal government is attempting to achieve.

The Department of Canadian Heritage discussion paper *Canadian Content in the 21<sup>st</sup> Century* states that:

any definition system would have to contribute to the government public policy objectives in film and television *which are first and foremost cultural*, that is to ensure that Canadians have diverse and accessible Canadian choices and to connect Canadians to one another and to the world. [emphasis added]

If one agrees with the notion that a film or television production is inherently Canadian by the fact that it is

made by a team of Canadian creators, then we see little cultural benefit in gauging the non-creative related aspects of the production.

Moreover, under the current system, the key creative test is limited to whether Canadians hold enough of the positions to achieve at least six out of a possible ten points, without any consideration of the costs associated with those individuals. In fact, the costs incurred with respect to the key creative positions are not taken into account for the purposes of determining whether the production expenditure test has been met. In our view, this disassociation of the key creative and expenditure tests is apt to foster inequity between Canadian and non-Canadian creators, particularly as it relates to Writers, Directors and Lead Actors.

In looking at the key creative positions covered by the current ten-point system, we note the exclusion of certain important functions that we believe make a creative contribution to the work as a

whole. Examples include Costume Designer and Sound Editor. The filmmaking community around the world prominently recognizes these creative positions with awards. The fact that they are not recognized within the current Canadian content key creative points system is, to our mind, a deficiency.

We believe that the main test in determining whether a production constitutes a Canadian work should be one that simultaneously considers both its creative and cost aspects. Further, the scope of the test should cover the entire creative and technical teams, both of which are vital to a production being made.

*In our view, the three tests confound both cultural and economic goals*

■ **The current ten-point model does not adequately respond to the broad spectrum of Canadian content programming.**

As the data provided earlier in this report indicate, the current ten-point key creative position system is not compatible across all genres of programming. It is least suited to the programming genres recognized as Canadian content by the CRTC alone (e.g., sports, game shows) and only marginally more compatible with documentary, educational/instructional, music and magazine productions, which are also recognized by CAVCO. Further, the ten-point system is not well suited to performing arts and variety programs, which are recognized by all three of the public policy infrastructure tiers.

Even for drama and animation productions (the two genres for which respective ten-point systems have been developed), not all projects certified over the last several years, be it by the CRTC or CAVCO, made use of all key creative positions.

■ **The federal government's film and television policy infrastructure is fragmented and, as a result, it lacks coherence, synergy and transparency.**

As detailed in the Department of Canadian Heritage's discussion paper *Canadian Content in the 21<sup>st</sup> Century*, the federal matrix of film and television legislation, regulations and support programs has gradually evolved over the last 65 years. However, each of the individual instruments within the policy matrix has progressed largely in isolation along its own jurisdictional path, creating the relatively complex collage we have today.

Moreover, each policy initiative undertaken over time has occurred in the absence of an overarching audiovisual policy framework. As a result, the policy infrastructure now in place flows along three fundamentally separate, yet complementary streams or tiers.

The first is **direct financial support**, which is very largely provided via the Canada Feature Film Fund and the Canadian Television Fund. The former program is

administered wholly by Telefilm Canada pursuant to its mandate to foster and promote the development of a feature film industry in Canada, as detailed in its founding legislation. The latter program is a public-private sector partnership that receives a significant portion of its annual budget from public sources. Telefilm Canada provides a share pursuant to its founding legislation, and the Department of Canadian Heritage provides funding through Contribution Agreements.

The second policy stream is **indirect financial support** geared towards encouraging a more stable financing environment and longer-term corporate development for production companies. This is provided in the form of a refundable tax credit. The Canadian Film or Video Production Tax Credit, which is co-administered by CAVCO, is provided within the context of the *Income Tax Act* and is subject to relevant regulations.

The third is the **broadcasting system**, governed by its own legislative framework and regulated and monitored by the CRTC.

There is but one common thread across these three tiers: they all strive to ensure either the making of or access to Canadian content film or television programs. If not for Canadian content, none of these organizations would exist.

Despite a common objective, the segregated nature of the policy infrastructure and efforts to deliver their respective mandates have led each organization either to develop its own Canadian content definition or to interpret that of others. Further, each has put in place administrative processes to review information provided by applicants seeking Canadian content recognition for their work. Applicants are often required to file the same information on the creative aspects of their work with several different organizations. There is considerable duplication and redundancy in the system, resulting in inefficiencies for both the public and private sectors.

A fragmented policy infrastructure has also generated incoherence in our Canadian content system over time. As we see it, the incoherence occurs on several levels.

The first relates to how some organizations use the definition of Canadian content as a mechanism to achieve an end that has very little to do with Canadian content. The most obvious example of this practice is the CRTC's Canadian content certification of dubbed foreign programming. Our intention in underscoring this activity is not to call into question the goal of ensuring that foreign works are available to French-, English- and Aboriginal-language communities in Canada or that Canadian voice-over actors participate in the dubbing of such works. These, we believe, are valuable cultural policy objectives. But we question the means by which this objective is being pursued. To equate foreign programming to Canadian content in any fashion whatsoever strikes us as convoluting the very notion of Canadian content. In our view, if the goal is to help develop the dubbing sector in Canada, using corporate development instruments such as tax credits would likely be more appropriate. Another example is the CTF's expansion of the notion of Canadian television programming by attempting to measure story elements that are "distinctively Canadian." This decision was taken not strictly for reasons of Canadian content but rather in an attempt to control the considerable level of over-subscription to the Fund.

The second area of incoherence concerns the use of exceptions.

One class of exceptions, recognized by the CRTC alone, relates to "production packages," defined as two or more coproductions or co-ventures undertaken by a Canadian production company together with one or more non-Canadian production companies, where a production with minor foreign involvement that qualifies as a Canadian production is matched with a foreign production with minor Canadian involvement. Another class is what is deemed "twinning," which involves matching a fully Canadian production with a foreign production with virtually no Canadian involvement other than financing. Neither of these classes, outside the ambit of a treaty coproduction, are recognized by CAVCO, Telefilm Canada or the Canadian Television Fund.

Moreover, the CRTC may provide certain exceptions related to writers, directors and the first two lead actors that are not provided by other organizations. While the applicant must show just cause as to why the exceptions should be granted – and the final decision-making authority in this regard rests with the Commission – such a process lacks in transparency and is inconsistent with the other tiers in the policy support infrastructure.

Telefilm Canada, in the context of the Canada Feature Film Fund, allows an exception specifically related to the use of a Canadian in the 1st Lead Actor positions. In its program guidelines, it notes that it will allow for flexibility in co-protagonist and ensemble situations, as well as where the non-Canadian actor is integral to the film's market potential. While we recognize that flexibility is necessary for producers to be able to bring together the right mix of elements to complete a production, we also recognize that it is difficult to evaluate when the use of a non-Canadian actor is integral to the film's potential for success.

A third area of inconsistency relates to the assessment of Canadian content as diversely practiced by the federal organizations. For example, the CRTC assesses television series as a whole, requiring that two criteria be met: i) at least 60% of the series' episodes meet or exceed the six-point key creative requirement; and ii) the whole series must attain an average of six points per episode. While such an approach has been adopted in recognition of the fact that the creative elements may vary from episode to episode, it means that certain episodes may not meet the minimum creative requirements. CAVCO and the Canadian Television Fund, on the other hand, require that each episode meet the key creative requirements.

A fourth area where the system lacks coherence relates to transparency of the elements that, in fact, make a production Canadian. Each organization, having been created under its own legislative and/or regulatory framework, is bound by related confidentiality provisions.



These provisions impede the sharing of information between federal and provincial organizations and with the Canadian public in general. While we recognize that initiatives have been launched to deal with this issue, the inability to openly share information related to the key creative elements of Canadian content inherently entails a higher degree of risk for the policy support system as a whole.

The fifth area of incoherence is the direct result of the fragmented policy infrastructure; each organization has implemented its own internal information systems to keep track of the projects it handles. There are inconsistencies in both the type of information collected and the way it is catalogued. Moreover, each organization has developed separate computer systems and database structures for these purposes. Not to put too fine a point on it, the existing systems are incompatible. This makes it impossible to obtain an accurate picture of the Canadian content production sector in a timely, cost-effective fashion, or to effectively monitor Canadian content through the public support system or track it after it has been released in the marketplace.

The need to deal with tracking issues will become increasingly acute as the digital revolution makes its mark on the audiovisual world. The digitization of music and widespread copying and sharing, most would agree, have caused considerable upheaval in the music sector over the last several years. As we see it, the audiovisual sector will be facing the same challenges head-on in short order – and some would argue that the time has already come. In order to survive in this environment, all production makers will have to count on more effective systems to better track the use of their works in Canada and around the world.

The lack of a comprehensive national data collection capacity hinders the rapid assessment of developments in the film and television sectors. These sectors are now evolving more quickly, even outside the digital realm.

Not having quick and easy access to comprehensive data directly translates into a less-than-optimal evaluation and policy-making capacity. To remain competitive in the future, it will be necessary for both policy/program administrators and the industry to be able to adjust their activities accurately and without delay.

■ **The policy infrastructure lacks an across-the-board correlation between the level of benefit provided by the public sector and the Canadian content requirements that must be met.**

There is an intrinsic public policy hierarchy for Canadian content, starting with access to the broadcasting system, continuing through the tax credit program and culminating, at the highest level, with support via the direct funding programs. Canadian content receiving recognition in the direct funding tier usually also qualifies for access to the tax credit and the broadcasting system. Similarly, Canadian content productions certified by CAVCO for access to the tax credit are automatically recognized by the CRTC for broadcasting purposes.

The result is that productions certified for broadcasting purposes *and* receiving financial assistance via tax credits are not obliged to meet more stringent creative requirements than those certified only for broadcasting purposes.

We also observe what we consider to be a considerable weakness within the tax credit program. That is, a production made with the contribution of Canadians holding the key creative positions necessary to achieve 6/10 points receives the same level of financial assistance as one achieving 10/10 key creative points. In other words, within this program there is no incentive to produce higher levels of Canadian content.

We believe that there should be a greater correlation throughout the Canadian content policy infrastructure between the level of public benefit provided to a production and the requirements that the production must meet in order to be considered Canadian content.

■ **There is a lack of consistency throughout the policy infrastructure with respect to the prioritization of Canadian programming.**

With a view to providing an added incentive to encourage broadcasters to acquire and schedule certain genres of Canadian programming, the CRTC has adopted a Canadian content bonus system. Canadian programs currently considered to be in the priority categories include drama, music, dance, variety and long-form documentary, as well as regionally produced programs in all areas other than news, information, sports and entertainment magazines.

Without wading into the ongoing debate as to whether the current list of priority program categories is appropriate, we observe that no distinction is made as to whether the bonus-earning “priority” program has received public financial assistance through either the tax credit or direct funding programs. It seems to us that if the government believes enough in a production

to award it financial support, it should also seek to prioritize it within the broadcasting system. This would afford Canadians a greater opportunity to see the programs they subsidize through their tax dollars.

■ **Canada is increasingly isolated in the international context.**

Given the nature of coproductions and the specific challenges in this area, we discuss the relevant issues and solutions in detail in Chapter 4.

■ **Market and regional concentration issues in the Canadian-owned distribution sector pose considerable challenges.**

Distribution represents an important link between the producer and the audience. The challenges facing this sector and possible solutions are addressed in greater detail in Chapter 4.





3

A NEW APPROACH TO  
CANADIAN CONTENT



ased on our evaluation of the current Canadian content policy infrastructure, we believe that Canada needs to make fundamental changes in three key areas:

- i) how a Canadian content production is defined;
- ii) how Canadian content is administered overall; and
- iii) how to encourage the greater use of Canadian creators.

The proposed changes, we believe, will benefit the Canadian film and television community as a whole. They will serve to buttress the sound foundation that has been put into place over the last many decades and to bring about a greater degree of coherence and synergy throughout the Canadian content policy infrastructure, which will ultimately better serve all Canadians. We emphasize that this can be accomplished without straying from the Government of Canada's long-standing cultural policy objectives for the film and television sectors.

Some in the film and television community may react unenthusiastically to the recommended changes, perhaps arguing that the proposed approach is more complicated than the existing one, or that its implementation would bring about more uncertainty in an already challenging environment. Some may contend that the new approach could ultimately result in a regression from the gains that have been achieved. We do not agree with such conclusions. In our view, failing to effectively deal with the weaknesses in the system will only serve to put off the inevitable. That is, it will become increasingly difficult to achieve the main public policy objective of ensuring the availability of quality film and television content that is made and watched by Canadians. This is particularly true with regard to high-cost productions in the genres of television drama series and feature films.

## Fundamental Principles

In developing a new policy approach to Canadian content, we first established a number of fundamental principles to guide our reflection.

- Canadian content film and television productions can be created only by Canadians. While we recognize the subjectivity of this statement, we nonetheless firmly believe that foreigners cannot relate an event or tell a story from a Canadian point of view, be it in dramatic storytelling, documentaries, variety and performing arts programming, or even in the area of sports. The mere fact of being very largely created by Canadians is what gives an audiovisual work its unique Canadian identity.
- The subject matter of a Canadian film or television program should be determined by creators. In other cultural sectors, like the visual and performing arts for example, artists are encouraged to create works stemming from the deepest reaches of their imagination, without regard to the source of inspiration. In fact, they are celebrated for doing so. Creators using the media of film and television, we believe, should be afforded the same freedom. We are confident that with such liberty, Canadian creators will continue to challenge convention and push the boundaries of imagination, sometimes to enlighten and at other times simply to entertain. Canada's cultural

*We believe Canadian content can be created only by Canadians*

creators, in all disciplines, should play a determining role in charting the course of Canada's cultural evolution.

- There should be greater coherence, synergy and transparency across the whole Canadian content policy infrastructure. Put another way, there should be one national standard for determining what qualifies as Canadian content that adequately responds to different production realities, thus introducing greater synergy. Moreover, greater transparency needs to be adopted in the Canadian content system, not only to make possible the sharing of information between federal institutions, but also with provincial funding agencies and vis-à-vis the Canadian public. The fact that the Government of Canada recognizes a certain production as Canadian content and that a certain number of Canadian creators contributed to its making should not, in our view, be a matter of confidentiality. Such information should be widely available to the public.
- There should be a more direct and across-the-board correlation between the public benefit provided in support of a Canadian content production and the minimum requirements that must be met in order for that production to qualify as Canadian content. In other words, the more support provided by the federal government to a particular project, the higher the minimum requirements for using Canadian creators should be.

*There should be greater coherence, synergy and transparency across the whole Canadian content policy infrastructure*

- The criteria used to assess whether a production is Canadian content should be focused on the entire creative and technical teams. As noted previously, what gives a film or television production its unique Canadian nature is the fact that Canadians contribute very largely to its making.

*There should be more efficient administration, tracking and monitoring of Canadian content*

- A uniform Canadian content criteria framework is needed but it must accommodate different production genres. At the same time, we believe the framework should be sufficiently flexible to allow producers to bring together the right mix of financial and creative resources so that a project may come to fruition in what is increasingly a competitive production environment.

- The whole of the Canadian content policy infrastructure should be more efficiently administered and simpler to monitor and evaluate. It goes without saying that the private and public sectors are increasingly required to adapt quickly to changes in the environment at both the national and international levels. Making the right decisions in this regard depends on the timely availability of accurate data. Without pertinent up-to-date information, any course of action, be it chosen by federal policy-makers or the private sector, will inherently entail a greater probability of failure.

## *A New Model for Defining Canadian Content*

The proposed new model would represent a national standard that could be used as a uniform framework for the whole of the film and television policy support infrastructure. It is intended to eliminate the considerable duplication in the current system by bringing together the common elements now administered individually by a variety of organizations. It is also designed to establish a higher degree of consistency and synergy in the Canadian content support system. A national standard that fosters greater coherence in the system will, in turn, go a long way towards addressing the need for greater transparency and improved policy monitoring and evaluation.

We wish to emphasize that the proposed new model is not intended to replace or diminish the roles played by existing organizations such as the CRTC, CAVCO, Telefilm Canada or the Canadian Television Fund. However, consolidating the Canadian content assessment and certification activities common to these organizations will allow each one to focus greater attention on developing new initiatives or adjusting and monitoring existing programs and regulations that are more directly linked to their particular objectives and mandates.

The proposed model entails status quo for certain of the elements used in assessing Canadian content and wholesale change with regard to others.

### **What should not change**

#### **Ownership and Control Requirements**

The ownership and control requirements, we believe, should remain in place. They help foster the development

of Canadian-owned and -controlled production companies and ensure that revenue resulting from the exploitation of Canadian content in both the domestic and international markets ultimately flows back to Canada.

#### **Producer Control Guidelines**

In order to ensure that access to the Canadian Film or Video Production Tax Credit is limited to productions that are truly owned and controlled by Canadian companies, CAVCO considers a number of factors. These are detailed in CAVCO's Producer Control Guidelines (PCG).<sup>18</sup>

A definition of what constitutes the producer is detailed in the PCG. Briefly stated, the producer is considered to be the one who controls and is the central decision maker with respect to the production from beginning to end. In assessing whether control and decision-making authority rests with the Canadian producer, CAVCO considers aspects including, but not limited to: ownership of the worldwide copyright in the production; ownership of the distribution rights for the Canadian territory; control of the initial licensing of commercial exploitation of the production; and the producer's level of financial interest in the exploitation of the production in foreign territories.

In addition, CAVCO assesses related indicators such as the degree to which the total budget is financed by a single non-Canadian entity; whether a Canadian entity owns or controls distribution and exhibition rights to at least the U.S. territory, or an economically significant portion of the world outside North America; and whether the producer retains an effective share of net proceeds.

<sup>18</sup> In Public Notice 2000-42, the CRTC also makes reference to these guidelines.

Other factors include whether there is evidence that the producer does not participate in the meaningful development of the story, concept and/or script acquired; evidence that foreign participants may exercise undue control; or evidence that a foreign company (other than a recognized lending institution) that is normally involved in the business of either producing, distributing, broadcasting, or similar endeavours is providing the completion guarantee with standard takeover rights.

Overall, the Guidelines are intended to help determine whether a producer seeking support from the Government of Canada effectively controls and is the central decision maker with regard to the Canadian content work. While some have suggested that these Guidelines may be in need of clarification, we believe that their spirit and intent remain valid and that they should be firmly enforced.

### **Citizenship Requirements**

The current requirements defining who is a Canadian should remain. That is, to be considered a Canadian for the purpose of the Canadian content definition, an individual should either be a Canadian citizen as defined by the *Citizenship Act*, or a Permanent Resident as defined pursuant to the *Immigration Act*. We do not believe, as some have suggested, that new criteria should be adopted to demand that, in addition to the basic requirements, a Canadian individual would have to reside full-time in Canada in order to qualify. Canada's creative talent pool is extremely mobile and should be allowed the freedom to seek opportunities wherever they may exist, be it in Canada or elsewhere.

### **Intellectual Property**

Copyright is fundamental framework law for the film-making process. A form of property law, it consists of exclusive rights that permit the owner of such property to make, or authorize others to make, certain uses of that property. Property laws apply to both tangible and non-tangible assets. The latter are considered intellectual property and are the result of human labour.

Copyright promotes the creation and widespread dissemination of works of creative expression by according creators appropriate rights in the fruits of their labour. Simply put, copyright is an essential framework

for the creative development of our culture. Some see it as the expression of a culture that values and respects creative contributions to society.

We believe that the current program criteria requiring the producer to own or have cleared all relevant rights should remain in place. If these principles are not respected, creators cannot be assured of control over the use of their intellectual property or of compensation when such property is exploited.

### **Distribution Requirements**

The current requirements to use a Canadian-owned and -controlled company for distribution in Canada have been adopted by the main production assistance programs as a means to further the objectives established by the 1988 Distribution Policy.

Based on the data provided in Chapter 4, it can be argued that the Distribution Policy has shown some success in helping Canadian-owned companies improve their market share in Canada. We can also establish that Canadian companies invest far more in Canadian films relative to their domestic market revenue than do foreign-owned companies.

However, the Distribution Policy was not designed to address current issues in the Canadian-owned segment of the theatrical distribution sector which, in our view, relate more directly to regional and market concentration. These issues, and possible solutions, are discussed in Chapter 4.

*Copyright is an essential framework for the creative development of our culture*

## What should change

We propose that the three main project-specific tests (key creative points system, minimum production expenditure and minimum post-production expenditure) be entirely replaced by a new Creative Expenditure Model.

The core of the new model would centre on the costs related to the creative aspects of a production. The model would also require that the top three creative positions of Writer, Director and Lead Performer be held by Canadians. However, a system of options has been incorporated into the model with a view to providing the necessary flexibility for producers to be able to structure production deals. The options system is also designed as a mechanism to: i) encourage the use of more Canadian creators; and ii) draw a more direct, across-the-board correlation throughout the film and television policy infrastructure between the level of public support provided to a production and the minimum Canadian content requirements that must be met. We elaborate upon this latter characteristic below.

To qualify as Canadian content, a production would be required to meet minimum expenditure levels in four creative groups. These minimum requirements would increase as options are exercised. Before providing details of the option system, we first explain more precisely the minimum creative expenditure requirements and how they would be assessed.

## Minimum Creative Expenditure Requirements

As previously noted, the creative expenditure requirements would focus on the costs related to the creative aspects of a production. Such costs would include both rights costs and expenditures paid to, or in respect of, the entire creative and technical team (these elements are hereafter referred to as creative costs).

The creative costs requirements would be assessed separately under four groups: i) Authors; ii) Creative Collaborators; iii) Performers; and iv) Technicians. For illustrative purposes, we provide an example of how individual elements of the creative costs could be divided into the key four groups (Table 1).

We emphasize that the elements shown here are intended only as examples; discussions with stakeholders would be required to confirm the list of elements to be included under each group. That said, we nonetheless offer the following (Table 2).

The Authors group should include all elements involving intellectual property (i.e., literary, musical, artistic and dramatic works). This group should further include the Story Editor, the Story Consultant and any Researchers, as these functions directly support the authoring role.

The Creative Collaborators group should include all functions that are defined pursuant to collective agreements overseen by the Directors Guild of Canada or the Association des réalisateurs et réalisatrices du Québec. However, we believe that certain non-creative positions, such as accountants, should be excluded.

**Table 1**

<b>Authors</b>	<b>Creative Collaborators</b>	<b>Performers</b>	<b>Technicians</b>
Story Acquisition Writer Music Acquisition Music Composer Director	DOP Picture Editor Sound Editor	Principal Actors Actors Off-Camera Perf.	Construction Super. Hair Makeup Costume Design



The Performers group should include all performers that would ordinarily be defined pursuant to collective agreements overseen by the Alliance of Canadian Cinema Television and Radio Artists or Union des Artistes.

The Technicians group would include all positions ordinarily defined under collective agreements overseen by relevant technical guilds. Again, non-creative functions such as transportation should be excluded.

To meet the creative expenditure requirements, a minimum percentage of the total costs related to each of the four key groups would have to be paid to, or in respect of, Canadians. In our view, the minimum expenditure levels in each group should be based on historical levels and be specific to the production genre.

In order to determine the minimum level of expenditures in each of the four key groups, we asked CAVCO to sample a representative pool of the productions it has certified in recent years.<sup>19</sup>

The sample population included 206 productions, or just over 14% of the total number of active CAVCO

files (1,431). Of the sampling, 37% were produced in French and 63% in English. Two productions were made in a language other than French or English. The sample population was also representative in terms of production genre. Table 3 shows the proportion of productions sampled in each genre, relative to the total number of active productions in that genre.

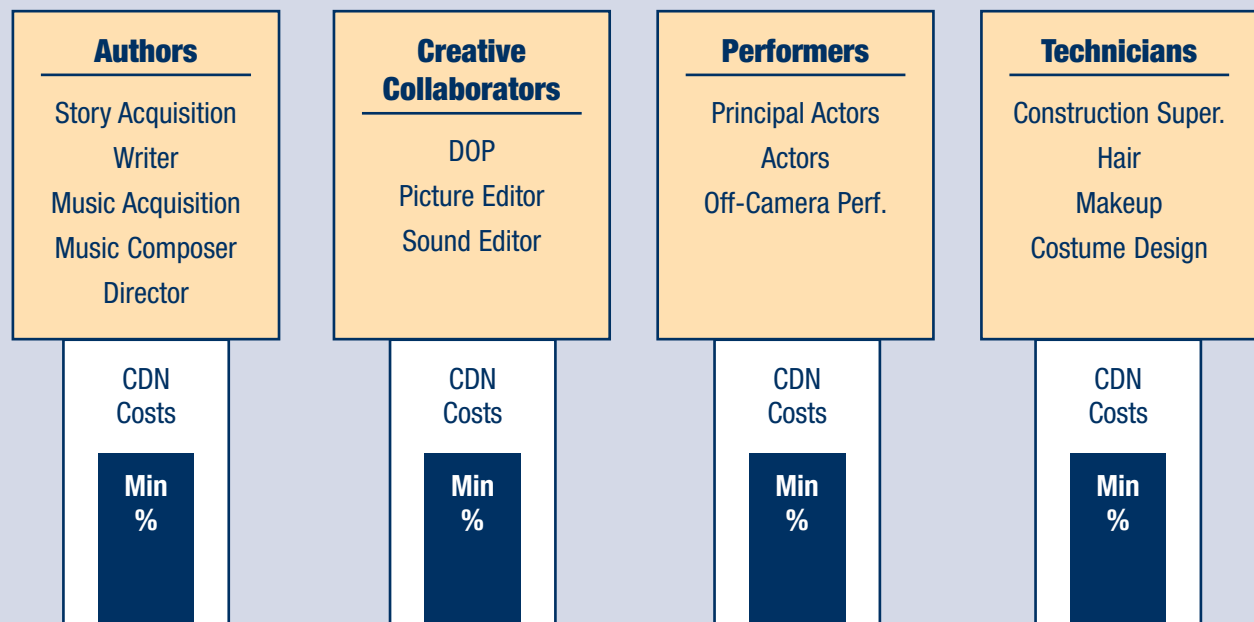
**Table 3**

Genre	Sample Size in Each Genre
Children's (animation and non-animation)	29.7%
Documentary	9.2%
Educational/Instructional	26.8%
Fiction (animation and non-animation)	15.8%
Magazine	15.2%
Music	35.7%
Performing Arts	41.2%
Variety	12.3%
<b>All Genres Combined</b>	<b>14.4%</b>

Note: The percentages vary by genre because in genres having fewer productions overall, the sampled proportion is greater to ensure representation.

<sup>19</sup> Coproductions were not included in the sample.

**Table 2**



To ensure representation within the sample population, several other factors were taken into account: the type of production, the category, and the fiscal year of production.

For each genre, creative costs were tabulated in their respective group (Authors, Creative Collaborators, Performers and Technicians); then for each group, they

were segmented by whether they were paid to Canadians or non-Canadians. A breakdown of the elements tabulated in each group is provided in Table 4.

The detailed results of the creative costs analysis by genre are provided as Annex C. As these data indicate, several production genres have historically paid similar

**Table 4**  
**Breakdown of Creative Cost Elements by Group**

Key Groups	Cost Elements
Authors	<ul style="list-style-type: none"> <li>• Story Rights</li> <li>• Writer</li> <li>• Story/Script Editor</li> <li>• Story/Creative Consultant</li> <li>• Script Supervisor</li> <li>• Animation Writer</li> <li>• Storyboard Supervisor</li> <li>• Animation Story Editor</li> <li>• Director</li> <li>• Music Composer</li> <li>• Music Supervisor</li> <li>• Music Rights</li> </ul>
Creative Collaborators	<ul style="list-style-type: none"> <li>• Production Designer</li> <li>• Art Director</li> <li>• 1st Assistant Art Director</li> <li>• Design Supervisor (Animation)</li> <li>• Director of Photography</li> <li>• Camera Labour (Animation)</li> <li>• Layout and Background (Animation)</li> <li>• Key Animation</li> <li>• Assistant Animation and In-Betweening</li> <li>• Assistant Director</li> <li>• Post Consultant/Supervisor</li> <li>• Supervising Picture Editor</li> <li>• Picture Editor</li> <li>• Dialogue Editor</li> <li>• Sound Effects Editor</li> <li>• On-Line Editor</li> <li>• Off-Line Editor</li> <li>• Supervising Sound Editor</li> <li>• Sound Editor</li> <li>• Mixing</li> <li>• Post-Synch Dialogue Editor</li> <li>• Foley Editor</li> <li>• Music Editor</li> <li>• Special Effects Supervisor/Coordinator</li> <li>• Head of Special Effects</li> <li>• Special Effects Technicians</li> </ul>
Performers	<ul style="list-style-type: none"> <li>• Star</li> <li>• Cast</li> <li>• Extra</li> <li>• Off-Camera Voice</li> <li>• Host</li> <li>• Narrator</li> <li>• Announcer</li> <li>• Puppeteer</li> <li>• Choreographer</li> <li>• Dancer</li> <li>• Singer</li> <li>• Chorus Performer</li> </ul>
Technicians	<ul style="list-style-type: none"> <li>• Construction Supervisor/Coordinator</li> <li>• Key Scenic Artist</li> <li>• Props Designer</li> <li>• Set Decorator</li> <li>• Costume Designer</li> <li>• Assistant Costume Designer</li> <li>• Wardrobe Supervisor</li> <li>• Dresser/Seamstress</li> <li>• Key Makeup Artist</li> <li>• Key Hair Stylist</li> </ul>

levels of expenditures in each group to Canadians. Therefore, it would be reasonable to combine a number of genres and fix minimum expenditure levels for each group for the combined genres. Examples of genres that could be combined include: i) documentary and educational/instructional; ii) all fiction (including children's); iii) magazine, music, performing arts and variety; and iv) all animation.<sup>20</sup>

Unfortunately, given the relatively short deadline for completion of the Canadian Content Review, it was not possible to arrange for a similar creative expenditure analysis of those production genres that are recognized only by the CRTC (sports, game shows, talk shows, etc.). Given that financial data for these types of production is not collected by the CRTC,<sup>21</sup> such an analysis would need to be undertaken to determine: i) whether the list of elements in each group is complete; and ii) what the historical levels of costs paid to Canadians have been.

### **The Option System**

Depending on the level of public benefit being sought, a certain number of options would be available to producers. The lower the public benefit being sought, the greater the number of options. Inversely, the greater the public benefit requested, the fewer the options.

An option could be applied against any one element within a group, including one of the top three creative positions (Writer, Director and Lead Actor). The option would allow the producer to net out the cost of that element when calculating the minimum expenditure requirements related to the group in which the option was exercised.

However, unlike in the current Canadian content requirements, where the use of a non-Canadian creator has no effect on the minimum expenditure requirements, the exercising of an option under the new model would

come at a price – that is, an increase in the minimum expenditure requirement in the group in which the option is exercised. For example, for fiction productions, if the minimum expenditure requirement in the Authors group was set at 70% and an option was used in this group, the minimum could be increased by 5% to become 75% (i.e., cost of the option = 5%). The expenditure requirement would then be calculated based on the total of the remaining elements in the group (i.e., net of the element against which the option was exercised), but at the new higher level.

The underlying rationale for increasing the minimum expenditure requirement each time an option is exercised is straightforward: replacing a Canadian element with a non-Canadian element in a particular group would reduce the producer's financial flexibility to employ non-Canadians. The end result would be of direct benefit to Canadian creators.

A producer would be allowed to exercise only one option per group. By requiring from the outset that the top three key creative positions (Writer, Director and Lead Performer) be held by Canadians and by including both the Director and the Screenwriter in the Authors group, we are assured that at least one of these two positions is held by a Canadian at all times.

### **The Number of Allowable Options**

With a view to more directly correlating the public benefit provided and the minimum Canadian content requirements, we believe the number of allowable options should be scaled relative to the level of public benefit provided.

As noted earlier, the film and television policy infrastructure provides three distinct levels of benefit to producers of Canadian films and television programs: Tier 1 represents direct financial support and includes

<sup>20</sup> The results for both fiction and children's animation are lower than expected. While the sample scope appears to be representative, a more detailed analysis of the creative expenditures may be necessary.

<sup>21</sup> These program categories are produced in-house by broadcasters. As such, they receive automatic certification as Canadian content and are not required to provide financial data unless requested.

the two main funding programs (Canada Feature Film Fund and Canadian Television Fund); Tier 2 represents indirect funding through the Canadian Film or Video Production Tax Credit program; Tier 3 represents access to the Canadian broadcasting system. Table 5 details what we believe are the appropriate number of options in each tier.

With regard to direct financing (Tier 1), we believe it appropriate to allow for the use of only one option. This would effectively correspond to the current minimum requirements that are common to both direct funding programs. The Canada Feature Film Fund, for example, requires that a film achieve at least eight out of ten key creative points. A film co-written by a Canadian and a non-Canadian may also be eligible for funding, subject

to Telefilm Canada's evaluation. Further, the Fund allows for flexibility in the 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 project's market potential.

Some may interpret the provision of one option in the direct funding tier as a reduction of the current minimum requirements, particularly as concerns the Canadian Television Fund, where all key creative positions must be held by Canadians. We reiterate that the proposed model is not meant to preclude the role of the direct funding organizations in developing specific requirements in the pursuit of their particular mandates. Rather, it is intended to bring together the common Canadian content elements across the direct funding tier.

**Table 5**

	<b>Authors</b>	<b>Creative Collaborators</b>	<b>Performers</b>	<b>Technicians</b>
	Story Acquisition Writer Music Acquisition Music Composer Director	DOP Picture Editor Sound Editor	Principal Actors Actors Off-Camera Perf.	Construction Super. Hair Makeup Costume Design
<b>Tier 1</b> Direct Financing (1 Option)	CDN Costs	CDN Costs	CDN Costs	CDN Costs
<b>Tier 2</b> Indirect Financing (2 Options)	Min %	Min %	Min %	Min %
<b>Tier 3</b> Broadcasting System (3 Options)				

The current minimum criteria for access to the Canadian Film or Video Production Tax Credit (Tier 2) require that productions achieve at least six out of ten key creative points. In addition, either the Director or the Screenwriter and either the 1st Lead Actor or the 2nd Lead Actor must be Canadians. Allowing two options for access to the tax credit program would effectively provide producers with the same degree of flexibility as is currently available.

For access to the Canadian broadcasting system (Tier 3), we believe it appropriate to allow for three options. Again, this would represent status quo in terms of flexibility, as producers are currently permitted to use either a foreign Writer or Director (Authors group), a foreign Lead Actor (Performers group) and at least one other foreign key creator that we have included in either the Creative Collaborators or Technicians group.

### **The Cost of Exercising an Option**

The “cost” of exercising an option in terms of the resulting increase in minimum expenditure requirements would need further analysis and discussion with both creators and producers.

It is conceivable that the cost of the option could be scaled depending on the level of public benefit being sought by the producer. For example, the increase could be set at 5% if a producer was merely seeking Canadian content recognition for broadcasting purposes (Tier 3).

Access to public financing, either indirect or direct, could entail a higher cost for use of an option, thus effectively further reducing a producer’s financial flexibility to employ non-Canadians.

In considering this issue, it should be kept in mind that each time an option is exercised, the minimum expenditures in the group in which it is exercised would be increased. This obviously would have the effect of increasing the overall minimum costs.

Given that the number of options would vary depending on the level of public benefit provided, it is conceivable that, if they are all exercised, the minimum expenditure requirements imposed on productions seeking broadcast-only recognition could be higher than those imposed on productions seeking either indirect or direct financial support.

**1 We recommend that the current points/expenditure system be replaced by the proposed creative expenditure model.**

## A New Approach to the Administration of Canadian Content

One of the questions raised in the Department of Canadian Heritage discussion paper *Canadian Content in the 21<sup>st</sup> Century* was whether the assessment of Canadian content should be centralized. As outlined earlier and as suggested by stakeholders during consultations, we believe that there are compelling reasons to centralize the certification of Canadian content.

To recap, the Canadian content policy infrastructure is currently fragmented and, as a result, lacks coherence and synergy. Further, in the current context it is not possible to effectively track Canadian content in terms of the public support it receives or its success in reaching audiences. The Canadian content system for film and television has remained relatively unchanged for some 30 years, while the film and television production and broadcast industries have grown and changed considerably. The federal government's policy tool kit, in our view, has not kept pace and is now hard put to meet current and future challenges in an efficient fashion.

To address these challenges, some have suggested that an overarching policy framework is needed to better position the Canadian content sector. There is a need, they maintain, to better frame and guide the interrelationships and interdependencies of the various federal and federally funded organizations involved in either promoting the creation of, or access to, Canadian content films and television programs, the ultimate goal

being to ensure a more effective means of pursuing public policy objectives related to Canadian content.

To put in place the fundamental foundation upon which, one day, an overarching policy framework could be developed, and with a view to improving coherence in the

system, reducing inefficiency caused by the duplication of common activities, and imparting a greater degree of synergy and transparency, we believe that the certification of Canadian content should largely be undertaken by one federal organization.

*...the certification of Canadian content should be largely undertaken by one federal organization*

### The Canadian Content Commission

We have notionally named this central certification organization the Canadian Content Commission (CCC). We leave for the Department of Canadian Heritage to determine its exact structure. We want to underscore, however, the need to ensure that such an organization operate at arm's length from the government and be representative of various communities.

The Canadian Content Commission could be mandated to play a number of key roles:

*a) Certification of Canadian Content Productions*

The CCC could certify all Canadian content film and television productions seeking access either to funding programs or to the broadcasting system, with some important exceptions.

In some areas, we believe that it would not be necessary to submit productions to a full certification assessment. Such areas include all productions made in-house by broadcasters as well as those made by the NFB and those supported through the Canada Council for the Arts. Much like today, they could be automatically recognized as Canadian content.

*b) Administration of Canada's Official Coproduction Treaties*

The Commission could administer Canada's official coproduction treaties by certifying international coproductions and actively participating in their negotiation. Further details in this regard are provided in Chapter 4.

*c) Research, Monitoring and Measurement of the Effectiveness of Government Policy*

The CCC could have a strong research and monitoring role to measure the overall performance of Canadian content. In addition to producing a comprehensive annual report, the CCC could track and publish timely data related to trends in specific areas.

Currently lacking in the system is a coherent perspective on the Canadian content support system and ongoing monitoring of key national and international trends and environmental developments. Because of its vantage point in the system, the CCC would be able to provide intelligence to the film and television industries and to the organizations that are mandated to support Canadian content.

This would provide for increased transparency and enable the implementation of uniform measurement systems for Canadian content. On a more macro level, this information would allow for better monitoring of the effectiveness of government policy objectives and help government to better direct the use of limited public resources.

To ensure that the CCC would maintain as complete a database as possible with regard to Canadian content, it would be necessary for the broadcasters, the NFB and the Canada Council to provide information on the productions they produce or support.

*d) An Advisory Role to Government*

The CCC could take on an advisory role, providing direction to the Minister of Canadian Heritage on issues that arise related to Canadian content. This would help maintain coherence across all federal government film and television policies and programs that support Canadian content. The system-wide communication and sharing of information that the CCC would assume would result in a better alignment of objectives among the players in the system.

*e) A Role with Respect to the International Standard Audiovisual Number (ISAN)*

One of the challenges in the film and television sector is the lack of an identifying and tracking system for audiovisual works. In the last couple of years, a number of organizations have worked to develop better tools to facilitate such activity, largely for copyright reasons. Given that information on virtually all Canadian content productions would reside within the CCC, it would seem natural for it to play a key role in this area.

The International Standard Audiovisual Number (ISAN), an international identifier for audiovisual works, has recently been approved by the International Organization for Standardization (ISO). To this end, the



Registration Authority for the International ISAN agency has been established. This represents an opportunity for Canada to develop a registry that could be maintained by the CCC. We understand that some Canadian organizations have already moved to incorporate the ISAN into their systems and contracts in anticipation of its implementation. It is proposed that the CCC play a collaborative role in this area.

*f) The Canadian Content Brand: Promotion and Marketing Strategies*

One of the most powerful messages we received from stakeholders throughout our consultations was the need to focus greater efforts on the promotion of our Canadian

films and television programs. We also understand that there is a concerted effort by organizations such as Telefilm Canada to focus greater resources on the development of audiences for Canadian cultural products. The CCC's research and monitoring role could facilitate the exchange of information with agencies and organizations, both national and international, and help develop strategies for the development and marketing of Canadian films and television programs.

**2** We recommend that one arm's-length organization be responsible for the certification of Canadian content.

# 3.4

## Encouraging the Greater Use of Canadian Creators

As pointed out earlier, a production achieving six out of ten key creative points currently receives the same level of financial assistance under the Canadian Film or Video Production Tax Credit (CPTC) as one that achieves 10/10 key creative points. In short, there is no incentive within the CPTC to produce works with higher levels of Canadian content.

Following on the principle that there should be a more direct correlation between the public benefit provided to a Canadian content production and the minimum requirements that it must meet, and to encourage the use of a greater number of Canadian creators, we believe that the assistance provided under the CPTC should be scaled relative to the level of Canadian content a production achieves.

The most straightforward method of determining how to scale the tax credit in the proposed new model would be to base the rate relative to the number of options exercised. The fewer the options used, the higher the tax credit rate should be. Table 6 below illustrates the point.

**Table 6**

Number of Options Exercised	Tax Credit Rate Provided
3	Base Rate
2	Base Rate + 5%
1	Base Rate + 10%
None	Base Rate + 15%

Note: percentages noted for illustrative purposes.

While we recognize that implementing a scaled tax credit system would require further analysis and consideration, we believe the provision of an incentive to encourage the greater use of Canadian creators is fully consistent with the federal government's objectives to promote the highest possible levels of Canadian content in films and television programs. Further, adjusting the rate structure upwards to reward higher levels of Canadian content, as opposed to penalizing lower levels, would help address the current financing difficulties in the production sector. We believe a scaled tax credit program could also effectively decrease the pressure of demand for assistance that is currently being exerted on direct funding programs.


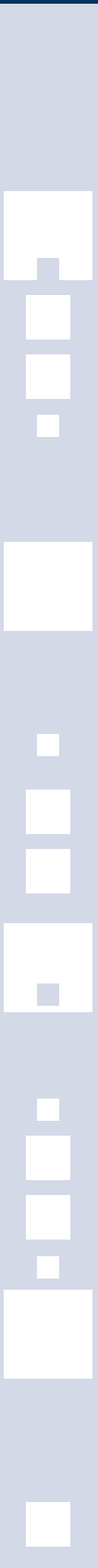
*...the provision of an incentive to encourage greater use of Canadian creators is fully consistent with the federal government's objectives...*

**3** We recommend that the Canadian Film or Video Production Tax credit be scaled upwards to reward the use of a greater number of Canadian creators.



4

OFFICIAL INTERNATIONAL  
TREATY COPRODUCTIONS  
AND THEATRICAL  
DISTRIBUTION



**T**his chapter examines two areas that we believe are integral to the Canadian content system: international treaty coproductions and theatrical distribution. The first has a direct link to Canadian content in that film and television productions made within the framework of official international coproduction treaties are considered “Canadian.” We provide an overview of international treaty coproductions and make recommendations on how the certification process can be integrated within the Canadian content system that we are recommending for the future.

The second, theatrical distribution, while not directly related to the definition of or administration of Canadian content, speaks to other related public policy issues: the promotion and audience reach of Canadian content; and the consumption of this content by Canadians. In our consultations across the country, we received a clear and strong message from stakeholders and ordinary Canadians that incentives have to be found to increase promotion of Canadian content so that it more effectively reaches Canadians. We examine the state of the distribution sector as it relates specifically to the distribution and marketing of Canadian feature films in movie theatres and make recommendations for increasing the promotion of Canadian feature films.

## Official International Treaty Coproductions

Official treaty coproductions are produced under the auspices of a bilateral treaty and enjoy national status in both of the partner countries. This means that, in Canada, they qualify as Canadian content for broadcast

*Over the years coproductions in various genres and languages have contributed to the cultural landscape of the country*

purposes and can access financing programs available to Canadian film and television productions. In partner countries, the productions qualify for domestic broadcast quota purposes and also enjoy access to all funding available to domestic productions.

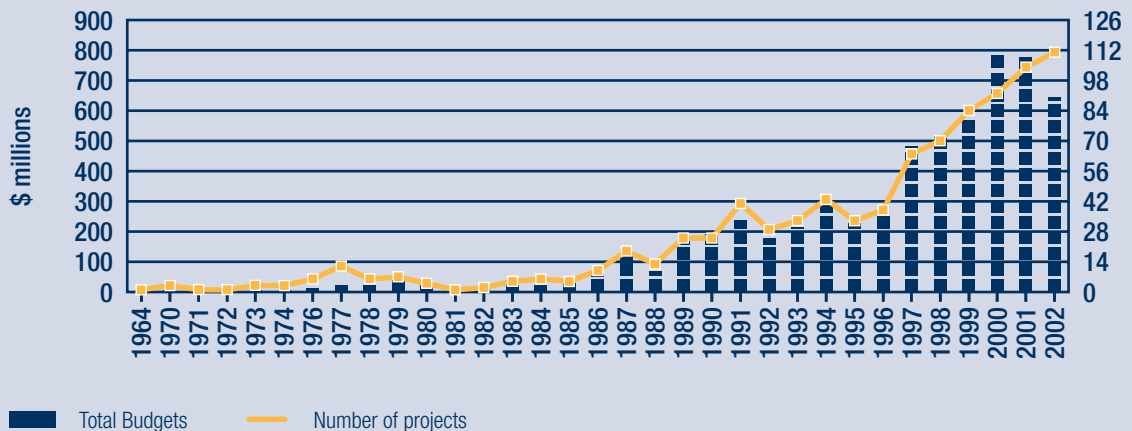
### The Growth in Coproduction Activity

Official coproduction activity has grown considerably since the first official coproduction treaty was signed with France in 1963, increasing from one project in that year to more than one hundred in 2001.

Figure 1 provides a breakdown of the volume of official coproduction activity by the total number of projects and total financing between 1964 and 2002.<sup>22</sup> As these data indicate, there is a close correlation between the two indicators – that is, total financing largely mirrors the total number of projects over time.

<sup>22</sup> Source: Department of Canadian Heritage. All figures presented in constant 2002 dollars. Data for some years not available.

**Figure 1 – Official Coproduction Activity, Number of Projects and Total Financing**  
(Constant 2002 Dollars)



Between 1970 and 1985, four official coproductions were produced on average each year. Then, between 1986 and 2002, the annual average rose sharply to 49.

*In 2002, Telefilm Canada granted advance ruling for over 112 projects with budgets in excess of \$650 million*

The period from 1970 to 1979 can be characterized as having moderate growth in terms of both total financing and number of projects. However, the following seven-year period saw a considerable decrease in the gains that had been achieved. This was likely due to the difficult economic

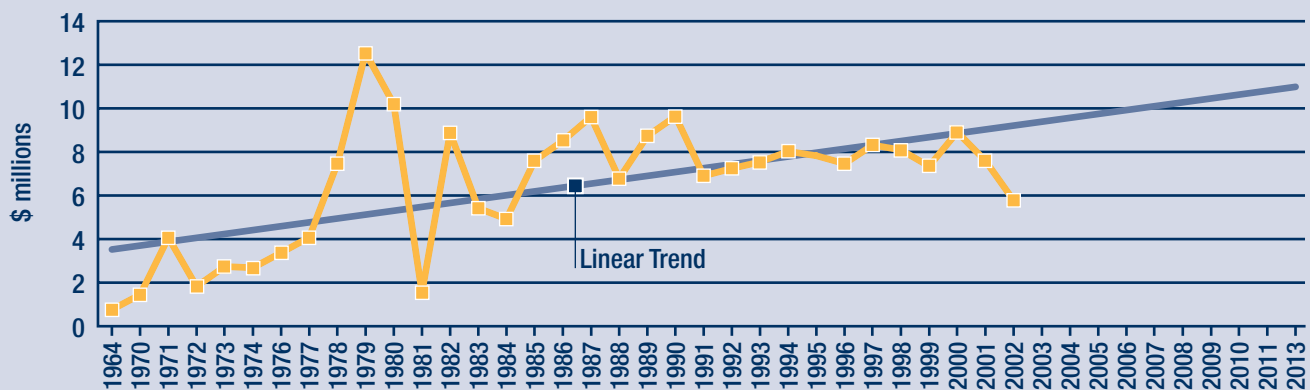
environment in the early 1980s. It was not until about 1987 that coproduction activity began to increase significantly, continuing until 1991. The economic slowdown of the early 1990s no doubt had a negative impact on the level of coproduction activity in 1992 and 1993. And it can be assumed that the overall film and television production environment was affected by the federal government's deficit reduction initiative of 1995 and 1996, thus directly impacting coproduction activity. Since 1997, growth in coproduction activity has been relatively robust.

Like the total number of coproductions and total financing, the average coproduction budget has increased over time. Figure 2 shows the average coproduction financing for each year from 1964 to 2002. As the data demonstrate, there was a considerable degree of annual fluctuation up until the early 1990s, due largely to the fact that the annual production volume was small. Throughout the 1990s, the average coproduction budget stabilized to some extent. Plotting a linear trend against these data, we clearly see the growth in average coproduction financing over time. Projecting the trend ten years into the future (assuming all being equal and not accounting for inflation), we can expect the average coproduction budget to reach \$11 million by 2013.

### Analysis of Canadian Content in Coproductions

The growth in overall coproduction activity, particularly in recent years, has raised some concern among policy makers. As we understand it, the concern relates to whether Canadian creators are being employed in the key creative positions given that coproduction treaties do not impose minimum requirements on individual projects.

**Figure 2 – Official Coproduction Activity, Average Financing**  
(Constant 2002 Dollars)



To assess this issue, we reviewed existing data. We also initiated a study to determine the degree to which Canadians have been participating in the key creative positions of coproductions.

Looking at CAVCO data as published in *Profile 2003*, we can confirm that the level of activity related to six- to eight-point production has been decreasing. By contrast, the level of coproduction activity has been increasing. In 2001-02, there was as much six- to eight-point production activity as there was coproduction activity. Plotting a linear trend against both six- to eight-point and coproduction activity, we can predict (assuming all being equal and not accounting for inflation) that the latter group will surpass the former in the 2003-04 fiscal year (Figure 3).

On the surface, this trend might suggest that, because the level of coproduction has been increasing significantly and treaties do not require that a minimum number of Canadians hold key creative positions, fewer Canadian creators are involved in coproductions.

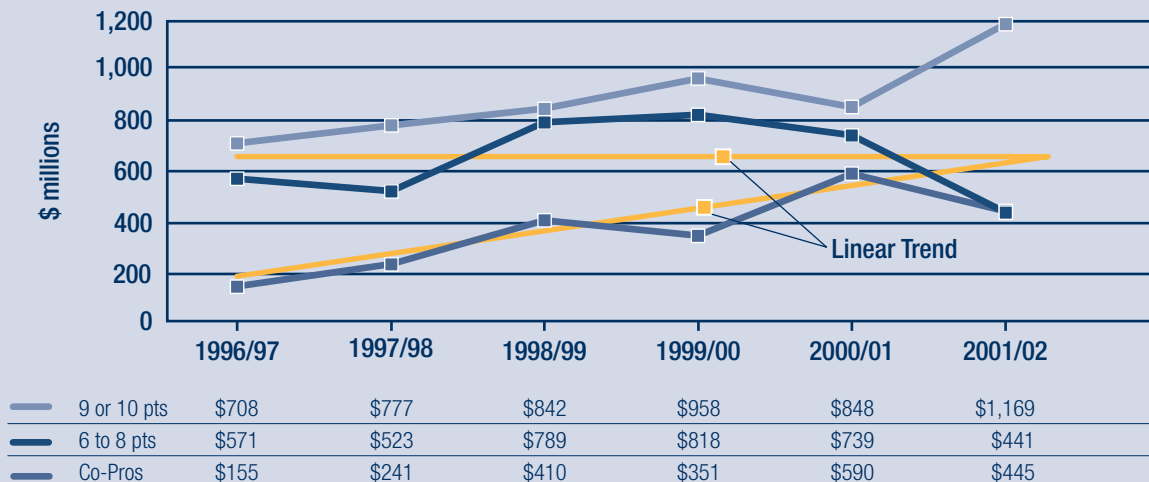
However, this is not confirmed by the results of the study we commissioned. That study examined in detail a sample of 127 coproductions made over the last five years. The sample was representative with regard to majority

and minority projects, and in terms of the animation, documentary and drama genres. To determine whether Canadian key creators were participating at a level on a par with creators in partner countries, the study established key creative position targets for each sampled coproduction relative to the equity financing share of each coproducing partner. What follows is an overview of the findings of this research.

Overall, Canadian creative talent met or exceeded the established prorated targets, accounting for over 61% of the total points attributed to the sampled productions, despite the fact that Canadian producers provided 52% of the total equity financing. Analyzed relative to each key creative position, the results indicate the following.

- Canadian writers participated in 66% of the productions, most actively (75%) in animation productions, less actively (58%) in drama productions.
- Canadian directors participated in 61% of the productions, most actively (70%) in animation productions, less actively (56%) in documentaries.
- Directors of photography were accounted for only in drama and documentary productions. Overall, Canadian DOPs participated in 61% of the coproductions (72% of the sampled documentaries and 56% of the drama productions).

**Figure 3 – CAVCO-Certified Production Financing by Points Including Coproductions**  
(Constant 2001 Dollars)





- Canadian Production Designers or Art Directors participated in 71% of the productions that allocated a point to the category. Fewer than 25% of documentary productions attributed a point to this category.
- Key animation was performed in Canada in 70% of the productions.
- Canadians participated in the creation of music in 67% of the productions, most notably (83%) in animation and less (56%) in drama. Not all documentary films attributed points to the music category.
- Canadian editors were largely used in coproductions, participating in 78% of the total productions, 85% of the animation coproductions.
- Canadian actors are also well represented in coproductions. Some of the on-screen (or lead voice) positions were filled by Canadians in 80% of the coproductions, most often (88%) in animation productions, less often (67%) in documentary productions.

This analysis shows that Canadian productions made within the framework of an international treaty coproduction do not disadvantage Canadian creators, technicians or performers. The contrary, in fact, is true: they develop and employ Canadian talent in significant ways.

**4 We recommend that official treaty coproductions continue to be recognized as Canadian content for both funding and broadcast purposes.**

## The Certification Process

### The Present Process

The first step is the submission of an application by a producer for an advance ruling to the certifying authorities in both (or more) countries at least 30 days prior to production. In Canada, this application is submitted to Telefilm Canada, which is the competent

authority for certification of coproductions. Upon receipt of an application, Telefilm reviews the following:

- the chain of title to ensure that the producers hold the necessary rights to produce the project;
- the financial structure and contracts to ensure the financial viability of the project;
- the coproduction agreement between the producers to ensure that the contractual obligations are in accordance with the terms of the treaty in question;
- the budget and the expenditure breakdown between the countries;
- the cast and crew engaged or proposed for the production.

This evaluation respects the basic principle governed by a bilateral treaty: the notion of proportionality. This implies that the respective creative contributions of each party, the expenditure in each country, the copyright ownership, and the sharing of distribution territories should all be proportionate to the financial contribution of each country.

Telefilm considers all the key creative positions as submitted by the producer and then evaluates whether the percentage of creative contribution is proportionate to the financial contributions of the parties. For example, if 12 key creative roles were identified in a 50-50 coproduction, Telefilm would expect to see six of the roles filled by Canadians.

Telefilm takes into account the overall balance between Canada and the coproducing country or countries and may require a greater or lesser level of Canadian content, depending on the status of the treaty or treaties in question.

*Canadian productions made within the framework of an international treaty coproduction do not disadvantage Canadian creators, technicians or performers*

The second part of the certification process occurs after completion of the production, once the final production costs are audited. Telefilm then reviews the final documentation to ensure that the production was produced in accordance with the information provided at the advance ruling stage and that the production was made in compliance with the treaty or treaties in question. Once compliance has been determined, Telefilm prepares a recommendation to the Minister of Canadian Heritage to certify the production as an official coproduction between the countries.

The recommendation, with supporting documentation is then forwarded to CAVCO for review. Although CAVCO does not evaluate the content of the coproductions, the productions are required to be reviewed for tax credit purposes.

### **Certification of Official Treaty Coproductions by the Canadian Content Commission**

The process of certification as described above is seen as highly inefficient by Canadian producers. Evaluation of a project may take up to six months (Telefilm often takes several months and CAVCO a further six to 12 weeks). We are convinced that benefits can be achieved by having the coproduction certification process become the responsibility of the Canadian Content Commission. The benefits fall into three areas: savings resulting from elimination of duplication; reduction of the producers' administrative burden; and achievement of cohesive public policy objectives.

Canada's production financing policies may sometimes be at odds with its international commitments, because coproduction administration is shared by several federal organizations. The integration of the certification process within the mandate of the Canadian Content Commission would ensure that the development of policies that

impact Canadian content is undertaken within a comprehensive framework, especially in a context in which international coproductions provide essential financing opportunities for high-budget productions.

An additional yet important benefit would be the centralization of industry data, which would enable Canadian content policy to be evaluated and developed with knowledge of and consideration for the specific requirements inherent to international treaty coproductions. At the same time, an important consideration is to ensure that knowledge of coproduction regulations and funding mechanisms is accessible and that flexibility is maintained in the administration process.

**5 We recommend that the certification of international treaty coproductions become the responsibility of the Canadian Content Commission.**

## **Criteria Governing New and Existing Official Coproduction Treaties**

### **The Need for a Policy**

Canada currently has treaties in effect with over sixty countries, although only a handful are used in a given year. The signing of treaties is often done outside the parameters of the Canadian content system, as responsibility for all treaties lies with the Department of Foreign Affairs and International Trade. This responsibility is delegated to the Minister of Canadian Heritage. And although Telefilm was mandated in 1976 to administer official coproduction treaties and to review applications, final certification of an official treaty coproduction is done by the Minister of Canadian Heritage.<sup>23</sup>

<sup>23</sup> On February 2, 1976, the Honourable Hugh Faulkner granted the Canadian Film Development Corporation (later renamed Telefilm Canada) the mandate and authority to evaluate and approve projects submitted under the terms and conditions of the coproduction treaties signed by the Canadian government. The agreements were entered into in order to foster cultural cooperation in the audiovisual field between Canada and European countries.

There are two issues that to our mind require review: the criteria governing the signing of new treaties, with a view to establishing greater clarity; and the evaluation process undertaken upon renewal of current treaties.

In the first case, a new treaty is often signed without due consideration for the benefits to the Canadian film and television industry. The negotiation of new treaties should be undertaken after consultation with the industry to determine what needs exist and after a careful review of the feasibility of the proposed treaty. There should be a clear indication that a treaty would provide benefits to the Canadian industry and not simply facilitate the transfer of work from Canada to another country.

The second subject requiring review is the criteria applied to coproduction treaties in the context of an evaluation process. At present, treaties are evaluated bilaterally but formal criteria are not used in determining renewal. The guiding principles appear to be the maintenance of flexibility and whether “balance” has been achieved. Achieving balance is a fundamental goal of all of the treaties currently in force. Generally, balance is reviewed by evaluating the respective financial, creative and technical contributions from each country, over a two-year period. However, a financial review may not be possible if the economies of the industries in both countries are not comparable.

In our view, a formal evaluation process should be undertaken when a treaty is reviewed to ensure that benefits for the Canadian industry still exist and to support the policy objectives of the Canadian content system. In so doing, the Department should take into account the spirit and intent of such treaties: to provide opportunities for creative and financial partnerships to be developed. Also, the concept of priority treaties should be developed, and these should be supported adequately with financing and promotion.

**6 We recommend that the federal government develop a policy framework setting out the minimum requirements for the signing of new treaties and criteria for the renewal of existing treaties.**

### **The Importance of Multilateral Agreements**

With the increased globalization of the cultural industries, particularly the film and television industries, many countries have sought to foster and develop multilateral partnerships in order to ensure that domestic production is financed and optimally distributed within their territories and globally. Despite its myriad bilateral coproduction agreements, Canada has not joined any of the multilateral initiatives to which its partners are signatories.

In the present climate of consolidation, market fragmentation and difficult financial conditions, Canada is becoming increasingly isolated from its main partners, the result of not participating in the existing multilateral initiatives. What is at issue is the very competitiveness of Canada’s audiovisual industry, which is at a growing disadvantage compared with other, particularly European, partners.

Canada has been recognized as a world leader in the field of coproductions and is still viewed as a key partner. However, our leadership is waning while other countries are developing policies to attract foreign investment and production and actively seeking multilateral initiatives to enhance the competitiveness of their industries.

*Canada has been recognized as a world leader in the field of coproductions and is still viewed as a key partner*

The Department of Canadian Heritage and Telefilm Canada undertook talks with the European Commission in the late 1990s, but these efforts did not bear fruit. The Conference of Ibero-American Cinematography Authorities (C.A.C.I.) has consistently invited Canadian officials to participate in their discussions and would most likely be receptive to Canadian involvement.

The need for strategic partnerships with like-minded countries is increasingly important for the success of the Canadian industry and to ensure that Canada does not lose its place as a world leader in the field.

**7 We recommend that Canada seek to secure preferential treatment and special association status with the most important multilateral initiatives, particularly those within the European Union.**

### **Access by International Coproductions to Financing in Canada**

In the context of increasing pressure on Canadian funding programs, some have questioned the value and benefit of allowing international coproductions to

access these programs. Others have recommended that public funding be limited to majority coproductions. We wish to address this issue, as we believe it is fundamental to the future of the Canadian content system.

Having determined that Canadian creative, technical and other talent is not compromised in international coproductions but, in fact, advantaged, we believe that productions made within the framework of international treaties should continue to enjoy access to funding programs. This access is made available to certified coproductions by the countries with which Canada has bilateral treaties. The spirit and intent of coproductions is, after all, reciprocity.

In order to maintain Canada's current status as a valued partner, it is essential that Canadian funding mechanisms continue to be open to international coproductions. The benefits of these partnerships may vary according to the production in question, but the government should not attempt to differentiate the value of such partnerships by limiting access to our funding programs to majority international coproductions, for example. This would, in our view, compromise the very foundation of international partnerships fostered via treaties.

# 4.2

## *Theatrical Distribution*

### **The Issue**

Under the current rules, for a Canadian theatrical feature film to qualify for federal production assistance, its distribution rights for the Canadian territory must be licensed to a Canadian-owned and -controlled distributor.

A few producers have expressed concern over the limited number of Canadian-owned distribution companies that have the capacity to effectively distribute a Canadian film. They maintain that these few companies have become gatekeepers, deciding which projects move forward, and without a distribution deal with a Canadian company they cannot access public production funding. They argue that if the current distribution criteria were eliminated and they were allowed to deal with foreign companies, it would effectively broaden the potential pool of companies to which they could pitch their projects. They believe that the increased competition could translate into higher minimum guarantees and, therefore, to an increase in the level of private-sector financing over time. Further, they believe more resources could be allocated to the marketing of Canadian films.

Noting the absence of regional distributors, other producers have suggested that the Canadian-owned segment of the distribution sector is too concentrated in Toronto and Montréal. This, they say, puts regional producers at a disadvantage.

Many wonder whether the efforts to market Canadian feature films and the resources available to support these efforts are sufficient to ensure such films the best possible chances of reaching the Canadian public.

These important questions deserve attention and must be analyzed in the overall perspective of implementing the new Canadian Feature Film Policy, which took effect April 1, 2001.

The issue of whether to eliminate the current distribution requirements must be carefully weighed. Similarly, the questions raised about the current status of access to distribution and marketing efforts for Canadian feature films must be assessed in light of the recent changes made to both the industry's structure and the support policies.

As a first step, we provide a brief history of distribution policies in Canada. We then measure the progress made in achieving the objectives of these policies and identify the elements of the current situation that continue to pose problems. Finally, we make recommendations that, in our view, will improve the distribution and marketing of Canadian feature films.

### **A Retrospective of the Canadian Distribution Policy**

Since 1965, several independent reports have underlined the domination of the U.S. film industry in Canada and emphasized the importance of encouraging Canadian film activity, particularly the development of an independent Canadian film distribution industry, to provide Canadians with an alternative to omnipresent foreign films. More specifically, the 1981 Task Force Report on Distribution, Exhibition and Marketing (Cohen Report) recommended adoption of a National Cinema Act to regulate the distribution and exhibition of motion pictures in Canada.



In 1985, the Film Industry Task Force co-chaired by Marie-José Raymond and Stephen Roth made recommendations on “three major structural problems” that required solutions for a healthy, dynamic, profitable and competitive Canadian film industry to be developed.

These were:

- i) Foreign domination of film and video distribution in Canada;
- ii) Chronic under-capitalization of production companies and the difficulty of financing feature films;
- iii) Concentration of theatre ownership and the vertical integration of distribution and exhibition.

The rationale for developing policy measures in support of the Canadian-owned distribution sector traditionally has centred on the following arguments.

- i) Canadian distributors play a crucial role in support of Canadian films; they help finance them via minimum guarantees and they bring them to the public by developing and implementing marketing strategies. A distribution company’s capacity to effectively play this role hinges on its ability to generate sufficient revenue in the marketplace.
- ii) While representing a large proportion of the total number of distributors operating in Canada, Canadian-owned companies hold a small share of the domestic theatrical distribution market. Despite their strong market position, the foreign distribution companies operating in Canada have never been interested in distributing Canadian films.
- iii) A healthy indigenous film industry requires the existence of a viable Canadian-owned distribution infrastructure capable of financing and marketing Canadian films.
- iv) Since the Canadian distributors are largely responsible for the linguistic and cultural diversity of the international feature films available to Canadian audiences, a stronger distribution sector would ensure that Canadians have access to an abundance of diversified film programming.

Given the low annual output and the nature of Canadian films in the mid-1980s, it was decided that the best way to help Canadian distributors improve their market share in Canada was to improve their access to foreign independent films. The underlying assumption was that they would augment their investment in Canadian films relative to the increase in the domestic market share they would achieve by distributing more foreign independent titles. Greater investment in Canadian films, in turn, would eventually improve the quantity and quality of Canadian films and, hopefully, help increase the chances of reaching larger audiences at the box office.

The challenge in securing better access to foreign independent films rested in breaking the Hollywood majors’ long-standing practice of negotiating for all North American rights when acquiring independent films. Given their much smaller size, their limited market share and the fact that they

operated only in Canada, Canadian distributors were effectively priced out of this market. Hence the distribution policy initially focused on attempting to separate the Canadian and U.S. territories for purposes of distributing foreign independent films in Canada.

The first attempt in this regard was initiated in 1987 when Flora MacDonald, then Minister of Communications, announced her intention to introduce legislation to establish an import licensing system. Under this scheme, foreign distributors would have been limited to distributing in Canada only films that they made or for which they had acquired the worldwide rights. However, concerns were raised by the authorities in

*Given their size, market share and the fact that they operated only in Canada, Canadian distributors were effectively priced out of the North American market*

other countries, who feared that the proposed Canadian legislation would result in increased acquisition of world rights by the U.S. majors, therefore potentially undermining the national distribution industries in these countries.

A revised policy approach was developed as a result, and Minister MacDonald announced the Canadian Film Distribution Policy in May 1988. The Policy contained three key initiatives that were designed to work in concert: i) the Film Products Importation Bill; ii) the Feature Film Distribution Fund (FFDF); and iii) foreign investment guidelines in the area of distribution.

### **Film Products Importation Bill**

The objective of this substantially revised legislative proposal was to ensure that the distribution rights to foreign independent films were acquired separately, as opposed to being part of a North American rights package. The Bill, however, died on the Order Paper with the call of the federal election later in 1988 and was never reintroduced.

### **Feature Film Distribution Fund (FFDF)**

Consistent with the overall objectives of the Distribution Policy, the FFDF provided Canadian distribution companies with financial assistance to acquire the rights to Canadian and foreign feature films. This enabled them to develop a larger catalogue of titles for distribution each year, thus bolstering the growth of their collective market share and their negotiating power with exhibitors. It also improved their capacity to offer attractive financing and marketing conditions for Canadian feature films. In 1996-97, assistance for the acquisition of rights to foreign feature films was abolished in order to concentrate the resources on Canadian features.

However, the Canadian Feature Film Policy set a new direction: financial assistance for acquisitions would be phased out and, thereafter, public assistance to distributors would be available only in support of activities related to marketing and promotion. This approach was adopted with a view to furthering the federal government's new objective to increase audiences for Canadian films in the domestic market. It was also implemented in recognition of the fact that a distributor is closest to the exhibitor in the industrial chain and is best positioned to gauge the audience potential of a Canadian film.

### **Foreign Investment Guidelines in the Area of Distribution**

Taken into account when a foreign investment made in the Canadian film or video sector is subject to the *Investment Canada Act*, the foreign investment guidelines in film distribution state that: i) takeovers of Canadian-owned and -controlled distribution businesses will not be allowed; ii) indirect and direct takeovers of foreign businesses will be allowed only if the investor undertakes to reinvest a portion of its Canadian earnings in accordance with national and cultural policies; and iii) investments to establish new businesses will be allowed only for the importation of proprietary films.

These guidelines were designed to: i) curb the erosion of Canadian distributors' market share caused by new start-ups; ii) protect Canada's investment in Canadian productions from foreign takeovers; and iii) ensure that foreign investors make a significant contribution to Canada's film and video infrastructure.



## The Current Situation

Since 1988, various policy and program initiatives have adopted criteria in support of the objectives of the Film Distribution Policy. Today, the three main production funding programs (Canadian Film or Video Production Tax Credit, Canada Feature Film Fund and Canadian Television Fund) require Canadian producers to use Canadian-owned and -controlled companies for distribution in Canada.

In assessing whether the Distribution Policy has had any success in achieving its objectives, we believe it useful

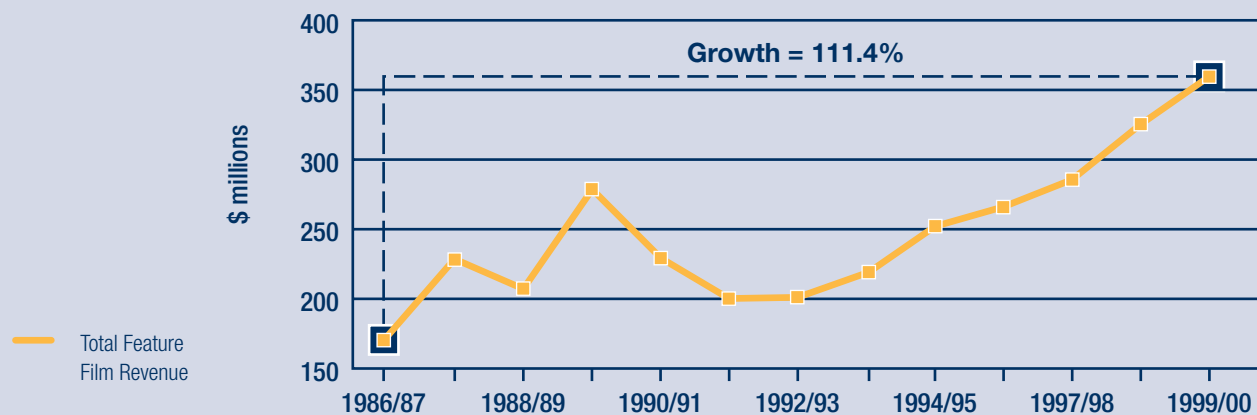
to review key data on the theatrical distribution industry in Canada dating back to a couple of years before it was introduced.<sup>24</sup> It is also pertinent to look at how much distributors contribute to Canadian films relative to their domestic theatrical revenue.

### Domestic Market Growth

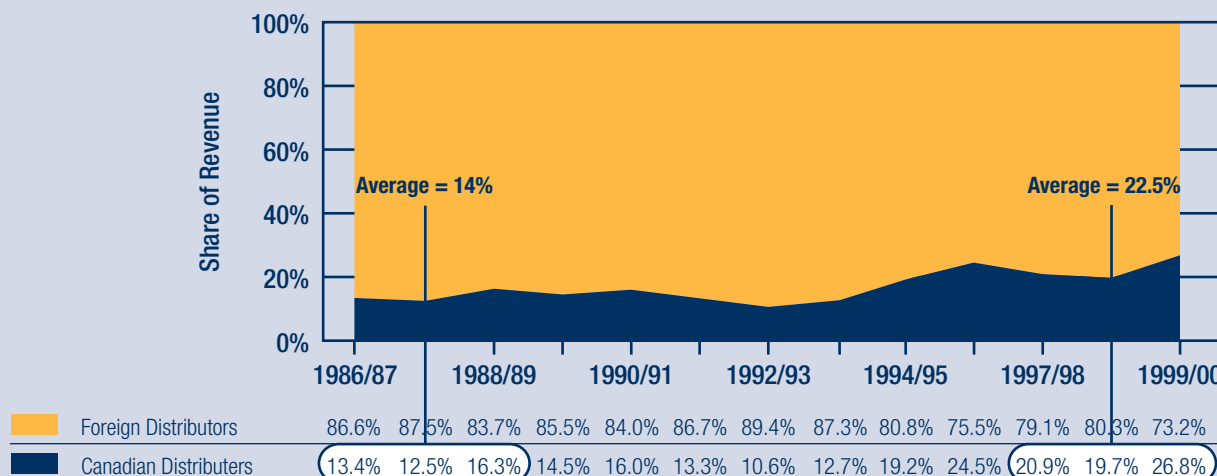
The theatrical distribution sector in Canada has experienced considerable real growth over thirteen years, from 1986-87 to 1999-00, expanding by 111.4% from \$170.5M to \$360.5M in total revenue (Figure 4).

<sup>24</sup> Source: Statistics Canada. (Note: Due to a new collection methodology tested in 1996, data for that year is not fully compatible with other years.)

**Figure 4 – Total Revenue from the Theatrical Market**  
(Constant 1999 Dollars)



**Figure 5 – Theatrical Market Share by Control of the Distributor**  
(Constant 1999 Dollars)



### Market Share by Ownership

Foreign-owned distribution companies still largely dominate the domestic theatrical market, however. Over the 1986-87 to 1999-00 period, foreign companies earned an average of 83% of total theatrical revenues. That said, Canadian-owned companies gained some ground over this time, especially between 1997-98 and 1999-00, while foreign companies proportionally lost market share. In the three-year period before the introduction of the Distribution Policy (i.e., 1986-87 to 1988-89), Canadian-owned distributors earned an average of 14% of all theatrical revenue. Between 1997-98 and 1999-00, their share of total revenue rose to 22.5% (Figure 5). Table 1 below provides market share data over two reference periods.

**Table 1**  
**Market Share of Total Distribution Revenue, by Ownership of the Distribution Company**

Ownership	1987-1991	1998-2002
Foreign	86%	77%
Canadian	14%	22.5%

Source: Statistics Canada.

Considerable progress has been made, with the result that the Canadian distribution sector is now in a significantly stronger position vis-à-vis the exhibitors, possesses far more market expertise, and is better able to effectively support the marketing of Canadian feature films.

*Considerable progress has been made, with the result that the Canadian distribution sector is now in a much stronger position*

In this regard it bears noting that, for the past two years, a partnership of two Canadian-controlled distributors, Alliance Atlantis and Odeon Films, has captured the largest box office revenue share, beating out the Hollywood majors on an individual basis, as shown in Table 2. In 2002, each of three Canadian-controlled distributors captured a box office share of 2% or more.

### Contribution to the Financing and Marketing of Canadian Feature Films

This strengthened position has allowed Canadian distributors to increase their contribution to the financing of Canadian feature films in recent years.

**Table 2**  
**Share of Total Canadian Box Office Revenues, by Individual Distributor**

2002			2001		
Distributor	Titles	\$ Share	Distributor	Titles	\$ Share
<b>Alliance Atlantis and Odeon</b>	<b>102</b>	<b>19%</b>	<b>Alliance Atlantis and Odeon</b>	108	17%
Sony	29	18%	Warner Bros.	33	16%
Warner Bros.	35	12%	Fox	26	13%
Fox	31	11%	Universal	23	13%
Buena Vista	27	10%	Paramount	29	11%
Universal	21	10%	Sony	31	9%
Paramount	32	6%	Buena Vista	19	8%
Dreamworks	9	4%	MGM	10	4%
<b>Equinox</b>	<b>5</b>	<b>3%</b>	Dreamworks	11	4%
MGM	17	3%	<b>Christal Films and Lions Gate</b>	28	1%
<b>Christal Films and Lions Gate</b>	<b>35</b>	<b>2%</b>			
<b>Other (Canadian)</b>	<b>193</b>	<b>2%</b>	<b>Other (Canadian)</b>	<b>184</b>	<b>4%</b>
Total	536	100%	Total	502	100%
<b>Canadian-controlled</b>	<b>335</b>	<b>26%</b>	<b>Canadian-controlled</b>	<b>320</b>	<b>22%</b>
Foreign-controlled	201	74%	Foreign-controlled	182	78%

Source: Zoom Services.

Over the past four years, (1999-2002), Canadian distributors provided 15.18% of total production costs for Canadian feature films, compared with 11.47% during the four previous years (1994-1998). In constant dollars, their contribution nearly doubled (+88%), rising from \$73 million to \$137 million.

**Table 3**  
**Contribution of Canadian-Controlled Distribution Companies to Canadian Theatrical Films as a Percentage of Total Budgets**

	1995-1998	1999-2002
Total budgets	\$636.3M	\$903.0M
Canadian distributor financing	\$73.0M	\$137.1M
As a Percentage	11.47%	15.18%

Source: CAVCO.

The figures provided by Telefilm Canada indicate that the average budget applied by Canadian-controlled distributors to marketing Canadian feature films also saw significant growth in recent years, as shown in Table 4.

**Table 4**  
**Average Marketing Budget for Canadian Feature Films**

	1998-2000	2001-2003
Total marketing budgets	\$22.3M	\$32.5M
Number of titles	129	133
Average budget	\$172,907	\$244,042

Source: Telefilm Canada

This represents the average marketing budget for a wide range of films (more than 40 per year), many of which are low-budget features (less than \$750,000).

However, the title-by-title data indicate that the number of Canadian feature films enjoying a marketing budget of \$500,000 or more grew steadily during the period: five in 1998 and 1999, nine in 2000 and 2001 and twelve in 2002 and 2003, three of which were launched with a budget in excess of \$1 million.

It should also be pointed out that quite a few Canadian-controlled distribution companies are now able to support \$500,000+ launch budgets and secure an adequate number of screens for Canadian feature film releases.

In the past three years, each of 15 Canadian feature films enjoyed marketing expenditures in excess of \$500,000, and they were handled by seven different distributors: Alliance Atlantis, Christal Films, TVA International, Films Séville, Remstar, Odeon Films and Mongrel.

### Other Objectives

The objective of offering Canadians a wide range of international films, highly diverse as to national origin, appears to have been achieved. As shown in Table 2, Canadians had access to more than 500 different feature films in movie theatres in 2001 (502) and 2002 (536). This compares favourably with most Western countries and is no doubt encouraged by Canada's linguistic duality.

For example, in theatres south of our border, 467 feature films were released in 2002, 69 fewer than in Canada; in Australia, there were 258 releases, fewer than half as many as were made available to Canadians. In France, the European country with the widest range of titles, 506 feature films were launched in 2001, just four more than in Canada that year. (The data on the number of theatrical releases in the United States, Australia and France are from a report by Deborah Drisdell entitled *Study of the Theatrical Feature Film Distribution Sector in Selected Foreign Countries*.)

Canadian moviegoers are thus privileged in terms of access to abundant, diversified film programming, and they owe this in large part to Canadian-controlled distributors, who handled more than 60% of the titles shown in theatres in 2001 and 2002.

In conclusion, it appears that the current Canadian distribution policies, which are aimed at giving Canadian-controlled distributors the broadest possible access to international independent films and exclusive access to Canadian feature films made with Canadian government direct financial support or tax credits, have worked well. They have enabled the Canadian distribution sector to grow despite the long shadow of the American majors, which continue to dominate film distribution in Canada and the rest of the world.

**Table 5**  
**Distribution Advances from Foreign Distribution Companies as a Percentage of Canadian Feature Film Budgets**

	1995-1998	1999-2002
Total budgets	\$636.3M	\$903.0M
Foreign distributor financing:		
American	\$105.2M	\$133.9M
Other	\$49.7M	\$84.7M
Total	\$154.9M	\$218.6M
As a Percentage	24.3%	24.2%

Source: CAVCO.

In return, the Canadian-controlled distribution companies have effectively increased their contributions to the financing and marketing of Canadian feature films, and to the diversity of the film programming available to Canadians.

To conclude this overview of the current situation, we note that the requirement for Canadian feature films to be distributed in Canada by Canadian-controlled companies does not appear to be deterring foreign distributors from handling the international distribution of these same Canadian feature films.

In fact, the statistics on contributions to the financing of Canadian feature films from foreign distributors (American and other) in exchange for the acquisition of international rights indicate that, as a percentage of the total budgets, their contribution has held steady for the past eight years; in other words, it has grown in constant dollars at the same pace as the overall budgets of these films.

## The Problems and Proposed Solutions

While considerable progress has been made in achieving the public policy objectives, this does not mean that all problems have been solved, or that the situation cannot be improved.

### Distribution of Canadian Feature Films in Canada

Some have noted that the total number of Canadian-controlled distributors is insufficient and that even fewer have real market power. They propose that the requirement for Canadian ownership of the Canadian distribution rights to recognized Canadian feature films be eliminated in order to afford Canadian feature film producers more choice and the benefit of the expertise and market power of major foreign distributors.

Having analyzed the current situation of distribution in Canada, we are not convinced by the assumptions of this proposal or by the presumed benefits of its application.

A comparative analysis of the number of distributors operating in Canada and in some fifteen European countries in 1999<sup>25</sup> offers no clear indication that there is a lack of distribution companies in Canada.

With 23 companies actively in operation – eight foreign-controlled and 15 Canadian-controlled – Canada matches the average of the principal European countries.

Excluding France, which has an unusually high and atypical number of distributors, the number of distributors operating in the various European countries ranges from seven to 50. Canada's number of distributors is comparable to that of the United Kingdom (20) and Italy (25).

Such comparisons must be viewed with caution, of course, since the number of distributors operating in a given country is influenced by many complex, interacting factors, such as:

- population size;
- linguistic and cultural homogeneity or diversity;
- number of feature films released annually;
- market share held by the American majors;
- presence/absence of partnership deals between national and American distributors; and
- presence/absence and, if present, the nature of distribution policies.

That being said, the situation in Canada does not appear to be unique or notably different, in one way or another, from that of countries of comparable size.

*With 23 companies...  
Canada matches the  
average of the principal  
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<sup>25</sup> Latest year for which data for such a wide range of countries is available.

**Table 6**  
**Number of Companies and Levels of Concentration of Distribution Activities in Canada and Various European Countries, 1999**

	No. of Active Companies	Top 3	Top 3: Titles /Total For Year	Top 3: Revenue Share	4th and 5th Place Distributors	Top 5: Revenue Share
Germany	50	UIP, Buena Vista, Fox	60 / 280	12%	Constantin, Warner	16%
Austria	20	Constantin, UIP, Buena Vista	100 / 250		Filmladen, Poly-film	
Belgium	28	UIP, Warner, Columbia	80 / 300	42%	Buena Vista, Universal	70%
Canada	23	Buena Vista, Warner, Alliance	138 / 386	44%	Fox, Universal	68%
Denmark	20	Nordisk-Fox-Columbia, Constantin, Buena Vista	110 / 180	68%	Sandrew-Metronome-Warner, UIP	90%
Spain	50	Warner, UIP, Buena Vista	400 /	48%	Lauren Films, Sogepaq	66%
Finland	15	UIP, Buena Vista, Metronome	100 / 160	66%	Finnkino OY, Savon kinoi Kino City	70%
France	160	Gaumont Buena Vista, Pathé, UIP	80 / 400	47%	UFD, Warner	61%
Ireland	8	UIP, Buena Vista, Fox		90%	Columbia, Warner	
Iceland	7	Samfilm, Kaskolabio, Skifan	20 / 180		Myndform, Stömubio	
Italy	25	UIP, Cecchi Gori, Warner	150 / 400	46%	Medusa, Buena Vista	
Norway	15	KF, Egmont Col., SF	110 / 200	56%	NFD, Warner	82%
Netherlands	15	UIP, Buena Vista, Warner	70 / 220	56%	Universal, Columbia	70%
Portugal	12	Lusomundo, Atlanta, Lopes	100 / 200		Columbia, Warner	
United Kingdom	20	UIP, Fox, Buena Vista	80 / 280		Warner, Columbia	
Sweden	15	Buena Vista, SF, Sandrew Film-UIP	70 / 200	44%	Warner	63%
Switzerland	30	UIP, Buena Vista, Fox	230 /	50%	Pathé, Warner	67%

Sources: For Canada: Zoom Services; for the European countries: Claude Forest, *Économies contemporaines du cinéma en Europe, L'improbable industrie* (Paris: CNRS Éditions, 2001).

The same holds true in terms of concentration. The share of box office revenues captured by the top three distribution companies in Canada in 1999 (44%) is similar to that found in France (47%), Spain (48%), Italy (46%), and Sweden (44%).

Among the Canadian-controlled distributors, the number of individual companies able to win a significant market share is clearly limited by the fact that eight Hollywood studio subsidiaries account for a very large portion of all distribution activities in Canada, a situation mirrored only in the United Kingdom. In most other European countries, American distributors hold a lesser market share, often owing to national-U.S. distributor partnerships.

But with three Canadian-controlled distributors each taking 2% or more of the box office in 2002, as seen above (Table 2), it certainly seems that the combined effects of the long-established distribution policies and the new directions of the Canadian Feature Film Policy are bearing fruit.

Some people have pointed to the considerable disparity between the first-ranking Canadian-controlled distributor, Alliance Atlantis and Odeon Films, with a 19% box office share, and Equinox, in second place with a 3% share. This is a fact.

However, on the one hand, it must be noted that this 3% individual market share is comparable to that earned by the major American distributor MGM the same year and is far from negligible. On the other, we must be pragmatic and recognize that, given the appeal of Hollywood movies among Canadians and the historically vast share of our market held by the American majors, it would be unrealistic to expect to see two or three Canadian-controlled distributors each capturing a 15% market share.

We note, though, that in recent years Canadian-controlled distributors have been forging strategic alliances: Alliance Atlantis and Odeon Films; Lions Gate and Christal Films; TVA International and Christal Films (Francophone market); TVA International and Lions Gate (Anglophone market); etc. This suggests that the Canadian distribution industry is well aware of the challenges it faces and of the need to develop partnerships that increase its collective capacity to effectively support the financing and marketing of Canadian feature films.

As to whether the foreign distributors currently operating in Canada would have the desire and the ability to distribute Canadian feature films more effectively in our domestic market, nothing could be less certain.

In this regard, it should be recalled that, prior to the mid-1980s, foreign-controlled distributors were free to acquire the Canadian distribution rights to Canadian feature films. Yet they did so only on rare occasions. No French-language Canadian feature was acquired, and English-language acquisitions were limited to a few titles with obvious international commercial potential, such as *Meatballs*, *Heavy Metal* and *The Grey Fox*.

Moreover, this was often done against the will of the Canadian producer-distributors, who would have liked to distribute their own films in Canada but were forced to sign over the Canadian rights as a condition for securing distribution in the United States.

Finally, Statistics Canada figures show that, even when foreign distributors had unrestricted, unlimited freedom to acquire and exploit the distribution rights to Canadian feature films in Canada, their contribution to Canadian feature film financing was insignificant, compared with that of Canadian-controlled distributors. For example, the distribution licences paid for Canadian productions



between 1982 and 1984 break down as follows: foreign-controlled distributors, 6%; Canadian-controlled distributors, 94%.<sup>26</sup>

Furthermore, in light of the growing market shares of Canadian-controlled distributors and the particular expertise they have developed, there is no hard evidence to show that the major American distributors – which specialize in the international marketing of movies with megabudgets averaging US\$50M+ – can offer films like *Men With Brooms*, *Séraphin - Un homme et son péché*, *Lost and Delirious*, *Bollywood/Hollywood*, *Les Boys* or *Ararat* more effective release strategies or better marketing conditions in the Canadian market than those provided by the Canadian-controlled distributors.

*Although the anticipated advantages of eliminating the requirement for Canadian-controlled distribution in Canada are far from evident, the possible disadvantages are substantial*

Although the anticipated advantages of eliminating the requirement for Canadian-controlled distribution in Canada are far from evident, the possible disadvantages are substantial.

If, as they have done in the past, foreign distributors were to use their North American and international

market clout to acquire and exploit the Canadian distribution rights to the two or three Canadian films with the best commercial potential each year, the result for Canadian-controlled distributors would be a substantial revenue shortfall, diminished interest and capacity to reinvest in Canadian cinema, and reduced distribution market share and leverage with exhibitors – all of which would heavily penalize Canadian film production as a whole.

Indeed, all Canadian feature films, other than the annual few selected by foreign distributors, would pay the price of taking this new direction, and their ability to secure

financing and reach Canadian audiences would be diminished by the loss of the Canadian-controlled distribution industry's market power, expertise and financial resources. This in turn would compromise the achievement of the objectives set out in the new Canadian Feature Film Policy.

Consideration must also be given to how such a change in direction would affect the Canadian-controlled distributors' capacity to access international independent (non-proprietary) films and continue bringing Canadians the rich and varied abundance of films they currently enjoy and have grown to expect.

In terms of public policy coherence, it would no doubt become difficult to continue limiting new foreign distributors to distributing proprietary films while authorizing them to distribute non-proprietary Canadian films. This could create a disparity that would ultimately call into question the existing output deals for international non-proprietary films between Canadian distributors and independent American or European distributors. Not to mention the possible repercussions on other components of Canadian cultural policy (broadcasting, publishing, etc.).

For all of these reasons:

8

**We recommend that the distribution of Canadian feature films in Canada continue to be reserved for Canadian-owned and -controlled companies.**

The above being said, we want to point out that the Association of Provincial Funding Agencies as well as British Columbia government representatives have insisted on the need for the Government of Canada to undertake a more detailed study of the issues related to distribution.

<sup>26</sup> See *Statistical Analysis of the Relevancy of Canadian Cultural Policy Regarding Distribution*, Department of Canadian Heritage, 1996, pp. 6-13.

## Support for the Marketing of Canadian Feature Films

Throughout the review, many industry representatives questioned whether the efforts to market Canadian feature films and the resources available to support these efforts are sufficient to ensure that such films have the best possible chance of reaching the Canadian public.

*...sustained efforts must be maintained in order to provide Canadian feature films with optimal marketing conditions...*

Over the last few years, very concrete steps have been taken to address this fundamental question. Indeed, following the launch of the new Canadian Feature Film Policy, one of the first initiatives taken in establishing the Canada Feature Film Fund was to gradually reduce the assistance

available to distributors for acquiring the rights to Canadian films in order to focus the efforts and resources on marketing support for these films.

As seen above, this focus appears to be paying off in rapid order, since the average marketing budget for Canadian feature films has seen steady growth. During the fiscal year just ended (2002-03), the average marketing budget for Canadian features was \$282,000 per title, compared with \$200,000 in 2000-01 and \$158,000 in 1998-99. And as movie coverage reveals, the number of Canadian films enjoying big-budget release campaigns is growing fast.

We are convinced that this is a step in the right direction and that sustained efforts must be maintained in order to provide Canadian feature films with optimal marketing conditions appropriate to each type of production and an increased capacity to reach and interest Canadian audiences.

However, although they have substantially increased their box office share in recent years, Canadian-controlled distribution companies have not seen a corresponding increase in their share of gross distribution revenues. This is because every year they release a growing number of titles, each of which requires the development of a tailor-made launch strategy. In addition, their costs are far higher than those of their foreign counterparts. In the case of Canadian films, for example, they have to shoulder campaign, trailer, poster and ad design costs that are not borne by the majors' Canadian subsidiaries, since everything is prepared in Los Angeles. Consequently, they employ more Canadian personnel – six times more, in fact – than the foreign distribution subsidiaries, which nevertheless take the lion's share at the box office.

We believe that more policy emphasis and financial support need to be placed on stimulating demand for Canadian content.

In another area, some distributors report that, at certain times of the year, they often have trouble securing advertising time on Canadian television stations to promote Canadian feature films. This can prevent them from fully achieving the desired impact of a Canadian film release advertising campaign. To help alleviate this problem:

**We recommend that the CRTC examine the possibility of allowing Canadian broadcasters to exclude commercials promoting Canadian theatrical feature films from the 12-minute-per-hour advertising maximum.**

Currently, promos for Canadian programs aired by the licence holder are not counted in the authorized 12 minutes. By expanding this provision to include promos for Canadian theatrical features, the CRTC would be supporting the efforts to market these films in Canada. Canadian distributors would have easier access to advertising time and might be able to negotiate it at lower cost since, for the broadcaster, the minutes in question would be in addition to those already authorized.

Moreover, the resulting increase in Canadian broadcaster advertising revenue would benefit the Canadian broadcasting system by augmenting, however modestly, the broadcasters' capacity to invest in the production of Canadian programs.

### **National Distribution/Regional Distribution**

Some Canadian feature film producers operating in the regions feel disadvantaged by the fact that nearly all Canadian distributors are based in Toronto or Montréal.

While recognizing that the distribution policies have encouraged the consolidation of the Canadian distribution industry and caused the disappearance of some regional distributors, we cannot deny that, as a general rule, in order to actively contribute to the financing and support the launch and marketing of Canadian feature

films, Canadian-controlled distributors require a national operating base or, at least, significant market power in one or both of Canada's two major language markets.

In today's highly competitive world, where release costs continue to mount, the very existence of effective regional distributors is increasingly problematic. To think otherwise would be unrealistic.


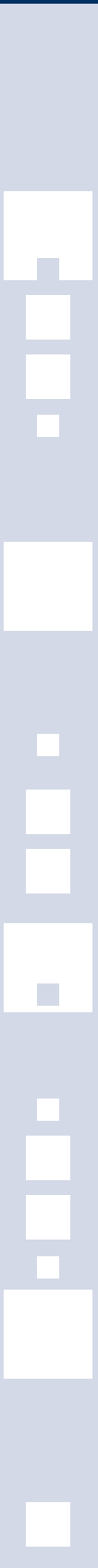
That said, we believe that the largest Canadian-controlled distributors could take steps to ensure that regional producers have equitable access to the Canadian distribution infrastructure. Such initiatives would be to the advantage of both parties: they would give national distributors faster access to feature film projects being developed across the country and a better understanding of regional realities, while affording regional producers privileged, on-site access to distribution players and the expertise they have to offer. Consequently:

10

**We recommend that the Department of Canadian Heritage examine the feasibility of providing financial support to help Canadian-owned and -controlled distributors establish regional services.**

# 5

CHALLENGES FACED  
BY ABORIGINAL AND  
MINORITY COMMUNITIES



**T**hroughout the Canadian Content Review, we specifically considered the particular challenges faced by the Aboriginal and minority communities within the Canadian film and television sectors.

Overall, representatives of these communities suggested that the Canadian content definition could be used as a mechanism to “level the playing field.” Some suggested a system of bonus points applied to the producer and/or to the creative personnel, while others recommended the adoption of a separate definition for their specific communities.

We do not believe that the Canadian content definition is the appropriate policy mechanism to attempt to achieve these cultural objectives. In our view, the definition should represent a national standard that applies equally to all Canadians. We believe that the Government of Canada can take steps, however, to facilitate access to funding programs for these communities.

## Aboriginal Communities

The *Broadcasting Act* reserves “a special place” for Aboriginal peoples within the Canadian broadcasting system. In the last few years, this special place has been enhanced by a number of initiatives, notably the creation of the Aboriginal Filmmaking Program at the NFB in 1996, the establishment of the Canadian Television Fund’s Aboriginal Production Fund in 1997, and the licensing of the Aboriginal Peoples Television Network (APTN) in 1999. These initiatives, taken together, have resulted in what has been referred to as “a renaissance in the Aboriginal film and television community – a renaissance of storytelling ... stories being told by Aboriginal peoples ... in their own voices.”<sup>27</sup>

*In light of and despite this renaissance, as Aboriginal creators, producers and others told us in our consultations, the community is at a critical juncture in its development*

In light of and despite this renaissance, as Aboriginal creators, producers and others told us in our consultations, the community is at a critical juncture in its development. They face challenges in producing film and television programs that are unique to their people.

One Aboriginal filmmaker noted that:

Socio-economic realities have meant that Aboriginal producers have only been players in meaningful numbers for the past four years.

Previous to that, only about two dozen active Aboriginal producers were working at all. Many of these were independents and some were attached to such organizations as Northern Native Broadcasting companies. The independents have worked mainly in documentary through the National Film Board and mainstream broadcasters. A few Canadian Aboriginals have been able to move into series television and only one into a feature film (*Atanarjuat*). One must ask the most obvious question: Why is this? Why, in 2002, is it that Aboriginals have not been able to crack the ceiling that prevents us from being the players in the broadcasting industry that we have the inherent capacity to be?<sup>28</sup>

While the licensing of APTN has been instrumental in providing new opportunities for Aboriginal producers and creators, the community believes that APTN is only one player among many. The community is affected by a general lack of access to both the broadcasting system and the public funding programs. In particular, the Aboriginal Working Group noted that current programs like the Canadian Television Fund’s Aboriginal languages envelope does not encourage the production of Aboriginal drama. Further, it does not foster, they believe, the development of the Aboriginal production community to a level where it can more effectively compete with the mainstream segment of the industry for access to other public support programs.<sup>29</sup>

<sup>27</sup> Maria De Rosa, “Studio One: Of Storytellers and Stories,” *North of Everything: English Canadian Cinema Since 1980*. University of Alberta Press, 2002, p. 329.

<sup>28</sup> Carol Geddes, Submission to the Canadian Content Review group.

<sup>29</sup> Aboriginal Working Group headed by Roman Bittman, formed to provide specific recommendations to the Canadian Content Review group.

In its submission in response to the Department of Canadian Heritage discussion paper, the APTN pointed out that “Canada urgently needs to develop the talent base to support the creation of series television drama productions that are written, produced and directed by Aboriginal people and that reflect the true Aboriginal experience. As one focus group participant stated in 1998, “*North of 60* is nothing like any reserve I have ever been on.”<sup>30</sup>

Aboriginal producers seeking financing for English- or French-language productions must compete with large production houses. APTN, a small broadcaster, cannot afford the high cost of licence fees. Therefore, in trying to obtain financing from the Canadian Television Fund’s Equity Investment Program, Aboriginal producer projects are disadvantaged, since they must compete with projects that are licensed by other, larger broadcasters.

**11** We recommend that the Department of Canadian Heritage find ways to facilitate creative and financial partnerships between Aboriginal producers in Canada and Aboriginal producers in other countries.

Consideration should be given to the historic relationship of the Aboriginal peoples with related nations across borders. Stakeholders made specific mention of the Jay Treaty of 1794, which formed the basis for the free flow of status indigenous persons across the border dividing the United States and what was then the British colonies and became Canada. This treaty guarantees the rights of status Aboriginals to enter the other country to pursue traditional, cultural and lifestyle endeavours.

The community recommended that additional measures be considered, some of which are outside the purview of this review but raise the importance for the federal government to develop an audiovisual policy for Aboriginal-made films and television programs. In light of the special place of Aboriginal expression in Canada, we believe that a policy framework focused on capacity building, which would allow Aboriginal creative expression to flourish in the 21<sup>st</sup> century, is timely and necessary.

<sup>30</sup> Submission by the Aboriginal Peoples Television Network, May 30, 2002. Reference to focus groups is made in this submission in the context of consumer research conducted for the APTN application to the CRTC for a national Aboriginal television network.



## Minority Communities

Often lauded by Canadians and foreigners alike as Canada's greatest strength, our linguistic, regional and cultural diversity is a powerful conveyer of what it means to be Canadian. Differences exist among individual Canadians, within communities and from region to region across the country.

Canada provides for the recognition of our linguistic and cultural differences in the *Official Languages Act* and the *Canadian Multiculturalism Act*. These differences are seen to be at the heart of Canada's collective identity.

Canada's *Broadcasting Act* Section 3.1 (d) (iii) also recognizes these differences as integral to our Canadian broadcasting system. The Act declares that the broadcasting system should, through its programming and employment opportunities, serve the needs and interests and reflect the circumstances and aspirations of linguistic duality and the multicultural and multiracial nature of Canadian society.

*We believe that the most effective way to address the concerns of minority communities is to improve their access to funding programs and to the Canadian broadcasting system*

In the context of Canada's rapidly changing demographics, a significant component of our creative capital in the future will come from minority communities. Producers, technicians and artists from minority communities should have the opportunity to create a variety of cultural products and develop their skills.

While we strongly believe that Canadian screens should reflect diversity in all its forms – linguistic, cultural and regional – we are of the view that this can be more

effectively accomplished by funding agencies and broadcasters implementing special initiatives.

We heard from Canadians representing minority communities that greater effort is needed on the part of our funding agencies and regulatory bodies to ensure that cultural diversity principles permeate both programming development and business operations. Access to television and film funding programs and the broadcasting system needs to be improved.

The Filmmakers' Association of Visible and Ethnic Minorities (FAVEM), for example, noted that the "most acute areas of exclusion are in key creative and administrative positions as producers, writers and directors." From their perspective, the absence of producers is significant in that producers generate stories that are made into films. Producers are also the clients of Telefilm, the CBC and the Canadian Television Fund. From an industry standpoint, increasing the number of producers of colour across the country is the most effective way to promote racial equity in film and television and allow Canada's visible minorities to see themselves reflected on Canadian screens.<sup>31</sup>

French-speaking producers in outlying regions also expressed the view that more needs to be done in order for their communities to contribute to the cultural diversity of the country.

We believe that the most effective way to address the concerns of minority communities is to improve their access to funding programs and the Canadian broadcasting system. That there are perceived "barriers to access" has been documented in a study undertaken on the state of cultural diversity and race in English-Canadian television drama. The study notes that, while there have been some policy initiatives that have facilitated entry to the broadcast

<sup>31</sup> Report of the Filmmakers' Association of Visible and Ethnic Minorities.

sector for creators and producers, there are “still unresolved barriers.”<sup>32</sup> The study refers, for example, to the need for broadcasters to nurture and mentor new talent from minority communities, for the Canadian broadcasting system to make more public funding available for the production of programming that reflects cultural diversity, and to increase the number of visible minority performers in principal roles on television.

Both public funding agencies and broadcasters should consider implementing enabling mechanisms such as equity targets, targeted training and professional development, and special outreach programs. There is a need to increase knowledge about the availability of cultural programs and facilitate networking among minority-community creators, producers and technicians.

Initiatives of this sort are proven to provide the most effective results, as demonstrated by the NFB, for example. The NFB has long been recognized for its track record in special equity initiatives and for effectively putting Canada’s diversity on screens and behind the camera.

The CRTC, having recognized the importance of television programming in reflecting the cultural diversity of Canadians, has called upon broadcasters to design initiatives that will “contribute to a system that more accurately reflects the presence of cultural and racial minorities in the communities that they serve.”<sup>33</sup> In this context, the Commission mandated the Canadian Association of Broadcasters to create a Task Force on Cultural Diversity.

According to an action plan filed with the Commission by the Canadian Association of Broadcasters, the Task Force, which consists of conventional, specialty and ethnic broadcasters, producers and community groups, is focusing on:

- research to provide baseline data on representation (who and what we see) on television across the country;

- identification of best practices on corporate accountability, programming and community involvement to be implemented by broadcasters;
- establishment of a governing body (including television broadcasters, producers, and interested community groups whose focus is to promote representation of Canada’s multicultural makeup) to oversee adherence to best practices and monitor the industry’s future progress.<sup>34</sup>

The Task Force is expected to report its findings in the fall of 2003 with a view to implementation by broadcasters of guiding principles for best practices and practical solutions.

From a public policy perspective, the Department of Canadian Heritage has long recognized that diversity is a strategic advantage for Canada and has undertaken initiatives aimed at greater inclusion and promotion of diversity in cultural sectors. One of the areas that has been identified by the Department as a priority for the future is the development of an action plan that can address the challenges that creators from culturally diverse communities face in accessing cultural programs:

it is time to come up with a plan to ensure that the policies, programs and services of the Department [of Canadian Heritage] and its institutions reflect the changing face of Canada – a society with a thousand faces.<sup>35</sup>

We hope that the current initiatives of the CRTC and the Department of Canadian Heritage, and those to be undertaken by public funding agencies and broadcasters in future, will help to improve access to resources and training for minority communities so that their diversity can truly and fully enrich our screens.

<sup>32</sup> Catherine Murray, *Silent on the Set: Cultural Diversity and Race in English Canadian Television Drama*, August 2002, p. 17.

<sup>33</sup> Public Notice CRTC 2001-88, August 2, 2001, Representation of Cultural Diversity on Television – Creation of an Industry/Community Task Force.

<sup>34</sup> Canadian Association of Broadcasters, Representation of Cultural Diversity on Television – Creation of an Industry/Community Task Force, a submission to the CRTC with respect to Public Notice CRTC 2001-88, February 15, 2002.

<sup>35</sup> Minister’s Forum on Diversity and Culture, Welcome letter by Sheila Copps, Minister of Canadian Heritage, p. 2.

# 6

CONCLUSION



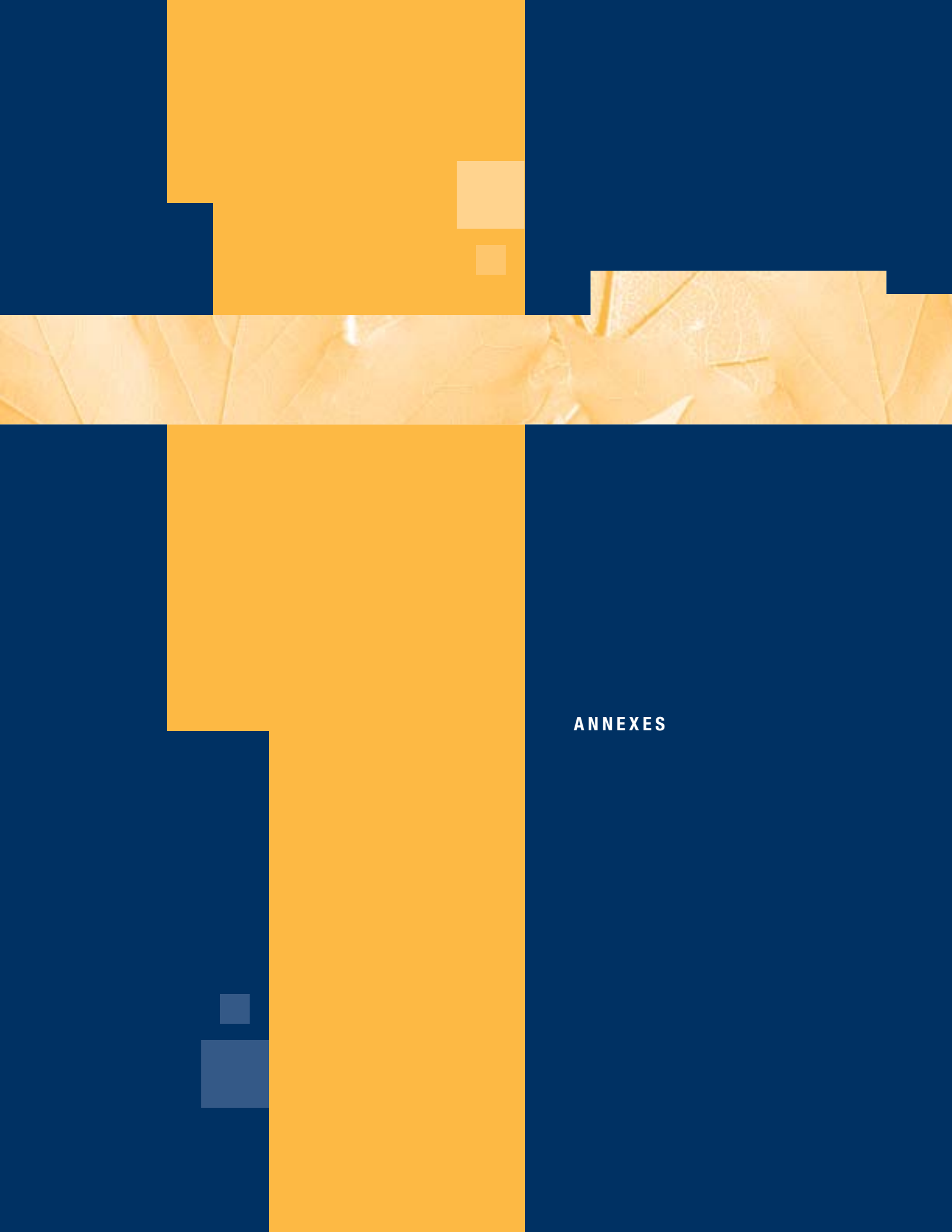
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e wish to thank all those who took part in this study by sharing their thoughts and opinions with us.

It is our hope that the Department of Canadian Heritage will now initiate a consultation process to allow all industry stakeholders and the general public to comment on this report, and especially on the new model that we are proposing.

It goes without saying that the recommendations made in this report represent fundamental changes. As such, their implementation would require the development of a multi-year government strategy involving stakeholders.

I am grateful to Minister Copps for having entrusted me with this review, and my colleagues and I join her in hoping that Canadian content in 21<sup>st</sup>-century film and television production will continue to be a matter of cultural identity.



ANNEXES



## *Annex A — Recommendations*

**In conclusion to this Review of Canadian Content in the 21<sup>st</sup> Century, we respectfully submit the following:**

- 1** We recommend that the current points/expenditure system be replaced by the proposed creative expenditure model.
- 2** We recommend that one arm's-length organization be responsible for the certification of Canadian content.
- 3** We recommend that the Canadian Film or Video Production Tax Credit be scaled upwards to reward the use of a greater number of Canadian creators.
- 4** We recommend that official treaty coproductions continue to be recognized as Canadian content for both funding and broadcast purposes.
- 5** We recommend that the certification of international treaty coproductions become the responsibility of the Canadian Content Commission.
- 6** We recommend that the federal government develop a policy framework setting out minimum requirements for the signing of new treaties and criteria for the renewal of existing treaties.
- 7** We recommend that Canada seek to secure preferential treatment and special association status with the most important multilateral initiatives, particularly those within the European Union.
- 8** We recommend that the distribution of Canadian feature films in Canada continue to be reserved for Canadian-owned and -controlled companies.
- 9** We recommend that the CRTC examine the possibility of allowing Canadian broadcasters to exclude commercials promoting Canadian theatrical feature films from the 12-minute-per-hour advertising maximum.
- 10** We recommend that the Department of Canadian Heritage examine the feasibility of providing financial support to help Canadian-owned and -controlled distributors establish regional services.
- 11** We recommend that the Department of Canadian Heritage find ways to facilitate creative and financial partnerships between Aboriginal producers in Canada and Aboriginal producers in other countries.

## Annex B — Stakeholder Comments

The following attempts to summarize the content and tone of the many thoughtful written and verbal comments generously provided by stakeholders during our consultations.

### ■ The current system and the balance between cultural and industrial objectives.

One large Canadian company summarized a multitude of voices with this comment: “The current Canadian content definition strikes the appropriate balance between cultural objectives and other perspectives. CAVCO and CRTC Canadian content definitions should be viewed as setting the standard for minimum levels of Canadian content.” The majority of stakeholders suggested that the status quo balance between the current minimum 6/10 point “industrial programs” and the 10/10 point “highly Canadian” television shows is an appropriate mix that allows creators the necessary flexibility to produce a high volume of Canadian programming. Canadian broadcasters, who have strict individual CRTC Canadian content quotas to meet, also want to see the current supply of programming maintained. One major player cautioned: “Any significant change to the system at this point would create unnecessary uncertainty that, instead of encouraging the creation of more quality Canadian programming, could, in fact, frustrate its development.” And one broadcaster flatly warned: “The current Canadian content system has served Canada and its cultural industries very well. Any attempt to evaluate content as to its degree of cultural relevance or specificity is an exercise that is doomed to failure.”

On the other hand, the general consensus was that this review is overdue. Most groups and individuals offered a variety of suggestions on how to upgrade the current requirements to ensure the protection of cultural goals

while encouraging, whenever possible, commercial success. In essence, the fine line between industrial and cultural goals is the tightrope that any new definition of Canadian content should walk.

One written submission that received accolades during the cross-country consultations came from Alliance of Canadian Cinema, Television and Radio Artists (ACTRA). Its definition of Canadian content reads: “A Canadian program is one conceived, written, performed, directed and produced entirely by Canadians – such a program will look and feel Canadian, regardless of what the story is about, or where it is set.” ACTRA proposed that this become the new definition of a Canadian program, “with relevant policies and programs amended over the next three years to conform to it.” Not everyone agreed that the rules should be changed to include the “entirely” qualification, but many seemed to think the ACTRA definition was on the right track.

The exception concerning the engagement of a “foreign artist” is at the heart of a recommendation made by the Canadian Association of Film Distributors and Exporters (CAFDE), which would include changing the scale from its current ten points to 12 points to allow for two foreign performers instead of one. This proposal would give producers some leeway to add American or European star power to Canadian motion pictures.

Distributors, exhibitors, producers, directors, writers and crew all say that Canadian audiences would be more inclined towards Canadian productions in theatres and on TV if our films and programs had more recognizable stars. That equation could include Canadian stars living in Hollywood or abroad if the Canadian residency issue were settled. The vast majority of stakeholders recommend that only the Canadian citizenship requirement be applied in determining Canadian content.



Another virtually unanimous recommendation from stakeholders was to avoid anything like the former Canadian Television Fund definition of “visibly Canadian” (especially “shot” and “set” in Canada) in any future Canadian content definition.

Nonetheless, some stakeholders agreed with the Canadian Broadcasting Corporation (CBC), which recommends raising the bar to have the system require more distinctly Canadian programming. The public broadcaster suggested that “the overriding objective of the system should be to enable the maximum distribution of original high-quality distinctly Canadian priority programs in prime time when most Canadians are available to watch TV.” The Independent Film and Video Alliance (IFVA), which represents more than 8,000 artists and cultural workers agreed: “The Canadian content system should be seen as a mechanism to safeguard and ensure the development of works of cultural expression by Canadians and a means to help allocate limited resources (e.g., the airwaves, government funding, tax credit) to works that truly qualify as Canadian.”

Many French-Canadian stakeholders noted that cultural concerns are paramount for the protection of the language and the culture. Export and commercial issues are consequently not a top priority in Quebec, where local films and television shows often enjoy stellar box office returns and high ratings, partly due to Quebec’s popular stars and the province’s history of investing more in culture than any other province. As a result, most French-language players take a different position in the “culture versus commerce” issue. The Société des auteurs de radio, télévision et cinéma (SARTEC) best summarized the French voice on this question: “The government should stress a cultural objective rather than an industrial one. It should find ways to strengthen its cultural objectives and put artists/creators in the forefront of any Canadian content definition.”

Union des artistes (UDA) and the Writers Guild of Canada (WGC) recommend that only Canadian-resident writers be recognized for certification of films and TV programs; that both a Canadian writer and director be required; and that the minimum point system be raised to 8/10. The Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) wants to see a mandatory point for music composers added to the basic Canadian content requirements (composers do not count in the current point system).

Not surprisingly, there was no objection to the Canadian Film and Television Production Association (CFTPA) recommendation that there be “greater simplicity and clarity in the rules and criteria for all direct funds and tax incentives,” and that any fine-tuning of the system should “improve application-processing time and provide a clear standard of service commitment to its clients.”

#### ■ **The current system vs. a new approach**

A vast majority of stakeholders said that the general approach of the current system should be retained with some minor adjustments. However, quite a few significant players recommended an overhaul of the system with an approach based on a “sliding scale” to financially reward more cultural projects without restricting the production of commercially viable export products.

The CFTPA summed up the status quo opinions in a nutshell: “General approach of the current system should be retained. The CAVCO/CRTC definition provides an effective minimum for defining Canadian content and provides an effective balance of cultural and commercial objectives. Administrative deficiencies and duplication are significant, however, and undermine the effectiveness of the current system.” The Alberta Motion Picture Industries Association (AMPIA) added what many others said about the current system’s rules on expenditures: “a 75% minimum of costs expended in Canada works quite well too.”

A written submission from an individual Canadian aptly introduces the dissension on this issue: “New approaches to assessing both Canadian cultural and commercial content should be devised, with the goal of eliminating the subjective valuation of cultural content, and the encouragement of economic and commercial content.” She recommends a “free market, rather than a protectionist approach.” A small production company speaks for many small and medium-sized players, especially on the east coast, with this remark: “The status quo of balancing cultural goals with commercial trends should be maintained, not expanded to benefit commercial concerns.”

One private broadcaster said, “a new approach is needed” and suggested that Canadian ownership of intellectual property rights and control of domestic and international distribution be rewarded with bonus points in the measurement of compliance with the 10-point system and six-point minimum eligibility for CAVCO tax credits. In other words, if a Canadian producer or distributor retains international distribution rights to a five-point production, the additional bonus point would qualify that production for certification. The CBC argues precisely the opposite: that a new system should increase the cultural requirements.

Those in favour of a new system based on a sliding scale would like something on the order of this recommendation from a production company: “A new system would include the following elements. First, varying the current federal incentive of 25% of the qualified labour expenditures, while maintaining revenue neutrality to the Treasury Board; i.e., if a project obtained six points in the current 10-point system, the incentive would be reduced to 20% and so on, as follows: seven points (22.5%), eight points (25%); nine points (27.5%); ten points (30.0%). Second, exceptions should be created to allow a non-Canadian in the writing department, perhaps solely in an editor/rewriter capacity. Third, the requirement that projects be shot and set primarily in Canada should be eliminated. Fourth, a reviewed definition of ‘producer’: the role of producer is likely to be filled by several individuals working in collaboration.”

The Independent Production Fund (IPF) and the Cogeco Program Development Fund both support a sliding scale approach that would, for example, “allow for a project obtaining six points to be eligible for minimum public funding support or 60% of what the project might have been entitled to had it been designed as a 10-point production.”

### ■ The parameters of a new model

Again, a large majority of stakeholders said that the general approach of the current system should be retained with some minor adjustments. There were some who “voted” for a completely different approach, such as the “sliding scale” model outlined above. And there were some, like the Directors Guild of Canada (DGC), that added, “Except for an increase in the number of points awarded to key creative personnel, a new Canadian content system might not work at all.”

One recommendation reiterated from coast to coast in both written submissions and during the consultations was that any new system or criteria must be simpler, more transparent and highly predictable. A production company added: “A revised system should take into account the point of view of producers who are currently required to provide an excessive amount of paperwork.” A private broadcasting entity summarized the voice of many with this comment: “The CRTC and CAVCO certification systems work well. Subjective analysis should be minimized.” That stakeholder also added this observation, echoing what quite a few broadcasters noted in one way or another: “Telefilm Canada should stop favouring the so-called independent production sector over others. Quality nine and ten point culturally relevant storytelling should be encouraged from all sectors. Continuing to exclusively favour one ‘sector’ over another in this age of vertical integration is patently untenable and inequitable.” In other words, the broadcasters would like to see the Canadian content system changed so that they would have direct access to federal funds (such as the Canadian Television Fund) to create Canadian content programming and not have to rely on the “independent production sector.”

Again, a Quebec-based production company cautioned that any new or revised system “should develop a cultural policy addressing the fact that the French and English markets are very different. Canadian content requirements should not impede creativity, and should encourage an industry that is strong and competitive on the domestic and international fronts.”

The SPACQ again emphasized that music composers must also be counted in any new system. “All individuals responsible for the creation of content should be included in the Canadian content calculation. How can we continue to justify the exclusion of music composers from the mandatory point system? Why have they been ostracized for so long?”

A vast majority of stakeholders reiterated that a balance between cultural and industrial concerns be maintained. The CMPDA noted: “Cultural objectives are not served without commercial success.” And the WGC concluded: “Any initial resistance to changes in the Canadian content standard will be mitigated by the practical reality that there will continue to be powerful economic incentives for industrial production to remain in Canada.”

### ■ Intellectual property

This question received the closest thing to unanimity. Again, the CFTPA provided the best summary: “Retention of intellectual property rights by Canadians is a fundamental feature of the CAVCO definition system and central to Canadian industry development. Ownership and control of Canadian copyright for 25 years is helpful for corporate development, and the commercial exploitation requirements of the regulations encourage Canadian producers to control the exploitation of their projects in Canada and abroad. There needs to be greater attention to the value foreign-based distributors may bring to the Canadian market: important to encourage greater competition and investment in this area.” Some stakeholders voiced no opinion and the only “no” came, not surprisingly, from the Canadian branch of the U.S. trade association, the Canadian Motion Picture Distributors Association (CMPDA),

whose members are major international distributors such as Disney/Buena Vista, Columbia Pictures, MGM, Paramount, Twentieth Century Fox, Universal and Warner Bros.

### ■ Citizenship and residence

Responses to this query approached unanimity nationwide, with variations ranging from “do not favour residency requirement” to “strongly oppose residency requirement.” Not a single private broadcaster or production or distribution company spoke in favour of a residency requirement, and the CBC said “perhaps.” Some individuals agreed, however, with the strong opinions from two professional writers’ associations that residency should be required. The WGC and SARTEC strongly believe that Canadian-resident writers should be the only writers that count in the Canadian content equation, partly, they say, because Canadian writers living in the U.S. are often “controlled” by American interests. The Canadian Independent Film Caucus (CIFC) – whose members are concerned especially with documentary filmmaking – would like to see a residency requirement particularly for documentary projects. Both the French-speaking directors’ organization – Association des réalisateurs et réalisatrices du Québec (ARRQ) – and writers’ association – Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) – would like to see residency required for tax reasons. The SPACQ notes: “Canadian content policies are currently being discussed for the benefit of tax-paying residents.”

Most voices from the Aboriginal filmmaking community agreed on a unique definition of Canadian citizenship dating back to the Jay Treaty of 1794, which formed the basis for the free flow of status indigenous persons across the border dividing the United States and what was then the British colonies. All but one Canadian Aboriginal producer recommended that “all programs and films produced by American (U.S.) Indian producers and Canadian Aboriginal producers qualify for Canadian content.”

## ■ Production and Post-Production Expenditures

Again, a majority consensus emerged nationwide, although there were quite a few stakeholders who noted “no comment” on the subject of expenditure requirements. Most said “yes.” A few provided a battery of corollaries and a host of explanations as to why the requirement should be raised or lowered from its current 75% level, such as one prominent player who said, “It may be appropriate to consider reducing these levels or establishing different levels depending upon the overall budget of the production.” The Canadian Media Guild (CMG) suggested that 75% is the correct number but conditions should be altered to “raise the bar so that 75% of the total spent on production services should also be spent in Canada, not just paid to Canadians,” and that some exceptions should be made.

The majority of stakeholders agreed with the producers’ associations (CFTPA and its French-language counterpart APFTQ). The CFTPA recommended what many wrote in their submissions or voiced during the cross-country consultations, that there be a “dual calculation” including both production and post-production expenditures. The association also got a lot of support for its recommendation that the government establish “a technical task force of industry experts to consider ways of simplifying and streamlining the calculation.”

The APFTQ suggested that “legal and auditing fees should be included in the 75% costs calculation. A new definition of production costs should be developed to include general expenses (legal fees, audit fees, insurance) and indirect costs (corporate overhead, interim financing). The 75% expenditure rules should be based on all production costs, rather than on each production and post-production expenditure, excluding costs related to key creative positions filled by non-Canadians.”

## ■ Coproduction

A resounding “yes” was heard nationwide on this issue, with a fascinating variety of reasons why coproductions are an essential part of the system. The APFTQ, for instance, explained that for French-language producers, coproductions are a common and vital part of their

financing structures. “It is difficult to find foreign financing for French-language production. Coproductions are the sole alternative to substantial foreign financing and the expansion of the Canadian market abroad.”

One private fund noted: “For French-language market producers and animation projects, international coproduction is often the only way to obtain significant foreign financing and secure a competitive budget.” The English-language producers’ association (CFTPA) also supported the continued acceptance of coproductions as 100% Canadian content because “loss of their status as domestic content would undermine the value of our agreements and jeopardize our international agreements.”

AMPIA again raised the issue of the current tax and broadcasting systems, saying that coproductions “must continue to be treated as domestic for purposes of broadcasting and for the tax system government support in order for our industry to attract coproduction partners to help finance production.” AMPIA suggested adjustments to make the CAVCO and funding body criteria consistent. “There must be a consistency of the rules across the system. Under CAVCO rules, non-Canadian personnel in a treaty coproduction are treated as Canadian in order to enable the project to qualify as Canadian content. Currently the Canadian Television Fund allows treaty coproductions to apply, yet doesn’t treat non-Canadian personnel, such as writers, as Canadian, which disadvantages these projects.”

APTN would also like to see a new treaty devised that “would allow Canadian and U.S. Aboriginal producers to develop co-ventures that would qualify both for Canadian content recognition and CTF and Telefilm Canada funding.” It maintains that Canada is lagging behind the U.S. in developing native writers, producers and directors.

The CBC also supports international treaty coproductions because “they form part of an industrial strategy, not a cultural strategy. Coproductions have a role to play in the financing and marketing abroad of productions that deploy a minimum number of Canadian production elements.”



One French-speaking producer who supports the current co-production status adds: “Canada should allow foreign investment in a treaty coproduction as long as the Canadian producer controls the Canadian portion of the budget.”

One private fund concludes that a film coproduction “has more commercial appeal because it has had to generate interest and support in more than one country.”

ACTRA agreed but added the qualification that a program produced under an official coproduction treaty “that utilizes third party country participants should not qualify as Canadian.”

SARTEC was the lone professional association of either language to say “no,” but added that it “doesn’t see how the integrity of treaties can be preserved if they are not recognized as 100% Canadian content. International treaty coproductions should not be eligible to qualify for CTF, Canada Feature Film Fund and tax credit funding if they do not meet all Canadian content requirements.” (SPACQ also said “no,” but only because there are currently no incentives in place to employ Canadian composers.)

### ■ **Distribution**

The stakeholders that commented on distribution fall for the most part into two groups: those that favour allowing foreign distributors to handle Canadian films in Canada and those that oppose it.

Some noted an excessive concentration of distributors in Montréal and Toronto, and others question the distributors’ will to make the necessary effort to market their films.

Many noted that, given the importance of marketing, additional funds should be made available to distributors for this purpose.

### ■ **Administration of the system**

“Greater harmonization” was the buzzword in the vast majority of stakeholders’ responses to the question of how any new or revised Canadian content system should

work. The CFTPA voiced the opinion of many with this comment: “There is a need for greater harmonization among agencies and a simplification of the administration process generally. We recognize the different mandates of funding agencies and regulatory bodies but something needs to be done to expedite the system.” It recommends a review of procedures in conjunction with the tax credit simplification agenda. CAFDE said one national standard for determining Canadian content should be developed.

Many do not want to see a centralization of the system. Many others do. And many have reserved comment until they can assess what new system will be proposed. The NFB spoke for quite a few organizations and professional associations when it said that a new model is needed, “but not if such an organization creates but another bureaucracy in the system, does not account for differences in genres, and further frustrates and slows down the industry. Such a model should be rejected.” The NFB suggested that “a private-public partnership in the form of a supervisory-advisory body be mandated to evaluate changes brought to the system and monitor the results.”

One private company suggested that: “A central body with a fully conformed set of rules could simplify the process and make life easier for all concerned.”

The CBC added: “The designated administrative body should have no more discretion than it does now and should operate at arm’s length from the Government of Canada.” A private broadcaster explained objections from those who dislike subjective rulings: “Bureaucratic discretion is to be avoided whenever possible. Businesses cannot grow or plan without some measure of certainty as to outcome. It is the current drift towards subjective discretion that is seriously undermining the effectiveness of the Licence Fee Program (LFP) of the CTF.”

In the middle zone, one independent producer said such flexibility must be approached cautiously. “Only if this is conducted in a totally fair manner” should it be instituted. She made it clear that she has “lost faith in

the fairness factor,” particularly with regard to the Canadian Television Fund process, and added that change should be avoided “until the serious problems that presently exist have been fixed.”

UDA summed up the “yes” camp, which had similar conditions: “The administrative body [must] limit the number of exceptions it makes and its decision making process must be transparent. [Further], criteria surrounding which exceptions can be made [must] be established at the outset.”

Finally, the vast majority said that there should be a mechanism to appeal Canadian content decisions, but with the caveat spelled out by one producer/broadcaster: “the system should be improved so there are fewer but clearer requirements making an appeal process a theoretical one, and one rarely needed or used.” That company said an appeal process is needed now only because of the complexity of the current rules.

Speaking for French-language producers, the APFTQ also said there is a need for a mechanism to appeal decisions but that the need would diminish if Canadian content requirements become objective. It added what many French- and English-speaking players said: “The administrative appeal body should be independent from the certification body.” UDA said there should be an appeal mechanism but that there should be no “underground decisions.” Any decisions from such a committee should be “transparent and public.”

An independent producer added that an appeal system should be “user friendly and expedient.” And a broadcaster concluded that: “Even the most objective of decision-making may occasionally result in borderline calls that could merit a revisit. A system of higher appeal ensures that fair and equitable decision-making is available to all.”

## List of stakeholders that submitted written briefs

### Submissions were received from the following:

1. Aboriginal Peoples Television Network (APTN)
2. Alberta Motion Picture Industries Association (AMPIA)
3. Alliance Atlantis Entertainment Group
4. Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)
5. Allison Outhit
6. Association canadienne des radiodiffuseurs (ACR)
7. Association des producteurs de films et de télévision du Québec (APFTQ)
8. Association des réalisateurs et réalisatrices du Québec (ARRQ)
9. Association of Provincial Funding Agencies (APFA)
10. Astral Media Inc.
11. B. M. Adanak
12. Bell Broadcast and New Media Fund
13. Bell Globemedia Inc.
14. Canadian Association of Film Distributors and Exporters (CAFDE)
15. Canadian Broadcasting Corporation (CBC)
16. Canadian Conference of the Arts (CCA)
17. Canadian Film and Television Production Association (CFTPA)
18. Canadian Independent Film and Video Fund (CIFVF)
19. Canadian Independent Film Caucus (CIFC)
20. Canadian Media Guild (CMG)
21. Canadian Motion Picture Distributors Association (CMPDA)
22. Canadian Television Fund (CTF)
23. CanWest Global Communications Corp.
24. Catherine Mullins
25. CFMT
26. Christopher Maule
27. CHUM Television
28. COGECO Program Development Fund

29. Conseil québécois des arts médiatiques (CQAM)
30. Corus Entertainment Inc.
31. Crescent Entertainment Ltd.
32. Directors Guild of Canada (DGC)
33. Distraction Formats
34. Équipe Spectra
35. Gary Ogden
36. Geoff Le Boutillier
37. Giant Screen Consortium Format Géant
38. Gretha Rose, Cellar Door Productions
39. Groupe TVA Inc.
40. Harold Greenberg Fund
41. Independent Film and Video Alliance (IFVA)
42. Independent Production Fund (IPF)
43. James O'Regan
44. Jeff Bear
45. Mallory Clyne
46. Marie-Odile Thibault
47. Mike M.
48. Norflicks Productions Ltd.
49. National Film Board of Canada (NFBC)
50. Shaw Television Broadcast Fund
51. Société de développement des entreprises culturelles (SODEC)
52. Société des auteurs de radio, télévision et cinéma (SARTEC)
53. Société professionnelle des auteurs et des compositeurs du Québec (SPACQ)
54. Télé-Québec
55. Union des artistes (UDA)
56. W. Paterson Ferns
57. Writers Guild of Canada (WGC)

**Comments on submissions were received from the following:**

1. Alliance Atlantis Communications Inc.
2. Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)
3. Association des producteurs de films et de télévision du Québec (APFTQ)
4. Astral Media Inc.
5. Canadian Association of Broadcasters Specialty and Pay Sector
6. Canadian Association of Broadcasters (CAB) – Television Board
7. Canadian Association of Film Distributors and Exporters (CAFDE)
8. Canadian Broadcasting Corporation (CBC)
9. Canadian Conference of the Arts (CCA)
10. Canadian Film and Television Production Association (CFTPA)
11. Canadian Media Research Inc.
12. CanWest Global Communications Corp.
13. Catherine Mullins
14. Craig Broadcast Systems Inc.
15. CTV
16. Directors Guild of Canada (DGC)
17. Independent Film and Video Alliance (IFVA)
18. Société des auteurs de radio, télévision et cinéma (SARTEC)
19. Synergy Canada
20. Union des artistes (UDA)
21. Writers Guild of Canada (WGC)





## Annex C — Results of Creative and Technical Cost Analysis

### Fiction Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$14,605,590	67.3%	\$10,189,268	97.9%	\$24,177,134	72.7%	\$5,970,502	98.9%	\$54,942,494	77.0%	
Foreign	\$7,089,566	32.7%	\$218,759	2.1%	\$9,079,710	27.3%	\$67,601	1.1%	\$16,455,636	23.0%	
Total	\$21,695,156	30.4%	\$10,408,027	14.6%	\$33,256,844	46.6%	\$6,038,103	8.5%	\$71,398,130		
% of Budget		<b>9.6%</b>		<b>4.6%</b>		<b>14.7%</b>		<b>2.7%</b>			<b>31.6%</b>

### Children's Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$840,560	85.2%	\$580,558	100.0%	\$1,008,898	99.9%	\$184,071	100.0%	\$2,614,087	94.7%	
Foreign	\$145,443	14.8%	\$0	0.0%	\$869	0.1%	\$0	0.0%	\$146,312	5.3%	
Total	\$986,003	35.7%	\$580,558	21.0%	\$1,009,767	36.6%	\$184,071	6.7%	\$2,760,399		
% of Budget		<b>9.8%</b>		<b>5.7%</b>		<b>10.0%</b>		<b>1.8%</b>			<b>27.3%</b>

### Documentary Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$4,058,871	95.1%	\$4,140,433	97.4%	\$1,270,422	97.6%	\$145,627	99.7%	\$9,615,353	96.5%	
Foreign	\$210,823	4.9%	\$108,817	2.6%	\$30,771	2.4%	\$450	0.3%	\$350,861	3.5%	
Total	\$4,269,694	42.8%	\$4,249,250	42.6%	\$1,301,193	13.1%	\$146,077	1.5%	\$9,966,214		
% of Budget		<b>11.6%</b>		<b>11.5%</b>		<b>3.5%</b>		<b>0.4%</b>			<b>27.0%</b>

## Educational/Instructional Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$616,877	99.4%	\$542,427	100.0%	\$527,850	100.0%	\$90,819	100.0%	\$1,777,973	99.8%	
Foreign	\$3,635	0.6%	\$0	0.0%	\$0	0.0%	\$0	0.0%	\$3,635	0.2%	
Total	\$620,512	34.8%	\$542,427	30.4%	\$527,850	29.6%	\$90,819	5.1%	\$1,781,608		
% of Budget		<b>11.7%</b>		<b>10.2%</b>		<b>9.9%</b>		<b>1.7%</b>			<b>\$5,321,057</b>

## Magazine Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$2,861,257	75.0%	\$2,493,139	97.3%	\$1,996,733	99.9%	\$351,654	100.0%	\$7,702,783	88.3%	
Foreign	\$951,957	25.0%	\$68,937	2.7%	\$1,156	0.1%	\$0	0.0%	\$1,022,050	11.7%	
Total	\$3,813,214	43.7%	\$2,562,076	29.4%	\$1,997,889	22.9%	\$351,654	4.0%	\$8,724,833		
% of Budget		<b>14.5%</b>		<b>9.7%</b>		<b>7.6%</b>		<b>1.3%</b>			<b>\$26,336,195</b>

## Performing Arts Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$616,750	87.7%	\$478,329	100.0%	\$840,903	95.6%	\$110,974	100.0%	\$2,046,956	94.2%	
Foreign	\$86,734	12.3%	\$0	0.0%	\$38,746	4.4%	\$0	0.0%	\$125,480	5.8%	
Total	\$703,484	32.4%	\$478,329	22.0%	\$879,649	40.5%	\$110,974	5.1%	\$2,172,436		
% of Budget		<b>10.6%</b>		<b>7.2%</b>		<b>13.3%</b>		<b>1.7%</b>			<b>\$6,620,676</b>

## Variety Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$1,258,804	92.2%	\$927,507	100.0%	\$2,098,455	96.2%	\$341,824	100.0%	\$4,626,590	96.0%	
Foreign	\$107,135	7.8%	\$0	0.0%	\$83,838	3.8%	\$0	0.0%	\$190,973	4.0%	
Total	\$1,365,939	28.4%	\$927,507	19.3%	\$2,182,293	45.3%	\$341,824	7.1%	\$4,817,563		
% of Budget		<b>9.9%</b>		<b>6.8%</b>		<b>15.9%</b>		<b>2.5%</b>			<b>\$13,736,395</b>

## Music Non-Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$140,393	96.6%	\$235,270	98.6%	\$425,070	95.5%	\$31,339	100.0%	\$832,072	96.7%	
Foreign	\$5,000	3.4%	\$3,290	1.4%	\$20,180	4.5%	\$0	0.0%	\$28,470	3.3%	
Total	\$145,393	16.9%	\$238,560	27.7%	\$445,250	51.7%	\$31,339	3.6%	\$860,542		
% of Budget		<b>6.9%</b>		<b>11.3%</b>		<b>21.1%</b>		<b>1.5%</b>			<b>\$2,112,674</b>

## Non-Animation Combined

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$24,999,102	74.4%	\$19,586,931	98.0%	\$32,345,465	77.8%	\$7,226,810	99.1%	\$84,158,308	82.1%	
Foreign	\$8,600,293	25.6%	\$399,803	2.0%	\$9,255,270	22.2%	\$68,051	0.9%	\$18,323,417	17.9%	
Total	\$33,599,395	32.8%	\$19,986,734	19.5%	\$41,600,735	40.6%	\$7,294,861	7.1%	\$102,481,725		
% of Budget		<b>10.3%</b>		<b>6.1%</b>		<b>12.7%</b>		<b>2.2%</b>			<b>\$327,277,382</b>

## Fiction Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$464,614	40.0%	\$2,672,811	97.6%	\$308,642	92.0%	\$75,306	100.0%	\$3,521,373	81.7%	
Foreign	\$696,960	60.0%	\$67,000	2.4%	\$26,819	8.0%	\$0	0.0%	\$790,779	18.3%	
Total	\$1,161,574	26.9%	\$2,739,811	63.5%	\$335,461	7.8%	\$75,306	1.7%	\$4,312,152		
% of Budget		<b>14.1%</b>		<b>33.3%</b>		<b>4.1%</b>		<b>0.9%</b>			<b>\$8,222,374</b>

## Children's Animation

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$4,024,377	60.0%	\$14,708,346	73.4%	\$811,630	78.9%	\$223,139	52.8%	\$19,767,492	70.1%	
Foreign	\$2,686,873	40.0%	\$5,343,881	26.6%	\$217,687	21.1%	\$199,463	47.2%	\$8,447,904	29.9%	
Total	\$6,711,250	23.8%	\$20,052,227	71.1%	\$1,029,317	3.6%	\$422,602	1.5%	\$28,215,396		
% of Budget		<b>9.9%</b>		<b>29.4%</b>		<b>1.5%</b>		<b>0.6%</b>			<b>\$68,115,847</b>

## Animation Combined

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$4,488,991	57.0%	\$17,381,157	76.3%	\$1,120,272	82.1%	\$298,445	59.9%	\$23,288,865	71.6%	
Foreign	\$3,383,833	43.0%	\$5,410,881	23.7%	\$244,506	17.9%	\$199,463	40.1%	\$9,238,683	28.4%	
Total	\$7,872,824	24.2%	\$22,792,038	70.1%	\$1,364,778	4.2%	\$497,908	1.5%	\$32,527,548		
% of Budget		<b>10.3%</b>		<b>29.9%</b>		<b>1.8%</b>		<b>0.7%</b>			<b>\$76,338,221</b>

## All Genres Combined

	Authors		Creative Collaborators		Performers		Technicians		Total		Total Budget
	Costs	%	Costs	%	Costs	%	Costs	%	Costs	%	
Canadian	\$29,488,093	71.1%	\$36,968,088	86.4%	\$33,465,737	77.9%	\$7,525,255	96.6%	\$107,447,173	79.6%	
Foreign	\$11,984,126	28.9%	\$5,810,684	13.6%	\$9,499,776	22.1%	\$267,514	3.4%	\$27,562,100	20.4%	
Total	\$41,472,219	30.7%	\$42,778,772	31.7%	\$42,965,513	31.8%	\$7,792,769	5.8%	\$135,009,273		
% of Budget		<b>10.3%</b>		<b>10.6%</b>		<b>10.6%</b>		<b>1.9%</b>			<b>\$403,615,603</b>