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Robert Soucy
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Department of Canadian Heritage
100 Sparks Street, 4th Floor
Ottawa, Ontario
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Dear Robert:

**RE: Public Notice CAVCO 2005-001 – WGC comments
regarding the showrunner definition and related issues**

This letter follows from our meeting in Toronto on December 1, 2005, to discuss CAVCO's current review of Canadian control guidelines for projects accessing the Canadian Film and Video Production Tax Credit (CPTC). The main issue in these consultations is how much Canadian control, both in terms of ownership and creative participation, is required for a project to qualify as Canadian content and receive the CPTC.

The Writers Guild of Canada (WGC) believes that it is imperative that Canadian taxpayers investing in CAVCO-certified projects are assured that Canadians have creative control and copyright ownership. CAVCO-certified Canadian productions benefit from government investment and are certified as domestic content for our airwaves. The real investors are Canadian taxpayers. They should be assured that they are investing in Canadian talent making shows created by Canadians and reflecting our national identity. Programs created by non-Canadians for foreign audiences – void of a Canadian voice – should not be permitted to masquerade as Canadian content and qualify for the 25% CPTC. Rather, the Production Service Tax Credit (PSTC), which was increased from 11% to 16% in 2003, is available for making this type of project.

This paper is intended to provide you with our thoughts on copyright, screen credits, and the showrunner issue.

Copyright

The WGC believes that Canadians should hold legal copyright in all CAVCO-certified productions. Contrastingly, the Canadian Film and Television Production Association (CFTPA) position is: "In the spirit of facilitating Canadian producers' access to more financing options, we believe that the current requirement that the Canadian producer

retain copyright ownership in and to the film or video production for a period of twenty-five (25) years should be substantially reduced, subject to further discussions on related copyright issues.”¹ While the WGC is prepared to be flexible on reducing the current 25-year copyright term, we do not support eliminating or drastically reducing the term.

We also disagree with the CFPTA position that “CAVCO should provide an exemption to the general requirement of legal copyright ownership in order to facilitate Canadian producers' access to international financing incentives which may require that legal copyright ownership be owned by a non-Canadian on either an interim or permanent basis.”²

While foreign jurisdictions, such as Germany and the United Kingdom, increasingly insist that local production companies retain copyright control over their projects, in Canada we seem to be moving in the opposite direction. Like Germany and the U.K., Canada has a developed film and television sector, with subsidies and tax credits, and we are not sure why we need to erode our copyright regulations. Perhaps a more fruitful strategy is to pursue co-production deals with other jurisdictions.

Furthermore, it is important that revenues from Canadian taxpayer-supported projects flow back to Canada, and this requires that copyright be held by Canadians. WGC collective agreements do not operate on a principle of buy-outs. They always provide for an on-going revenue stream for further exploitation provided the project has a certain level of success. Canadian screenwriters and other talent have enforceable rights to collect royalties. Therefore they should have access to all royalties and other back-end payments negotiated with Canadian producers under domestic collective agreements. If producers are permitted to transfer copyright and effective ownership to a foreign entity, Canadian talent cannot be assured access to their rightful contractual terms. **If all rights are transferred to a foreign entity, this is really the equivalent of foreign-service production and the project would better qualify for the PSTC rather than the CPTC.**

On the issue of creative control, the WGC opposes any move towards looser CAVCO criteria to provide further flexibility on Canadian creative input and other elements as a means of attracting more foreign financing. This issue is discussed in more detail below.

Screen Credits

On the issue of screen credits, Canadian screenwriters believe that these must be above scrutiny, accurately reflecting those who performed specific functions. It is important that CAVCO-certified projects are transparent and that all credits are verifiable and legitimately identify who has performed the work. This is fundamental to justifying Canadian investment in a project and is in line with government control standards including the Auditor-General's audits of the film and television sector. Producer vanity

¹ CFPTA submission to Phase 1 of CAVCO 2005-001 consultations, submitted April 29, 2005

² CFPTA submission to Phase 1 of CAVCO 2005-001 consultations, submitted April 29, 2005

credits that are negotiated as part of the financing deal should be made transparent to all public and private investors.

Showrunner issue

In our meeting on December 1, 2005, in Toronto, we discussed the issue of how CAVCO might best ensure that the showrunner position is held by a Canadian on all certified projects.

In Public Notice 2005-001, CAVCO set out three tests to determine whether a production is controlled by Canadian producers. These included Section II-C, Point 19 regarding the acceptable level of foreign participation in the development of the project as well as the proposal set out in Section II-F, Point 26, to disallow the use of non-Canadian showrunners. This latter proposal would permit a single non-Canadian screenwriter in a supervisory position in the writing department.

As expressed in earlier consultative rounds, the WGC believes that Points 19 and 26 are inextricably linked and our position assumes that these two clauses will work in tandem. The WGC is not proposing that the CAVCO points system be revised; however we would like to encourage more Canadian creative control on six-point production in the current system. For projects receiving the two screenwriter points, the WGC can accept non-Canadians developing a concept for a project, as long as the scripts are written exclusively by Canadians, the showrunner is Canadian, and there is a maximum of one non-Canadian in a supervisory role in the story department. We have also proposed a showrunner definition, which incorporates the position's producer and writing functions, for inclusion into future CPTC guidelines.

In our December 2005 meeting, we discussed the practicalities of our proposal and CAVCO requested our specific input on whether the two showrunner functions – producer and screenwriter – could be separated in our proposed showrunner definition. CAVCO's thinking was that by separating out the showrunner's producer functions, this would guarantee a Canadian at the helm of all shows since currently only Canadian producers are permitted on CAVCO-certified projects.

What the top showrunners say

We felt it was crucial that CAVCO hear from Canada's top showrunners and we canvassed our most experienced members, including: Peter Mitchell (*Cold Squad, Traders*), Peter Mohan (*Code Name Eternity, Mutant X*), David Barlow (*Nothing Too Good For a Cowboy*), Steve Lucas (*Blue Murder*), Brad Wright (*Outer Limits, Stargate SG-1, Stargate Atlantis*), Alan DiFiore (*Da Vinci's Inquest*), Semi Chellas (*Eleventh Hour*), John Pattison (*Puppets Who Kill*), Charles Lazer (*Sir Arthur Conan Doyle's The Lost World, Nothing Too Good For a Cowboy, Beastmaster*) and Elizabeth Stewart (*Magician's House, Adventures of Shirley Holmes, Edgemont, Falcon Beach*). The following is a summary of what they said.

Canadian showrunners fully endorse CAVCO's efforts to ensure Canadian creative control over Canadian content productions by considering proposals to disallow the use of non-Canadian showrunners on certified projects. What follows is their further thinking on specific showrunner issues.

Showrunner is a real term

The showrunner is a legitimate position held by a screenwriter who creatively controls episodic television production in Canada. The term showrunner is one word, and designates the person who is running the show.

While the CFTPA and other producer groups may deny that the showrunner position exists, insisting that it is a colloquial term that can be applied to a variety of other talent, this simply does not reflect the reality of television production here or south of the border.

Since series television production derives from the script, the key creative post is held by a screenwriter who is the showrunner. One current example is Brad Wright who creatively controls *Stargate SG-1* and *Stargate Atlantis*.

Making series television is collaborative and when examining series production in the past and present, three models of the producer/showrunner relationship emerge:

- (1) The producer raises the financing and holds ownership of the project, and hires a showrunner to run the show.
- (2) The producer raises the financing and holds ownership, and wanting some creative input into the project, hires a showrunner to collaborate on the show.
- (3) The producer and showrunner are one and the same. It is the same person who writes, produces, runs the show and holds ownership of the series.

This demonstrates that there are examples of showrunners who also have ownership positions in their projects, a situation which is not all that uncommon. These showrunners are also screenwriters or they would have to hire head screenwriters and a writing team. Some recent examples are Wayne Grigsby, Chris Haddock and Steve Lucas. In other cases, the showrunner reports to the executive producer who often holds ownership of the show.

Since television production is fundamentally a creative enterprise, the showrunner's key creative decisions are affected by, and impact upon, the managerial, financial, legal, and corporate affairs of the production. For example, if an episode is coming in over budget, the showrunner is responsible for overseeing the rewriting the script and working with the director and/or line producer to bring the program in on budget.

History of the term showrunner

The term showrunner originated in the United States in response to the rise in the number of ‘producer’ credits on series TV. While there may have been over 10 producer credits on a series, it was not clear who was running the show. All collaborators who needed a decision made – from the network, to the studio, actors, screenwriters, and key creative heads – had to know who they went to for a ‘yes’ or a ‘no’. Hence the term showrunner came into common usage in the U.S. It was adopted in Canada the 1990s when we moved into American style series television production with shows like *Cold Squad* run by Canadian showrunner Peter Mitchell. The simple fact is that any Canadian executive producer involved in series production engages a showrunner when going into series production.

The reality of 6-point production

We must recognize that non-Canadians actively participate on Canadian projects in this key creative role under the current point system. As we know, on 6/10 point projects, a portion of the financing often comes from the U.S., and therefore usually a U.S. showrunner is on the project. Although a Canadian producer is involved, arguably to trigger the Canadian tax credit and other subsidies, these projects are made under the American system and in most cases an American showrunner is at the creative helm of the project. Recent examples of 6-point shows that qualified as Canadian content although they were creatively controlled by a non-Canadian showrunners include *Sue Thomas: FB Eye*, *Young Blades*, *Zoe Busiek: Wild Card* and *Dead Like Me*.

By denying the fundamental role of the showrunner, the producers appear to be seeking continued flexibility to access U.S. financing in return for accepting that U.S. showrunners will control the project. As we discussed in our December 2005 meeting, the WGC opposes this. Our position is simple: if the project has a U.S. showrunner, then it should not be considered Canadian content because it is creatively controlled by Americans. The show series should rather be properly labeled as foreign-service production qualifying for the PSTC.

Although the current system is out of date and should be revised, we are not proposing to modify the CAVCO points system. What we are proposing is to work within the existing regulatory structure to ensure that a Canadian occupies the key creative position in Canadian series television – the showrunner. While the old system assumed that the producer held both creative and financial control, the fact that all Canadian shows today have showrunners attached renders this notion obsolete. To deny the existence of the key creative showrunner position is to challenge the reality of how series television is made in this country. The showrunner and the producer are equally important positions; we believe they must both be held by Canadians. These should be prerequisites for the project to qualify for CAVCO certification before the CAVCO points system is applied.

The CPTC was not designed to exclusively provide tax credits to productions that employ Canadians. In order to qualify for the CPTC, rather than the lower rate of the PSTC, a

production must employ Canadians in the key creative positions. As per the CAVCO scale, live-action projects receive 2 points for Canadians occupying the screenwriter and director positions, and 1 point each for Canadians in the lead performer, second lead performer, art director, director of photography, music composer and picture editor posts.

Financial control or ownership is not sufficient to determine whether a project is Canadian - creative control is the essence of what determines a Canadian production. Having non-Canadians hold creative control over a project is equivalent to having no Canadian producer involvement – it is unacceptable and should exclude the project from qualifying as Canadian content. Since all series television projects employ a showrunner to creatively oversee all aspects of the production, we believe that the position must be occupied by a Canadian as a prerequisite for the show to qualify for the CPTC and as Canadian content for broadcasting services.

Showrunner producer and writing functions are inseparable

At our December 2005 meeting, CAVCO asked us whether the WGC could agree to separate the two showrunner functions – producer and screenwriter. Both the top Canadian showrunners and the WGC Council were extensively consulted on this important issue.

WGC showrunners disagreed with the proposal because they believe that the two roles are inseparable. The two roles are fully integrated in the showrunner position – it is not possible to have one without the other. The showrunner is first and foremost a screenwriter and is ultimately responsible for delivering scripts to the network. He/she is also responsible for the day-to-day creative decisions that originate from those scripts and are required to run a show. If the showrunner position was divided into separate roles, this would inaccurately reflect the position's full range of responsibilities and control. The showrunner needs to fulfil the responsibilities of both a screenwriter and a producer.

The role of the showrunner on episodic television

For a clear definition of the responsibilities of the showrunner position, we consulted the Writers Guild of America, west's handbook *Writing for Episodic TV: From Freelancer to Showrunner*. The eight leading L.A.-based showrunners and screenwriters who wrote the handbook had this advice for screenwriters who become showrunners: "You are now in charge of pre-production, production, and post-production. In other words, everything."

According to our top showrunners, although producers are sometimes at the helm of a project, the person ultimately responsible for the show is the showrunner. In this collaborative medium, the showrunner controls the creative process, while the Canadian producer keeps the showrunner informed of CAVCO and network requirements and financial parameters.

A showrunner is the key creative producer of the series and is ultimately responsible for the creative content of the series. A series begins with the formulation of scripts, and

ends with the production of those scripts in the form of audiovisual works. While the showrunner may or may not have developed or created the series, because of the pre-eminent importance of the script in series television, showrunners are always experienced screenwriters.

Everything originates from the script – including the budget, casting, and overall look of the show. The showrunner’s challenge is to coordinate the efforts of a large group of people performing a myriad of varied tasks so that each episode of a series - and the series as a whole - reflects a single, unified creative vision.

In episodic television production, there are six main stages: concept, development, pre-production, production, post-production, and distribution and exploitation. The showrunner is involved in each stage as outlined below for both the “screenwriter” and “producer” functions:

Showrunner functions:

Concept – originates idea, creates initial pitch and pitch document, identifies potential production partners and broadcasters, assesses marketplace, prepares business plan for proposal, identifies partner(s).

Development – pitches series to broadcaster(s), prepares development materials, researches and writes pilot script(s), bible, and promotional materials. He/she contributes development materials to applications for development funding and liaises with story editor(s), other screenwriters, production company executives, network executives, and funding agency personnel. He/she also contracts with partner(s), prepares development budget, funding applications, and schedules. Liaises with stakeholders, retains and directs researchers, technical advisors, screenwriters, and story editors and consults with the production company, network, funding agency, and legal personnel.

Pre-production – revises and story edits script materials, participates in story conferences and production meetings with producers, director, and production personnel. Approves script and story-editing schedules, He/she attends auditions and read-throughs, and note sessions with actors, story editors, production company executives, producers, distributors, and network executives. Interviews, researches and approves all key production and post-production personnel. Consults with all production personnel on schedules and budgets, and identifies, reviews, and approves director, story editor and screenwriter candidates. He/she consults with the casting director, auditions actors, and approves all casting. Also reviews and approves all creative decisions – script, design, visuals, and audio. He/she consults with story department, and liaises with, and receives notes from, production company, legal personnel, insurance company, network, funding agency, and distributor.

Production – revises scripts, writes additional material, reviews rushes, and consults with all personnel mentioned in pre-production. Reviews and approves all aspects of production – performance, direction, shooting, recording, staging, and design. He/she

reviews rushes and liaises with, and receives notes from, production company, network, funding agency, and distributor.

Post-production – reviews the edited episode, writes additional material, consults with producer(s), director, and story editors, consults with post-production personnel, and reviews mixed episode. He/she consults with personnel as above. Reviews and approves all aspects of post-production – picture editing, sound editing, ADR, reshoots, sound mix, colour correction, and packaging. He/she consults with story department and liaises with, and receives notes from, production company, network, funding agency, and distributor.

Distribution and Exploitation – prepares synopses. Reviews, revises and writes promotional and publicity materials. Liaises with production company, broadcaster, distributor, publicity and promotions personnel. Ensures delivery of materials to broadcaster and distributor. He/she consults with media, promotion and publicity personnel, and reviews and approves publicity and promotional materials. Also liaises with, and receives notes from, production company, network, funding agency, and distributor.

Showrunner definition

As a result, our earlier proposed definition of a showrunner stands as the most accurate summary of this key position. It is as follows:

In general terms, a showrunner bears ultimate responsibility for the ongoing creation, development and production of a television drama series. The showrunner facilitates all creative minds at work on the project and ensures that all talent involved collaborate and communicate to make the best show possible.

The showrunner is the person who is responsible for all series writing and development, ensuring that scripts are approved by the associated network(s), the distributor and funding agencies involved in the series. The showrunner also oversees the production of all episodes, including working within set budgets, attending all pre-preproduction conferences, assisting in location selection and working with production personnel.

Specific showrunner responsibilities may include the following:

- **pitching, developing, overseeing, writing and rewriting all episodes to the point where they secure network approval, and overseeing the story department;**
- **liaising with other series executive producers, line producer(s), network executives and overseeing all pre-production, production and post-production activities;**
- **hiring, guiding, supervising and, where necessary, replacing staff screenwriters, series directors, lead actors, key crew members and suppliers;**

- **ensuring that production costs stay within the overall series production budget;**
- **approving all look, sound, location, hair, makeup and wardrobe decisions, and lead and guest cast selections;**
- **approving and overseeing all reshoots, music, mixes, colour corrects, ADR, titles, title sequences and credits;**
- **assisting with and overseeing the creation of ideas and material needed to promote the series and produce the series website.**

Conclusion

Canadian screenwriters support CAVCO's commitment to ensuring that Canadian shows, subsidized by the CPTC, and certified as Canadian content for broadcast purposes, are creatively controlled by Canadians. One place for CAVCO to start is with an examination of the effectiveness of the current system. This should recognize that the current model of series television production relies on a showrunner to get projects made, while the old system assumed that the producer held both creative and financial control. But as we have demonstrated, the showrunner position has made this assumption obsolete.

The WGC believes that for productions accessing the CPTC, CAVCO rules should preclude Americans from the showrunner function since this role creatively controls the show and has a say in hiring all other key creative personnel. A production with a non-Canadian holding creative control is akin to one with no Canadian producer involved. Both scenarios are unacceptable and should exclude the project from qualifying as Canadian content.

CAVCO regulations outline the three main objectives of the CPTC program as economic, industrial and cultural³. The CPTC was not designed to exclusively provide tax credits to productions that merely employ Canadians. In order to qualify for the CPTC productions must employ Canadians in the key creative positions. While the current system is out of date, we are not proposing any changes to the CAVCO point system. We believe that the showrunner position must be held by a Canadian as a prerequisite for the show to qualify as CAVCO-certified Canadian content. Since the showrunner also holds producer functions, non-Canadian participation should be further excluded under CAVCO's producer rules.

The WGC opposes dividing up the showrunners' screenwriting and producing functions because they are inseparable. The showrunner has responsibility for the day-to-day running of the show which requires he/she to fulfil both producer and screenwriter functions on a daily basis.

³ Source: http://www.pch.gc.ca/progs/ac-ca/progs/bcpac-cavco/pubs/2001-02/ra-ar/prog_e.cfm

The WGC is not seeking to deny producers access to public funds. On the contrary, we would like to see more public funds support truly Canadian projects, creatively controlled by Canadians. And as the example of Brad Wright on *Stargate* and *Atlantis* illustrates, once a Canadian runs the show, they employ Canadian screenwriters, directors, performers and other talent. Since there are two tax credits available, it is important to ascertain which is the most appropriate for each individual project. **Moreover, we must ensure that the spirit of the legislation is also upheld, reserving Canadian content certification and the tax credits for projects controlled by Canadians.**

We have the talent in Canada to make hit shows that are attractive not only to audiences at home, but also to networks and viewers abroad. For example, *Stargate* and *Atlantis*, highly-rated shows on the U.S. Sci-Fi Channel, were made with US network financing and benefited from US distribution deals, although the showrunner and writing team are Canadian. Similarly, several 10-point Canadian shows including *Da Vinci's Inquest*, *Degrassi*, *Falcon Beach*, and *Slings & Arrows* have received US distribution with fully Canadian control in place.

Our tax credit system must be above reproach. If the Canadian tax credit is not being used for truly Canadian projects, we run the risk of it being open to review and examination by authorities. It is important that we address these issues in our own system. The current review provides the ideal opportunity to do so.

We look to CAVCO to uphold the CPTC system to ensure that Canadian taxpayers are supporting projects truly controlled by Canadians. We welcome the next phase of these consultations and propose a follow-up meeting with you and a handful of our most experienced showrunner members to discuss the WGC position.

Sincerely,



Maureen Parker
WGC Executive Director

cc. Gail Martiri, WGC Policy Director