

Canada-U.K. Co-production Treaty Consultation

Writers Guild of Canada Submission to Canadian Heritage

March 1, 2005

The Writers Guild of Canada (WGC) welcomes the opportunity to participate in the Department of Canadian Heritage's review of the Canada-U.K. co-production treaty.

The WGC is the national association representing more than eighteen hundred (1,800) screenwriters working in English-language film, television, radio and multimedia production in Canada. WGC members are the creators of Canadian stories including feature films like *Mambo Italiano*, *Being Julia*, *The Sweet Hereafter*, and *Childstar*, dramatic series such as *DaVinci's Inquest*, and *Corner Gas*, and popular mini-series *Trudeau* and *Lives of Saints*. The WGC is committed to building a vibrant industry showcasing Canadian imagination and talent.

For over sixty years, the WGC and its predecessor has negotiated collective agreements setting out minimum rates and terms for screenwriters with independent producers and broadcasters. The WGC has negotiated separate Independent Production Agreements with the Canadian Film and Television Production Association (CFTPA) and the Association des producteurs de films et de télévision du Québec (APFTQ), as well as agreements with CBC Radio, CBC-TV, CTV, the NFB and TVOntario. By hosting events such as the Canadian Screenwriting Awards, and publishing its magazine *Canadian Screenwriter*, the WGC keeps writers in the spotlight.

Introduction

International co-productions are an essential tool for our film and television industry – they not only allow our industry to pool financing, but also to unite Canadian creative talent with those from our partner countries to make audiovisual works that enjoy the status of national productions in each of the respective countries.

This review is aimed at determining Canada's priorities in renegotiating the Canada-U.K. co-production treaty. The WGC believes that Canadian cultural merit and meaningful work opportunities for Canadian talent must be our government's top objectives. Official treaty co-productions are "Canadian" for public financing and broadcast purposes and must serve our cultural goals by reflecting Canada to Canadians. This type of production is not a purely financial transaction since it uses our airwaves and benefits from public financing. Canadian taxpayers should not be asked to support international production deals void of a Canadian voice or story.

Canadian films and television dramas help define Canada for Canadians. Film and TV productions are our most potent story telling vehicles since they are accessed by most Canadians. Recently, Globe and Mail journalist Kate Taylor made the point that "even on a bad night, *Da Vinci's Inquest* draws half a million viewers whereas a best-selling Canadian book might be read

by 20,000 Canadians and no Canadian play would be seen by more than a few thousand.¹ Clearly, we should be putting our limited resources behind our own culturally relevant films and dramas; hard-earned taxpayer support should not be wasted telling other people's stories.

Canada-U.K. co-production treaty

The Canada-U.K. co-production treaty has been our most successful in terms of production volumes, and the most active partnership for both countries. In 2003, Canada represented 57% of UK-bilateral co-productions and 30% of all co-productions. In the same year, the U.K. represented 33% of Canada's bilateral co-productions and 39% overall. More recently however, volume of activity has constricted under the treaty and is expected to drop further.

This decline is largely attributed to the U.K.'s new expenditure rules that took effect on January 5, 2004 for projects coming under the UK/Canada treaty. The new rules replace the former minimum 20% financial contribution for each of the co-production partners, implementing a minimum 40% spend on UK facilities and personnel for bilateral co-productions. Where there is a third co-producer a 35% UK-spend requirement applies, and for projects with four or more co-production partners, a minimum 30% UK spend applies.

More Canadian broadcaster and distributor investment is needed

As the U.K. and our other co-production partners implement rules designed to protect their culture and maximize the use of their creative talent, Canadian producers find it increasingly difficult to close the funding gap for national projects. The main problem is the lack of Canadian private investment in Canadian film and television productions. While our private broadcasters and distributors benefit greatly from the protected Canadian market and reap substantial profits, they financially contribute the bare regulated minimum to Canadian dramatic productions.

Canadian private conventional broadcasters spend four times more on U.S. programming than Canadian, and in 2004 they spent 13% less on Canadian drama than in 2003². Canadian distributors also reduced their financial contribution to CAVCO-certified theatrical production to only 10% last year, and Telefilm figures show that they contributed only 4.5% of production budgets for supported English language films in 2003/04.

This is unacceptable. The WGC urges the government to direct the CRTC to review its 1999 Television policy which removed requirements from private conventional broadcasters to support dramatic features and television series. A new Canadian Television Policy must include drama-specific expenditure and exhibition requirements to ensure private broadcaster investment in the development and production of high-quality drama. Telefilm's rules governing distributor support must also be revised to ensure that public support for distributors is contingent on their increased investment in the production of Canadian theatrical features.

¹ Kate Taylor, "Shows like Eleventh Hour beat bestsellers," Globe and Mail, February 26, 2005, page R6.

² CRTC Television, Statistical and Financial Summaries 2004.

Projects void of a Canadian voice do not deserve public support

The paucity of private investment means that Canadian projects increasingly rely on public support to get made and it is our government's responsibility to ensure that Canadian taxpayers get value for their investment.

The WGC believes that publicly supported co-productions should not be purely financial transactions – they should have cultural merit and reflect Canada to Canadians. In order for official treaty co-productions to have a Canadian voice, at a minimum Canadians must occupy one of the key creative positions of screenwriter or director. Unless this minimum requirement is met, co-productions are no different than foreign-service production created elsewhere but using Canada as a shooting location.

Currently, a very low percentage of official Canadian co-productions are written by Canadian professional screenwriters. Of the 200 official Canada-U.K. co-productions made from 2000-2004, only 14% or 28 productions were written under WGC contracts. Statistical analysis of other prominent Canadian co-production partners bears similar data. From 2000-2004, there were 185 official Canada-France co-productions while only 12.5% or 23 productions were written by WGC members, in the same period only one of seventeen Canada-Germany projects and only one of six Canada-South Africa co-productions were written by a WGC professional screenwriter. Clearly, there is room for improvement.

English Canada should learn by the positive examples of other successful jurisdictions that choose to support and encourage projects with cultural merit, rather than trading off creative talent to attract foreign financing. Examples include the U.K., other European jurisdictions and Australia who have implemented legislation to protect and support their culturally relevant, domestic stories and are being rewarded by higher domestic audiences for their national film and television works. Closer to home, the successful Quebec television and film industry has achieved both financial and critical success based on local stories told from a uniquely Quebecois perspective, written, directed and performed by Canadian talent.

It is also important that Canadian airwaves and cinemas are not filled with “Canadian content” that has little or no Canadian creative input. For example, *Resident Evil* was a 20% Canadian and 80% U.K. financed project that lacked any Canadian cultural merit but was shot in Toronto employing crews and other support. *White Noise*, *Head in the Clouds*, and *River King* were also certified as co-productions by Telefilm although they did not tell Canadian stories and were not written by a Canadian screenwriter. This type of production is foreign service production. It should not receive public money nor be classified as “Canadian” for broadcast and distribution purposes because it does not include Canadian creative input. These projects may however benefit from tax credits provided by federal and provincial governments for foreign productions.

CAVCO scale should be used to assess Canadian creative participation

Canada's official treaty co-production agreements require that each partner country's creative and technical participation must be proportionate to their financing. While Telefilm is responsible for gauging Canadian creative participation, it lacks transparent, objective assessment criteria.

Rather than reinvent the wheel, **the WGC recommends that the Canadian Audiovisual Office Certification Office (CAVCO) certification process be used to assess official treaty co-productions. This would mean that official treaty co-productions would be subject to the same criteria as other projects seeking designation as “Canadian” for public financial support and broadcasting purposes.** Telefilm staff have confirmed to the WGC that they use the CAVCO Canadian content scale (based on specific criteria for key creative personnel for both live-action and animation productions using a point value scale) *informally* as a guide to assess key creative input. The WGC recommends that this process be formalized by requiring that only co-productions earning a minimum of 6 points on the CAVCO scale be certified as official Canadian projects.

By using the widely-used CAVCO system, Telefilm can easily assess whether a project meets the 6 out of 10 Canadian content points requirements and merits Canadian certification. All other projects, receiving less than 6 points out of 10 but including a Canadian production partner, would not be certified as official Canadian co-productions but would qualify for the federal Production Services Tax Credit and applicable provincial tax credits.

WGC responses to Heritage Canada Questions:

- 1. The UK has indicated that treaties must stipulate both economic and cultural objectives and that future co-production activity between Canada and the UK will need to achieve these objectives effectively. What are some examples of both cultural and economic objectives and how should these be measured?**

Objective: Publicly-supported co-productions should earn at least six out of ten CAVCO Canadian content points

The WGC recommends that official treaty co-productions be subject to the same criteria as other projects seeking designation as “Canadian” for public financial support and broadcasting purposes. By using the CAVCO scale, only projects earning a minimum of six out of ten points would be certified as official treaty co-productions. In this way, our government would ensure that only projects with meaningful Canadian creative input would enjoy the benefits of “Canadian” national production designation. Projects earning less than six CAVCO points could qualify as foreign-service production for tax purposes.

Our industry calls on Canadian Heritage to fully support Canadian creative talent, not to seek further “flexibility” to involve non-Canadian screenwriters and directors in publicly-supported projects. We have experienced screenwriters in Canada and do not need non-Canadian screenwriters to write treaty co-productions financed by Canadian taxpayers. For example, *My Big Fat Greek Wedding* was mid-range budget film that was written by a Canadian, starred a Canadian, was shot in Canada, yet it was not financed by a Canadian producer. This was a missed opportunity that should not be repeated. If Canadian screenwriters and other talent are marginalized in our own treaty co-productions, this will ultimately lead to the overall creative and productive decline of our indigenous production sector.

The WGC further recommends that the government consider strengthening existing CAVCO Canadian content criteria to include only Canadian residents. This recommendation was supported by Ogilvy Renault in a March 2004 report prepared for Telefilm entitled “Review of Certain Regulatory Constraints in the Canadian Feature Film Industry.” Ogilvy Renault recommended the continued use of Canadian content criteria to ensure the maximum use of Canadian screenwriters and directors on Canadian official co-productions and feature films as this is in line with the Canadian feature film policy’s objective to “develop and retain talented creators by investing in screenwriting and professional development for filmmakers.” The report further recommended that Canadian content rules regarding the use of Canadian screenwriters and directors be tightened to require that these positions be held exclusively by Canadian residents.

2. The UK has also indicated a desire to enhance co-production relationships through innovative partnerships that extend beyond production, e.g. training, preservation, co-development. What are examples of ways Canada could cooperate beneficially with the UK?

Development

The WGC would like to work with Canadian Heritage and Telefilm Canada to devise an effective partnership with the U.K. and/or other co-production partners to pool development financing resources. This type of partnership could increase much-needed script and concept development financing for professional screenwriters to develop Canada-U.K. co-production projects. However it is important that development funding currently available for Canadian screenwriters through Telefilm’s production financing and Screenwriters Assistance Program be maintained and not channeled to a co-development project.

Training

The WGC does not see a need for our government to financially support a training initiative with the U.K. or any other co-production partner.

We have the depth of scriptwriting talent in Canada to create winning projects that will resonate with audiences. Our successes with co-productions including *Lives of Saints*, *The Blue Butterfly* and *I Love Mummy* demonstrate that we have the talent to make film and television shows that audiences want to watch. The WGC represents professional, experienced screenwriters who do not require additional training and the plethora of quality film schools in this country means that aspiring screenwriters and other creative talent have ample educational opportunities to learn their craft. However Canadian screenwriters do need more work opportunities to hone their craft. Practice makes perfect, and Canadian screenwriters can only get better at what they do by doing it.

3. What steps can be taken to improve the distribution of Canada/UK co-productions?

In no other industry do producers make products just to leave them on shelves unsold, with no marketing or promotion. While Loblaw’s would have failed long ago if it followed this strategy, it is a regular occurrence in the Canadian film and television business. Clearly, it is a waste of

tax payers money to support co-productions that are not theatrically released by distributors or aired by broadcasters in all partner countries. All Canadian co-production treaties should require that all certified projects include a signed distribution agreement with a distributor and/or broadcaster in each partner country.

Theatrical releases

Telefilm requirements that all productions with budgets exceeding \$1 million include an agreement with a Canadian distribution company should apply to official treaty co-productions. In line with Telefilm requirements, the distribution agreement must guarantee the project's Canadian theatrical release within one year of its delivery, and provide for appropriate print and advertising expenditures for marketing purposes.

Telefilm distribution and marketing assistance for a co-production's release should also be made contingent on the distributor's investment in Canadian theatrical production financing. Distributors have dramatically reduced their financial contribution to only 4.5% of production budgets for supported English language films in 2003/04. In order to increase Canadian distributor investment in Canadian production budgets, the WGC recommends that public support only be extended to those distributors that demonstrate an appropriate level of investment in Canadian projects.

Television broadcast

Financial data has demonstrated that Canadian conventional broadcasters are making minimal investments in Canadian dramatic feature films, television movies and series. As a result, it is more and more difficult for producers to close financing on Canadian projects. To increase much-needed broadcaster investment, the WGC recommends that private conventional broadcasters be directed by the CRTC to pay for and provide first and second windows on their networks for Canadian dramatic feature films, television movies and series.

This type of support can be modelled on systems in place in the U.K., where FilmFour, a division of Channel Four Television, has financed and broadcast about 300 films to date, averaging 20 feature films annually. This will provide both increased private investment through the licence fees paid for Canadian co-productions and television broadcast to reach wider audiences for certified projects.

The WGC urges the government to direct the CRTC to review its 1999 Television policy which removed requirements from private conventional broadcasters to support dramatic features and television series. A new Canadian Television Policy must include drama-specific expenditure and exhibition requirements to ensure appropriate private broadcaster investment in the development and production of high-quality co-production dramas.

4. What degree of key creative flexibility should be allowed with respect to third-party participation in a co-production? What criteria could be used to frame such flexibility?

The WGC does not support any flexibility in official treaty co-productions to allow third country participation. All Canadian certified co-productions should be made using creative and technical talent exclusively from co-production partners.

U.S. financing does not make Canadian stories

In Canada, “third-party” participation mostly refers to U.S. financial investment and this is no different than foreign-service production. This type of production does not qualify as official treaty co-production because creative control is held by U.S. financiers who insist on having American screenwriters create and write projects long before shooting begins. This means that by permitting the use of third country participation, the government would effectively trade off our talent pools to attract U.S. money.

The “cultural” cost of gaining U.S. financing cannot be underestimated. U.S. financiers demand control over creative content in exchange for their investment dollars. WGC statistics demonstrate that where a project is largely financed by a U.S. partner, Canadians lose creative control. This is because U.S. financial partners typically insist that they approve the writer-producers (show runners) and the writers in the story departments—the creative engines of series television. This means that U.S. financed productions lack Canadian creative participation -- although they are often filmed in Canada and employ Canadian performers and crews, the story lines are all American because Canadian screenwriters are seldom hired to write scripts.

The WGC understands that only the Germany-Canada Co-production treaty presently allows for the participation of third country screenwriters. We urge the government and Telefilm to reject any use of the Canada-Germany agreement to open up the Canada-U.K. or other Canada-EU co-productions to third country screenwriters. Canadian co-production agreements are carefully negotiated by our government and the partner country. Any attempt to use the Germany-Canada agreement to circumvent these rules to gain access to third country creative participants, would mean the informal *renegotiation* of our existing EU member state treaty co-production agreements.

Courtesy credits

The WGC does not accept any use of courtesy credits for third country participants. Courtesy credits, such as *executive producer*, *associate producer*, and *creative producer*, are often writing credits disguised, and used to provide creative control. There should be a thorough investigation of the use of this type of credit before any consideration is given to extending it to non-treaty participants.

5. What, if any, are the merits of finance-only deals, whereby, in exchange for a financial contribution of between 5-10%, a co-production is deemed to bear national status?

In line with our position stated above, the WGC opposes any certification of finance-only deals as official Canadian treaty co-productions. Unless a production earns a minimum of six out of ten points on the CAVCO scale it should not be certified as an official Canadian co-production. Finance-only deals are no different than foreign-service production using Canada as a shooting location and should not access the benefits afforded to national productions.

6. Have you experienced any difficulties co-producing with the UK? Please propose improvements to the treaty that could resolve such difficulties in the future.

- a. Not applicable

7. If at all, how could the certification process be improved while ensuring continued effectiveness and transparency?

Unless a production earns a minimum of six out of ten points on the CAVCO scale it should not be certified as an official Canadian co-production. In order to facilitate assessment of creative participation, the following documentation requirements should be maintained:

- submission of screenwriters and directors contracts,
- proof of citizenship for Canadian creative personnel,
- a list of creative and technical personnel,
- the contracts for other technical and creative personnel,
- an itemized project budget including both Canadian and foreign shares,
- a cost breakdown by country including third-party expenses,
- an itemized financial structure for the Canadian co-producer with relevant financial and related documentation,
- an audited production cost report,
- a credit list with the nationality of all participants.
- complete list of credits, including participants' nationality,
- any applicable review engagement reports,
- an approved affidavit attesting to the production costs where applicable,
- foreign producers cost report,
- each co-producer's final financial structure, accompanied by all of the Canadian co-producer's related contracts,
- a final itemized breakdown of costs by country