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May 27, 2005

Robert Soucy
Director, CAVCO
Department of Canadian Heritage
100 Sparks Street, 4th Floor
Ottawa, Ontario
K1A 0M5

Dear Robert:

**RE: Public Notice CAVCO 2005-001 - Draft amendments to the *Income Tax Act*
*Phase II of consultative process***

The Writers Guild of Canada (WGC) welcomes the opportunity to participate in the second phase of the Canadian Audio-Visual Certification Office (CAVCO) consultation 2005-0001 on proposed amendments to the *Income Tax Act* ("Act"). These comments supplement our original submission filed with CAVCO on April 27, 2005.

Introduction

The WGC has reviewed the responses received in the first round of consultations and would like to take this opportunity to comment on the tabled submissions.

The main objective of the current review undertaken by the Department of Canadian Heritage, through CAVCO, is to clarify the amount of Canadian control, both in terms of copyright ownership and creative participation, required for a project to receive CAVCO certification. CAVCO certification allows projects to benefit from the Canadian Production Tax Credit (CPTC) and to receive CRTC Canadian content classification for broadcast purposes.

CAVCO has proposed three tests to determine whether a production is controlled by Canadian producers. These are: whether the Canadian producer (1) demonstrates legal ownership of

copyright in a production (Section II-A), (2) holds an acceptable share of revenues from the exploitation of the production in non-Canadian markets (Section II-B), and (3) exercises full control over the initial licensing of its rights as a copyright owner from the time of acquisition of the property (Section II-C).

The WGC position on Canadian control remains unchanged – it is imperative that Canadian taxpayers investing in CAVCO-certified projects are assured that Canadians retain creative control and copyright ownership in those projects. While several respondents cited a recent production downturn and called on CAVCO to loosen its criteria to provide further flexibility on Canadian creative input and other elements as a means of stimulating production, the WGC does not support this view.

The WGC opposes less stringent Canadian copyright and creative control criteria and urges CAVCO to resist arguments that this is necessary to stimulate production in a seemingly battered industry. The Canadian film and television production industry is cyclical. Past experience has shown that periods of lower production activity are usually followed by an upsurge in activity. This is especially true for foreign service production made with minimal Canadian creative input, as the latest production figures demonstrate a resurgence of activity following last year's downturn. In its May 23, 2005 issue, *Playback* features an article titled "Boom! Hot summer for service," which reports that higher tax credits and a stabilized dollar are bringing a large number of Hollywood shoots back, and Toronto and Vancouver studios are preparing for a busy spring and summer.

Several respondents also suggested that the main objective of the Canadian film and television industry is to better the economic viability of the production sector. We strongly disagree. Canada's film and television policy should first and foremost benefit the Canadian taxpayer by making productions truly created by Canadians, and truly reflecting the issues, stories and ideas that are important to Canadians.

We would also add that film and television production is a collaborative medium that requires input from a variety of skilled professionals – including screenwriters, directors, performers, and technicians. A producer would not be able to make a television series without these partners.

But producers are asking for more flexibility so they can include non-Canadian creative talent in their productions. A perfect example of this is a statement the Motion Picture Production Industry Association of British Columbia made when discussing the proposed showrunner provisions. They stated, "To deny to a Canadian producer the ability to involve such a non-Canadian showrunner on a television series is the equivalent of denying the Canadian producer the ability to finance and produce such a series."

We cannot see how CAVCO could possibly support the producers' pleas for more flexibility when what that really amounts to is giving the producers the ability to jettison Canadian creative talent from CAVCO-certified productions while receiving tax credits and Canadian content classification. This is not true to the spirit of CAVCO-certification.

CAVCO-certified Canadian productions benefit from government investment and are certified as domestic content for our airwaves. The real investors are Canadian taxpayers, and they should reap the benefits. Programs created by foreigners for foreign audiences – void of a Canadian voice – should not be permitted to masquerade as Canadian content solely for financial reasons.

It is imperative that Canadian airwaves and cinemas are not crowded with “Canadian content” with little or no Canadian creative input. CAVCO-certified productions are not purely financial transactions – they should have cultural merit and reflect Canada to Canadians. Canadians must occupy the key creative positions, including screenwriter and director, in order for these productions to have a Canadian voice. Otherwise, CAVCO-certified productions are no different from foreign-service production created elsewhere and using Canada merely as a shooting location. These productions may benefit from the federal Production Services Tax Credit (PSTC) and similar provincial credits, but should not be classified as “Canadian” for broadcast and distribution purposes.

WGC comments on specific issues:

1. Copyright

The WGC believes that Canadians should hold copyright control for all CAVCO-certified productions. Copyright affords Canadian producers with rights over a production and the ability to economically exploit the project. The WGC continues to support the current 25-year copyright term and believes that Canadians should retain copyright over government supported projects. We do not agree with the CFTPA’s position that the legal ownership of copyright is no longer a valuable commodity in the current marketplace. While we agree that exploitation rights in and to a production yield economic value, these rights are directly linked to copyright ownership which should be in Canadian hands for publicly supported projects.

We also disagree with the CFTPA that CAVCO should provide an exemption to the general requirement of legal copyright ownership to help facilitate Canadian producers’ access to foreign financing. Foreign jurisdictions are increasingly requiring that their production companies retain copyright control over their projects. Likewise, it is essential that revenues from Canadian taxpayer supported projects flow back to Canada, and this requires that copyright be held by Canadians.

Producers should not be permitted to sell copyright in a project to a foreign investor if Canadian taxpayers are also investing in the project. Our government invests in productions with a view to building the domestic film and television sector and encouraging viable production entities – this investment should generate long-term value that stays in Canada. It should not be used to facilitate deals that will allow on-going revenue streams to flow outside of the country.

Canadian screenwriters and other talent should also 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.

2. Creative control

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. The WGC believes that Canadians must reclaim creative control of Canadian content productions and the use of a Canadian screenwriter and director should be mandatory for Canadian-certified productions. To accomplish this, the WGC recommends the bar for Canadian content productions be raised to a minimum of eight points out of ten on the CAVCO scale.

CAVCO proposals on development and showrunners must work in tandem

There seems to be consensus among respondents that projects developed outside of Canada but written by Canadian screenwriters should not be excluded by CAVCO. However, the WGC's support for this proposal is based on our position that CAVCO's proposed points 19 (referring to the acceptable level of foreign participation in the development of the project) and 26 (to disallow the use of non-Canadian showrunners, while permitting a single non-Canadian writer in a supervisory position in the writing department) must work in tandem. As stated in our earlier submission, this means the WGC will accept that non-Canadians are permitted to develop 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. If a Canadian screenwriter writes the script, and the story department is Canadian, the production should qualify for the full CAVCO screenwriting points.

While the WGC confers with the producers' position that third country financial participation in the development stage is permissible, we do not accept increased flexibility for third-party screenwriters on CAVCO-certified projects in exchange for third-party financial participation.

Proposal to disallow the use of non-Canadian showrunners

The WGC applauds CAVCO for reviewing the use of non-Canadian showrunners and recognizing the need to ensure Canadian creative control over Canadian content productions. The WGC supports CAVCO's proposal to no longer allow non-Canadian showrunners, while permitting a single non-Canadian writer in a supervisory position in the writing department – provided that the scripts are written only by Canadians in order for the project to qualify for the two screenwriter points.

The WGC does not agree with the position put forward by the CFTPA and other producers that they require access to non-Canadian showrunners to remain competitive and to make “world-class programs.” Showrunners hold creative control over a production. In order to ensure that Canadians creatively control a project, this position must be held by a Canadian. The producers' position suggests that their intention is to make generic, industrial programs for overseas markets – with no consideration for Canadian audiences. The WGC cannot see why CAVCO would

consider certifying these productions as domestic content for tax credit and broadcast purposes since such productions may qualify for the foreign service tax credit.

While we agree with the CFTPA that the term “showrunner” is not defined in our collective agreements, we do not agree that it is not a formally recognized position, nor that it is a colloquial term that can be applied to a variety of other talent. As outlined in our initial submission, the showrunner is a writer first and foremost – but it is not solely a screenwriting position. The showrunner is responsible for all creative elements on a television project and facilitates all creative minds at work on the project. He/she is responsible for hiring other talent, including the director and performers, and oversees the production of all episodes, including being on set, working within set budgets, attending all pre-production conferences, assisting in location selection and working with production personnel.

The WGC also disagrees with the CFTPA that there is only a “handful of experienced showrunners in Canada” who can “ensure that a show turns out exactly as intended by the Canadian producer”. While there may be fewer showrunners working in Canada than there are in the U.S., the reason for this is simple – we have fewer shows here. However, the WGC’s membership features professional and experienced Canadian showrunners, many of whom are internationally recognized as creators who can deliver quality projects.

It is surprising that the CFTPA would further claim that there is a paucity of showrunning talent in this country since their members work directly with very same Canadian showrunners on the shows they produce. A partial list of Canadian showrunners working in Canada includes: Chris Haddock (*DaVinci’s Inquest*), Pete Mitchell (*Cold Squad*), Wayne Grigsby (*Trudeau, Snakes and Ladders*), Chuck Lazer (*Beastmaster, The Lost World*, co-executive producer *Nothing Too Good For a Cowboy*), David Barlow (co-executive producer *Nothing Too Good For a Cowboy*) Peter Mohan (*Mutant X, Code Name: Eternity*), James Hurst (*DeGrassi, Instant Star*), Mark Farrell (*Made in Canada, Corner Gas, This Hour has 22 minutes*), Brad Wright (*Stargate*), Susin Nielsen (*Robson Arms, Alice, I think*), Steve Lucas (*Blue Murder*), Semi Chellas (*Eleventh Hour*) and Jill Gollick (*Metropia*) and many more.

Canadian showrunners have a proven track record of delivering world-class productions. The 2004 Emmy nominations for *Corner Gas* and *Newsroom*, and the international acclaim for *Human Cargo*, as well as the lucrative American sales enjoyed by *This is Wonderland*, *Degrassi*, *DaVinci’s* and *Trailer Park Boys* – all ten-point shows, written, directed and performed by Canadians -- clearly demonstrates that we have the talent to make quality shows in this country and have no creative reason to import this talent.

While we agree with the CFTPA that Canadian showrunners and screenwriters could enhance and polish their skills by working with an American “seasoned hand,” the WGC does not see how our domestic industry and producers can afford this class of A-list American showrunning talent. The Alan Balls, John Wells, and David Chases of this world are used to working for ten or twenty times the rates currently offered in Canada. If the CFTPA is suggesting that they want

access to B, C or D-list American showrunners solely to train Canadians in the story department we would argue that these people do not bring any special value to our industry.

As we discuss in our earlier paper, financial reasons outweigh skill sets, talent or experience when it comes to hiring a showrunner where an American broadcaster or distributor is involved. Americans insist on Los Angeles-based showrunners and screenwriting teams to ensure that they have creative control over the project. Canadian producers seem to be seeking more access to U.S. showrunners and screenwriters for CAVCO-certified productions solely to access U.S. financing. This trade-off of Canadian creative talent in exchange for financial gain for the Canadian production community is unacceptable for both Canadian taxpayers and screenwriters.

Screenwriters

There also seems to be consensus that a maximum of one non-Canadian in the writing department is permissible. However, as stated above and in our earlier submission, the WGC's support for this provision is contingent on the showrunner being Canadian and all scripts written by Canadians. In order to ensure that non-Canadian screenwriters are excluded from CAVCO-certified projects, the WGC also makes its support for this provision contingent on CAVCO raising the Canadian content bar to make a minimum of eight out of ten points mandatory for certified projects.

Conclusion

The WGC thanks CAVCO for recognizing the seriousness of this issue, and for their efforts to make the Canadian content classification process as transparent as possible. The Canadian film and television industry is collaborative in nature, bringing together the talent of screenwriters, directors, performers, technicians and producers to make Canadian projects. Since the production is not possible without input from all these sectors, no one sector is more important than another. For this reason, the WGC supports CAVCO's efforts to clarify the mechanisms in place to ensure that Canadians have creative, copyright and financial control on certified productions.

The primary objective of Canadian content policy must be to encourage the production of recognizable Canadian content and differentiating it from foreign-service production. CAVCO's current review is not just about tax issues, but also about greater transparency in determining Canadian content and ascertaining Canadian control over our public airwaves. Creative control on CAVCO-certified productions must be firmly in Canadian hands. This means that Canadian screenwriters must write the scripts for our projects. Our limited public funding and public airwaves should support recognizable Canadian productions first and foremost rather than facilitating foreign content, like Sue Thompson *FB Eye*, or Zoe Busick: *Wild Card*, which are written abroad and disguise our cities and citizens as anywhere-U.S.A.

In order to uphold the true spirit of a CAVCO-certified production, Canadians must hold creative control and hold the copyright. If not, our tax dollars and airwaves risk subsidizing foreign productions, void of a Canadian voice and aimed at foreign, not Canadian, audiences. Canadians have the right to know their hard-earned tax dollars are being spent on true Canadian projects – projects that tell Canadian stories, and foster Canadian talent.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maureen Parker', with a stylized, cursive script.

Maureen Parker
Executive Director

- cc. Jean-Pierre Blais, Assistant Deputy Minister, Cultural Affairs, Canadian Heritage
Jean-Francois Bernier, Director General, Film Video and Sound Recording, Canadian Heritage
Rene Bouchard, Director General, Broadcasting Policy, Canadian Heritage
Rebecca Schechter, President, Writers Guild of Canada
Gail Martiri, Director of Policy, Writers Guild of Canada