



**CFTPA**  
Representing television, film  
and interactive production in Canada

**ACPFT**  
Porte-parole de l'industrie de la production  
cinématographique, télévisuelle et interactive au Canada

June 30, 2005

Robert L. Soucy  
Director  
Canadian Audio-Visual Certification Office (CAVCO)  
100 Sparks Street, 4th Floor  
Ottawa, Ontario K1A 0M5

RE: Phase 2 comments on Public Notice 2005-001

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Dear Mr. Soucy:

The Canadian Film and Television Production Association ("CFTPA") is pleased to provide additional comments in response to your consultation on the *Canadian Film or Video Production Tax Credit ("CPTC")*.

We noted that the majority of respondents supported the CFTPA's positions on the following issues:

- The need to reduce the 25 year copyright ownership term.  
Reduction of the term would recognize standard corporate eventualities as the dissolution or sale of production companies, the retirement of the producer or death of company shareholders. Canadian producers would also be able to negotiate a broader range of domestic and international financing and distribution deals.
- The need for Canadian broadcasters to retain their "prescribed investor" status.  
Broadcaster investments are an important source of production financing that producers simply cannot forsake. In addition, as highlighted in the CBC, SRC and CAB submissions, removing broadcasters from the list of prescribed investors would counter the recent efforts of the CRTC to provide incentives for broadcasters to make equity investments in Canadian drama productions. There must be coherence between public funding, certification and regulatory agencies in order to properly grow and strengthen the Canadian film and television industry.

- The need to continue to allow productions based on foreign “formats” to access the CPTC.  
The proliferation of productions based on foreign formats cannot be denied. Any restrictions with regard to the eligibility of these productions to the CPTC would close the door on Canadian-owned and -controlled productions that feature Canadian creative and technical talent. This would be counterintuitive to the cultural and economic goals of the CPTC.
- The need for the CPTC guidelines to be flexible.  
Flexibility is key in order that the interpretation of the CPTC guidelines evolve according the changing realities of the film and television industry. Flexibility may be introduced in such areas as copyright ownership or screen credits. Implementing rules which would prohibit Canadian producers from accessing third-party financial participation in development or production ultimately curtails production activity and starves business opportunities.
- The need to recognize non-Canadian participation in a project.  
Despite the claims of certain respondents, producers have ultimate control of the creative and production process. Individuals hired by the producer to undertake certain functions on a production do not control the production. Non-Canadian creative and technical talent, including “showrunners”, are under the strict control and direction of the producer. These individuals do not bear any risk in a production and are not accountable to financiers for the production and delivery of a project. It is the producer who must answer to the financiers and who is ultimately responsible for all decisions involved in the production process.

Non-Canadian participation in the development or production of projects is a common practice which should not disqualify a production from accessing the CPTC. The producer control guidelines must recognize that allowances in the CPTC for foreign financing through advances and broadcast licenses and for the participation of non-Canadian directors or writers means that these non-Canadians are involved in the creative decisions on a production. This involvement does not result in a loss of control by Canadian producers. If the Canadian producer is in full compliance with the producer control guidelines, participation by non-Canadians in creative decisions should not disqualify the production from the CPTC.

- The need to provide producers with latitude to negotiate the best deals they can to complete the financing of their productions.  
This means that producers would be given the latitude to close financing deals which may indeed involve the cross-collateralization of the Canadian territory or taking less than 25% of net profits from each major foreign territory. Most respondents supported the CFTPA’s view that at minimum, CAVCO should maintain the current requirement that Canadian producers – retain 25% of worldwide net profits, excluding the Canadian territory.
- The need to establish a CAVCO Advisory Committee.  
Such a committee would nurture open dialogue between CAVCO and the Industry, and facilitate the exchange of information on an ongoing basis.

We noted that the WGC, DGC and ACTRA attempted to broaden the scope of the consultation by advancing their views on such issues as the points system, recommending that it be mandatory for the director, screenwriter and performer positions to be held by Canadians. These recommendations not only run counter to the need for flexibility in the guidelines to accommodate the realities of production and to maximize production activity, but fall outside of the confines of the current consultation. We trust that the parameters of PN2005-001 will be respected and that

CAVCO's focus will remain on copyright ownership of certified productions, acceptable revenues from the exploitation of the production in non-Canadian markets, control of initial licensing of the commercial exploitation of the production and the producer control guidelines. We would be pleased to comment on additional Canadian content certification criteria should CAVCO launch a comprehensive consultation on the CPTC. Until that time, the CFTPA strongly opposes any change to CPTC certification criteria that are not contemplated within this consultation.

It is important that there not be disharmony between CAVCO and the Canada Revenue Agency (CRA) interpretations of the copyright ownership provisions. Producers may face the loss of their tax credit should CRA deem that there has been a disposition of "beneficial ownership" of the copyright in a production. The financial consequences created by such a determination are too great for producers to bear - in some cases, it may trigger the financial ruin of production companies. To avoid such an eventuality, we propose that clear copyright requirements, devoid of subjectivity, be developed for sole interpretation and administration by CAVCO.

In closing, we'd like to reiterate the importance of implementing transitional measures in order that the production community adjust to any new program requirements, and grandfathering productions which have received certification under the current CPTC program guidelines.

We look forward to meeting with you and your staff to discuss these issues in further detail.

Best regards,

A handwritten signature in black ink, appearing to read 'G. Mayson', written in a cursive style.

Guy Mayson  
President and CEO

cc. Claire Samson, President and CEO, APFTQ  
Nathalie Leduc, Director – Financing Section, APFTQ