



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

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

September 7, 2006

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

RE: Public Notice 2006-02

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Dear Mr. Soucy:

1. The Canadian Film and Television Production Association ("CFTPA") is writing to provide you with comments in response to Public Notice 2006-02, the third phase of your consultation on the *Canadian Film or Video Production Tax Credit* ("CPTC").

2. We are pleased with the evolution of the proposals that CAVCO has put forth since it began its consultation on the CPTC last year. We appreciate your willingness to introduce flexibility into the program guidelines so that they accommodate constantly evolving market realities while respecting the spirit and intent of the CPTC program and its supporting legislation.

3. CAVCO's most recent proposals appear under the following headings in the phase 3 consultation document: *Issues concerning ownership, Canadian broadcasters as prescribed entities, 25-year copyright ownership requirement, Acceptable share of revenues, Waiving copyright ownership requirements for foreign tax-based incentives, Different approaches for theatrical and television productions, CAVCO Advisory Committee, Non-Canadian showrunners, Format shows, Producer control, Producer control guidelines and Production-related screen credits for non-Canadians.*

4. We agree with your proposals under the headings *Issues concerning ownership, Canadian broadcasters as prescribed entities, Acceptable share of revenues, Different approaches for theatrical and television productions, CAVCO Advisory Committee and Non-Canadian showrunners.*

5. We seek clarification on the direction that CAVCO would like to take with regard to the proposals under *Format shows*, *Producer control guidelines* and *Production-related screen credits for non-Canadians*.

Format shows

6. We agree with the proposal to continue to allow format shows to qualify for certification under the CPTC. However, we are unclear as to the condition that CAVCO proposes to attach to these productions' eligibility, namely demonstration of effective control over the foreign exploitation of the production.

7. We would support this condition if what is meant by "effective control" is control of the initial licensing of commercial exploitation of the Canadian version of the production and no one other than the Canadian producer can exploit the Canadian version outside of Canada. This condition would be in keeping with the current commercial exploitation requirement that any eligible project under the CPTC must meet and CAVCO's proposed producer control guidelines.

8. In the case of projects for which Canadian producers have acquired limited use rights, we would expect that the commercial exploitation of the project, including the Canadian producer's control over the initial licensing of commercial exploitation, will reflect the nature of the rights acquired to produce the project.

Producer control guidelines

9. We generally support the proposed definition of "producer", except that the producer's involvement and ultimate responsibility for production bank accounts should be subject to the provisions of proposed Guideline 3(a)ii, which states that the "*delegation of banking authority by the producer to a person(s) over whom the producer exercises final authority shall not be deemed to constitute a contravention of this indicator.*" The definition of "producer" would, therefore, read as follows:

"[...] The producer is involved in and ultimately responsible for: [...] production bank accounts (sole and unfettered cheque signing authority, **subject to Guideline 3(a)ii**); and the arranging of the commercial exploitation of the production."

10. We endorse the Guidelines themselves, but seek clarification on the following:

a) Guideline 3(a)i: We agree with this Guideline, but would need confirmation that CAVCO does not intend on capturing situations in which non-Canadian financiers are exercising their standard approval rights.

b) Guideline 3(a)ii: We would like CAVCO to confirm that this Guideline would apply to Canadians and non-Canadians alike. In other words, the Guideline will not be contravened if the producer delegates his/her banking authority to a Canadian or non-Canadian over whom he/she exercises final authority.

c) Guideline 3(b)i: How does CAVCO define "majority" ("*Where the majority of production financing is provided by a single non-Canadian party...*") and what kind of proof would CAVCO be satisfied with to show that the producer's rights and responsibilities were not interfered with?

d) Guideline 5(b): What kind of proof or confirmation would CAVCO ask the producer to provide to demonstrate that any non-recoupable licence fee provided for broadcast rights was allocated at fair market value?

#### Production-related screen credits for non-Canadians

11. We endorse the proposal to allow at least as many producer-related vanity credits to non-Canadians as are given to Canadians for production-related functions. However, we are unclear as to whether this simple and unambiguous requirement would replace the current Non-Canadian Exemption Policy in part or in its entirety. We recommend that the proposed matching principle for screen credits supplant the Policy in its entirety. If it is CAVCO's intention to retain at least a portion of the current producer control guidelines that pertain to screen credits, we would welcome the opportunity to work with you to streamline the guidelines for easier interpretation and application.

12. We note that the proposed matching principle for non-Canadian and Canadian credits would only be acceptable as long as "*...prominence is assured for Canadians and the non-Canadian credits are in the nature of "vanity" credits*". We are unclear as to what factors CAVCO will consider when determining whether prominence has indeed been assured.

#### 25-year copyright ownership and Waiving copyright ownership requirements for foreign tax-based incentives

13. We offer the following perspectives with regard to the proposals under *25-year copyright ownership* and *Waiving copyright ownership requirements for foreign tax-based incentives*:

14. Enacting regulatory amendments for each new and emerging international fund is not a practical or efficient solution. Rather, we suggest that the Departments of Canadian Heritage and Finance consider a single regulatory amendment that would allow Canadian producers to access any international fund which may require a temporary transfer of copyright ownership, as long as the producer control requirements are upheld and tax shelters are precluded from deriving any fiscal benefit from the CPTC.

15. We would also propose that international co-ventures be allowed to access the CPTC. Co-ventures encompass any international partnership between Canadian and foreign producers in which decision-making responsibilities are shared and the Canadian producer is responsible for the Canadian portion of the production. These are productions which may not fulfill all the requirements of an international film or television treaty for co-production, or which were produced with foreign countries that have not signed a co-production treaty with Canada.

16. In this way, we recommend a two-prong approach to copyright ownership: maintaining the current 25 year term (with exceptions for corporate eventualities such as the winding up or sale of a production company) for productions in which the Canadian producer retains all the copyright, and modifying the copyright requirements for co-ventures and for productions which have accessed financing from foreign funds with copyright restrictions.

We would be pleased to provide you with further details on any of the issues raised in this document.

Best regards,

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

Guy Mayson  
President and CEO

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