



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

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

July 25, 2003

Richard Stursberg  
Executive Director  
Telefilm Canada  
700 - 360 St. Jacques Street  
Montréal, Quebec  
H2Y 4A9

Dear Mr. Stursberg,

RE: Telefilm Canada's Recoupment Policy Review

The Canadian Film and Television Production Association (CFTPA) wishes to thank Telefilm Canada for the opportunity to comment on its proposed recoupment policy.

We understand that the aim of Telefilm's consultation on the recoupment policy, as stated in its May 30, 2003 Recoupment Policy Review, is to "...minimize negotiations between Telefilm and producers and ensure consistent recoupment practices are being applied across all of Telefilm's offices." We agree that regularization of recoupment practices would alleviate delays in the contractual process and increase predictability in negotiations between producers and financiers. We acknowledge Telefilm's commitment to finding ways of improving the solvency and viability of the industry, as stated in its Corporate Plan for 2003-2004 to 2005-2006 ("Corporate Plan"); capitalization of companies is a vital building block upon which an effective recoupment model applicable to both English and French language productions must be based.

In light of the above and after careful consideration of Telefilm's proposed recoupment policy, the CTFPA believes that the policy does not support Telefilm's stated objectives for the following reasons:

1) Uses historic numbers

The use of historic numbers in developing the proposal reflects the market reality of years past, not present. Current market conditions indicate increased difficulty for producers to secure both domestic and international distribution advances, as well as a general downturn in the international market for Canadian productions.

2) Discourages investment in Canadian productions

The proposed model creates a structural disincentive to obtaining significant distribution advances. Capping recoupment of distribution advances at 5% on the first tier effectively discourages investment in Canadian productions, prompting distributors to discount their advances to compensate for their downgraded recoupment position.

3) Does not promote capitalization of companies

Telefilm's Corporate Plan speaks to the need to build audiences, using capitalization of companies as a means to achieving this end. Telefilm now recognizes that producer deferrals are the single greatest obstacle to meeting the working capital requirements of a production company. A number of 2003 projects with Telefilm investment modelled their current deals against the Telefilm proposal: in all cases, both producer and distributor recoupment positions worsened. Given the stated objectives of Telefilm's Corporate Plan and the Canadian Television Fund's lack of financial capacity to increase their contribution levels to production, producer deferrals and tax credits for English language productions must be given a new and significant priority in recoupment, as is the present case with French language productions.

4) Complex

The proposed model introduces further calculations by having advances of over 5% sit on the second tier with investment levels that are not fixed at the time of negotiation. This renders the model even more complex than the current recoupment model. This heightened complexity impedes the negotiation of distribution, reduces the attractiveness of Telefilm financed productions to distributors, and adds delays to closing negotiations.

The CFTPA believes that the following recoupment schedule for English-language productions better reflects Telefilm's stated corporate objectives and promotes a healthy financial environment within which companies may be better capitalized. In addition, the model provides for near parity with the current model for French-language productions.

**Territory: World, excluding the US**

	Distributor	Producer	Telefilm	Other financial participants
<b>Tier 1</b>	100% of net production revenue, until recoupment of distribution advance/producer deferral up to 20% of production budget			
<b>Tier 2</b>		50% of net production revenue, until full recoupment of investment (including provincial/federal tax credit)	50% of net production revenue, pro rata pari passu among remaining investors, including Telefilm Canada	
<b>Tier 3</b>	Pro rata pari passu with remaining unrecouped participation			

Tier 1 – Any combination of distribution advances (whether arm's length or non-arm's length) and producer deferrals, can recoup 100% on first tier from all sources except the U.S., up to a maximum of 20% of the production budget. The U.S. market would be the open territory for investors. The 20% cap in this tier reflects modelling done by Telefilm, the results of which were incorporated in a document entitled "Recoupment & Financing, The Mysteries of Television Company Capitalization" and presented to the Industry in November 2002. Based on a five-year trailing average for English-language Drama, Producer Investment (including deferrals) made up 10% of a production financing plan. Minimum guarantees from distributors contributed 9% to the same financing plan. The combined amount of deferrals and distribution advances total 19% of the budget, hence the 20% figure in the first tier position.

This tier offers a clear corridor for recoupment of a distribution advance, keeps the distribution commitment to a percentage of the production cost on a 'last in/first out' basis, removes the requirement for distributor diligence regarding shared corridors, and eliminates the need for distributors to review production financing agreements (possibly providing undesirable leverage to distributors as financing participants).

Tier 2 - Producer Investment (Provincial/Federal Tax Credits) is recouped on a 50-50 basis with Telefilm/Other Equity Participants until full recoupment of producer investment. Tier 2 recoupment is essentially a 'revenue sharing' rather than a 'recoupment' position. The Producer works shoulder to shoulder with Telefilm on a 50/50 basis in service of the commercial exploitation of the production. The Producer and Telefilm are working partners in service of this objective, working together towards keeping the amount of the budget to be recouped in Tier 1 to a relative minimum, while recognizing current financing realities.

Tier 3 - Pro rata pari passu with remaining unrecouped participation.

**Territory: US**

	Distributor	Producer	Telefilm	Other financial participants
<b>Tier 1</b>		50% of net production revenue, until full recoupment of investment (including provincial/federal tax credit, deferrals)	50% of net production revenue, pro rata pari passu among remaining investors including Telefilm Canada	
<b>Tier 2</b>	Pro rata pari passu with remaining unrecouped participation			

Tier 1 - Producer Investment (Provincial/Federal Tax Credits) recoups on a 50-50 with Telefilm/Other Equity/Copyright Participants until full recoupment of producer investment.

Tier 2 - Pro rata pari passu with remaining unrecouped participation, including balance of any related eligible distribution advance in excess of the maximums.

The CFTPA would ask that Telefilm consider the comments in our December 2002 submission on issues such as distribution fees, expenses, and reporting periods. In addition, and as stated in said submission, should Telefilm implement this policy, any series renewals would have the choice of the previous year's arrangement or this new policy, to ensure appropriate grandfathering of investment decisions made in prior seasons. Lastly, we recommend that following a 5 year reporting period, Telefilm transfer its recoupment position to the producer. The administrative burden on producers of having to report to Telefilm on an ongoing basis is not offset by the revenue stream generated after that time.

We have forwarded our comments with the intention of strengthening the production industry as well as our relationship with Telefilm Canada. We would be pleased to be involved in areas that require further attention and look forward to our continued participation in this process.

Yours sincerely,



Guy Mayson  
Acting President & CEO

cc. Elizabeth Friesen, Director – Media, Telefilm Canada  
Laszlo Barna, Chair, CFTPA  
CFTPA CTF Task Force  
Sandra MacDonald, President & CEO, Canadian Television Fund  
Claire Samson, President & CEO, APFTQ