



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

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YEARS • ANS
1926 • 2006

August 25, 2006

Via email: bcpac_cavco@pch.gc.ca

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

Dear Mr. Soucy:

**Re: Public Notice CAVCO 2006-02 – Canadian Film or Video
Production Tax Credit (CPTC) – Revision and
implementation of CAVCO program guidelines**

1. The Canadian Association of Broadcasters (CAB) – the national voice of Canada’s private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks, and specialty, pay, and pay-per-view services – is pleased to provide its general comments in response to the public notice referenced above.
2. The CAB submits that given the difficulties in predicting how content, and in particular Canadian content, will be produced and distributed going forward, it is critical that CAVCO remain flexible and that its guidelines be reflective of the commercial reality of the film and television production industries.

Broadcasters as “Prescribed Entities”

3. The CAB is pleased that CAVCO has determined that Canadian broadcasters should retain their “prescribed person” status under the Income Tax Regulations. As noted in the CAB’s earlier submissions in this proceeding, Canadian broadcasters play a critical role, as both

licensors and equity investors, in helping independent producers bridge their financing for Canadian television productions.

4. In making this determination, CAVCO has recognized the important role broadcasters can play in financing Canadian productions and has ensured a greater harmonization of policies related to the tax credit regime and existing CRTC policies and regulations governing the broadcasting sector.

Acceptable Share of Revenues

5. In the current public notice, CAVCO has determined that the term “acceptable share of revenues” should be interpreted to mean that producers must retain an effective share of net proceeds equivalent to at least 25% of the value worldwide excluding Canada.
6. The CAB remains deeply concerned with the notion of enshrining a mandatory share of revenues for a program producer in CAVCO’s guidelines. As noted by the CAB in its previous submissions, and by a number of other parties to this proceeding including the CFTPA and the APFTQ, CAVCO’s guidelines must remain flexible and reflect the commercial realities of program production. Imposing a mandatory share of revenues for a program producer may not be consistent with the industry standard share, due to equity investors and other revenue participants in a given project, and therefore may not reflect commercial reality. For these reasons, the CAB strongly submits that revenue share arrangements are outside CAVCO’s mandate and should be left to commercial negotiation.
7. Furthermore, the CAB is unclear as to what constitutes “net proceeds” under this provision. The CAB notes that the eligibility criteria for “acceptable revenues” outlined in Public Notice CAVCO 2005-001 required producers to retain not less than 25% of the “net profits” from exploitation in a foreign market. However, the current public notice introduces the new concept of “net proceeds”.
8. The CAB submits, therefore, that if CAVCO’s guidelines specify revenue share arrangements, clarification of the term “net proceeds”, and how it is likely to be interpreted, is required in order to ensure better predictability and transparency for all parties involved in production financing arrangements.

Limited Use Rights

9. The CAB supports CAVCO's determination that productions based on popular formats will continue to qualify for the CPTC. However, the CAB notes that "format shows" will only be eligible for the CPTC under the condition that the Canadian producer can clearly demonstrate *effective* control over the foreign exploitation of the production.
10. The CAB is unclear as to what constitutes *effective* control under this provision. This language is not used in either CAVCO's existing *Producer Control Guidelines* or the CFTPA's proposed *Commercial Relevant Indicia of Control*. Accordingly, the CAB believes that further clarification, and perhaps consultation, is required before the guidelines come into effect.
11. Moreover, the CAB also notes that *Guideline 4: Exploitation* in the CFTPA's proposed *Commercial Relevant Indicia of Control* provides that "[t]he Canadian producer must have and maintain full responsibility and control over the negotiation of initial exploitation agreements."
12. The CAB submits that the CFTPA's proposed *Guideline 4* is more than adequate to ensure that productions seeking to access the CPTC are truly owned and controlled by Canadian companies. Accordingly, should CAVCO endorse the CFTPA's proposed *Guideline 4*, the CAB sees no reason to hold producers of "format shows" to a different or higher standard by requiring them to demonstrate *effective* control over the foreign exploitation of the production.
13. Furthermore, while the CAB supports the language used in the CFTPA's proposed *Guideline 4* it submits that some modifications are required to proposed *Indicator 4(a)*. The CAB is concerned that the proposed language in *Indicator 4(a)* which provides that "[d]ocumentation must demonstrate that the producer has exercised full control (direct or indirect) and holds final decision-making authority over the terms pursuant to which any party acquires any right to exploit the project, regardless of territory, media and term" is too far reaching in that it would not only capture initial distribution rights but also any subsequent sub-licensing or sales made by a distributor that has purchased those rights for fair market value.

14. In the CAB's view, the proposed language for *Indicator 4(a)* is inconsistent with the language used in the proposed *Guideline 4* in that it goes beyond issues of control over the negotiations of initial exploitation rights. The CAB submits this is not reflective of commercial reality and would seriously hamper both broadcasters and producers who are involved in Canadian versions of format shows.
15. For these reasons, the CAB submits that the CFTPA's proposed *Indicator 4(a)* for *Guideline 4* should be amended as follows:

Documentation must demonstrate that the producer has exercised full control (direct or indirect) over the terms pursuant to which any party acquires rights to the initial exploitation of the project, regardless of territory, media and term.

CAVCO Advisory Committee

16. As stated in its earlier submissions in this proceeding, the CAB supports the creation of an Advisory Committee through which CAVCO would seek feedback from the industry on questions of evolving commercial standards, industry practice and market conditions. Furthermore, the CAB believes it is very important for the Advisory Committee to have broad representation from the broadcasting sector, including conventional, specialty and pay broadcasters in French and English-language markets and that it have equitable representation among all major industry stakeholders.
17. However, the CAB wishes to reiterate its position that the creation of an Advisory Committee should not diminish the need to seek comment via a public process on all proposed guideline changes.
18. The CAB appreciates the opportunity to provide its comments.

Sincerely,



Susan Wheeler
Vice President, Policy & Regulatory Affairs (Television)

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