

CANADA MEDIA FUND

Working Group: Other Issues pertaining to Content Financing and Distribution

Date: November 10th, 2015

Topics for Discussion

- 1) Introduction
- 2) Consultation – Recurring Themes from Cross Country Focus Groups
- 3) Stakeholder Proposals
 - a. eOne: International Distribution
 - b. DOC Canada
 - c. Writers Guild of Canada
 - d. Saskatchewan Screen-Based Media Production Grant
 - e. Other Stakeholder Proposals

1. Introduction

This Working Group will provide the opportunity for the Canada Media Fund (“**CMF**”) to discuss:

- feedback received by the CMF during its cross-country consultation which was comprised of focus groups in 18 different cities (in all provinces and territories); as well as
- written proposals submitted by industry stakeholders in Fall 2015.

2. Recurring Themes from Cross Country Focus Groups

During the cross-country focus groups, the CMF presented a potential new funding model which aims to maximize the impact of its programs and leverage its funding, industry intelligence and access and promotion strategies (“**Continuum Model**”) in response to industrial, regulatory and content consumption habit changes in the media marketplace (Appendix A).

The proposed model was the result of an internal CMF exercise, and the CMF reminded stakeholders that policy direction for the CMF is set by the Government of Canada and defined in the Contribution Agreement (the “**Agreement**”) between the CMF and the Department of Canadian Heritage. Therefore, many of the concepts presented in the focus groups - and much of the feedback received - can be classified as “longer-term” topics that would require changes to the Agreement before they could be implemented. In addition to these “longer term” topics, however, each focus group raised issues that were directed at current CMF policy and programs which would not require changes to the Agreement and could be implemented for the 2016-2017 fiscal year.

While every region had questions that focussed on issues in their distinct market, the following consistent long-term and short-term themes emerged:

Long Term

- 1) Stakeholders expressed general support for the CMF's proposed Continuum Model (attached as Appendix B), with specific emphasis on the following:

- a. *Migration from platform centric to content centric:*

Many stakeholders were in favour of the CMF evolving from its platform centric approach to a content centric approach. As such, there was agreement that the different verticals in the Continuum Model should be applied to all types of content to enable opportunities for innovative and commercially successful projects to exist on variety of platforms.

- b. *The ability for different platforms (foreign, digital or both) to contribute to the CMF's Licence Fee Threshold and/or trigger CMF funding:*

Currently, only CRTC-licensed traditional, scheduled broadcasters or CRTC-licensed video-on-demand services are able to trigger CMF funding. Many stakeholders submitted that enabling additional platforms to provide validation of market interest and trigger CMF funding would reflect the manner in which Canadians currently engage with content, allow for an increase in the diversity of content supported and allow access to a wider range of applicants.

- c. *Importance of development and pre-development:*

In order for projects to have a higher chance of success at the production stage, many stakeholders submitted that more money should be available to producers at the development and pre-development stage. Further, this funding should be available to producers without a broadcast licence agreement or letter of interest from a broadcaster.

- d. *The CMF's definition of "landmark" content:*

Many stakeholders noted that the definition of "landmark" can be subjective, dependant on a party's point of view and much easier to recognize in hindsight. Further, if landmark is to be defined more broadly than just audience success, other accompanying criteria (awards, social media presence, foreign financing) should be further developed.

Short Term

- 2) *Measures to incentivize marketing, promotion and discoverability:*

As producers are increasingly required to build audiences right from the development stage, support for marketing and promotion should be available to producers at any stage, not merely when a production is ready for exploitation. Stakeholders also generally agreed that such support would assist in reaching foreign audiences, in addition to those at home.

The CMPA submitted a specific proposal (discussed at the November 3rd Working Group) whereby "Promotional Digital Media" content would be a separate line item in the television production budget under a revised marketing and promotion category with a higher cap.

3) *Division of the Experimental Stream into innovative and commercially driven sub-streams:*

While innovation is a central tenet of the Experimental Stream, many stakeholders submitted that there should be increasing emphasis on commercial success. Under the CMF's new framework, both innovative and commercially-driven projects would be supported in the emergence and growth verticals.

4) *Modifications to the CMF's definition of "Regional":*

While the CMF currently has a number of programs that encourage production in regions outside of major centres, many stakeholders submitted that the vast majority CMF funding is still being spent in Toronto, Montreal and Vancouver. As such, there were multiple suggestions for the CMF to increase its commitment to regional production, re-examine its current definition of "regional" (which is harmonized with the CRTC's) and consider additional approaches related to expanded genre eligibility, community television and partnerships with provincial or territorial agencies.

5) *Changes in CMF Guidelines to address the relationship between Broadcasters and Producers in light of the coming expiration of Terms of Trade agreements:*

As broadcasters will be able to apply to remove requirements to adhere to a Terms of Trade agreement, effective April 29, 2016 as a result of the CRTC's *Let's Talk TV* proceeding ("LTTV"), many stakeholders submitted that the CMF should adapt its policies to account for this change. As discussed at the November 3rd Working Group, the CMF considers it necessary to review its Guidelines in advance of the expiration of such agreements and will be seeking a balanced approach to this issue.

6) *The ability for additional platforms (foreign, digital or both) to contribute to the CMF's Licence Fee Threshold and/or trigger CMF funding (short-term):*

In addition to the long-term strategy of enabling different platforms to trigger CMF funding which would require a change in the Agreement, there was demand for possible short-term changes to expand the diversity of platforms that could either trigger CMF funding or contribute to a project's Licence Fee Threshold. The CMF is currently examining strategies it could implement in 2016-2017 in connection with the new Hybrid VOD category and potentially expanding the ability of foreign platforms to participate in CMF projects.

7) *Different methods for applicants to access CMF funding:*

Some stakeholders submitted that the CMF should offer alternative ways for smaller companies to access smaller amounts of CMF funding. These applicants do not have the necessary corporate infrastructure in place to devote bandwidth to the current CMF application process and a "streamlined" CMF sub-program would increase the diversity of applicants and projects. Similarly, other stakeholders submitted that larger, established companies that submit several projects to CMF annually should also have the ability to access funding through some form of slate approach.

The CMF welcomes any additional feedback from the Working Group on all of the issues contained in this section of the briefing note.

3. Stakeholder Proposals

a. eOne - International Distribution

In its 2014-2015 Guidelines, specifically chapter 6 of its Business Policies ("**Standard Recoupment Policy**" or "**SRP**"), the CMF removed the following requirement:

International distribution rights must be offered to appropriately qualified Canadian international sales companies, which must be given the right and opportunity of first offer. In cases where comparable offers are made by Canadian and non-Canadian companies, CMF will seek to ensure that priority is given to Canadian international sales companies.¹

CMF's rationale for removing the subject provision was that it was virtually impossible for the CMF's program administrator (Telefilm Canada) to enforce its application for all projects submitted for funding. Based on observation of past applications, the vast majority of distribution contracts are submitted approximately 18 months after a project's completion.

As a result, for every project with an attached foreign international sales company, Telefilm would have to confirm whether a Canadian international sales company had been given the right of first refusal ("**ROFR**"). If it was determined that a Canadian company had not been given the ROFR, the applicant would be faced with the option of either (a) rescinding its existing agreement with the foreign company and accepting the accompanying legal implications of such a decision or (b) losing its CMF funding as the project would no longer abide with a provision in the SRP.

The CMF was reticent to devote its limited resources to effectively *enforce* this provision as it did not want to risk exposure to the foreseeable legal and financial implications associated with even one case where an applicant failed to meet the necessary requirements.

Pursuant to this change to the CMF's SRP, Entertainment One Television ("**eOne**") and the CMF have engaged in discussions in connection with this matter, and eOne has submitted a proposal, attached as Appendix C which seeks the following objective:

"At a time when we are seeing more and more foreign players working within our borders, eOne believes it's more important than ever to institute ways for Canadian sales companies to remain healthy and continue to play a vital role in our industry".

The CMF seeks stakeholders' feedback on the proposal.

b. DOC Canada

In correspondence dated September 2, 2015, the Documentary Organization of Canada ("**DOC**") submitted a formal proposal to the CMF in connection with possible changes to the CMF Guidelines. One recurring theme in DOC's proposal was that there should be more outlets and incentives for independently produced one-off documentaries. In keeping with this theme, DOC made the following recommendations:

- 1) "that BPE envelope calculations be less weighted on audience ratings;
- 2) increased funding to features within the POV Fund, changes to the DM requirement, greater flexibility for admissible financing and elimination of the cap on marketing funds within the feature film budget;
- 3) that the CMF return to its previous envelope cap for broadcaster in-house production;
- 4) that CMF needs to play a role in supporting Terms of Trade and genre protection;
- 5) a review of CMF funding policies and guidelines for feature documentaries;
- 6) that CMF find new ways to provide increased support for one-off documentaries and consider them an essential part of the Canadian broadcast schedule because they play a unique role in presenting Canadian cultural programming, diversity, regional programming, and programs in the public interest."

The CMF did not include a Working Group on Documentaries in its Fall 2015 industry consultation schedule. The issues raised above by DOC will however be considered in the formulation of program Guidelines for

¹ 2013-2014 CMF Business Policies, Chapter 6 - Standard Recoupment Policy, Appendix A, 6-4.

2016-2017. The DOC proposal has been posted to the CMF's web site, and the CMF seeks stakeholders' feedback on the proposal.

c. Writers Guild of Canada ("WGC")

In correspondence dated November 3rd, 2015, the WGC submitted two proposals to the CMF in connection with possible changes to the CMF's support for development in the Convergent Stream. The first proposal calls for the creation of a new Pre-Development sub-program based on the CMF's current English Regional Pre-Development sub-program. The second proposal requests a review of the Eligible Costs in the CMF's Development Program and sub-programs. The WGC's entire submission is available on the CMF's website and the CMF seeks stakeholders' feedback on these issues.

d. Saskatchewan Screen-Based Media Production Grant ("SBMPG")

Stakeholders in Saskatchewan have sought to expand the applicability of the Saskatchewan Screen-Based Media Production Grant in the CMF's Standard Recoupment Policy ("SRP"). The current SRP allows for a preferential recoupment position for producers based on their investments and their provincial tax credits whereas grant money allocated to a production is not currently afforded the same preferential status.

One long-standing exception to current CMF practice concerns funding allocated to a production through the Alberta Media Fund, which can occupy a preferential recoupment position in the SRP.

While the CMF continues to examine strategies to improve its ROI in productions in which it has an equity investment, it is also important to ensure its approach to this issue is both fair and consistent. After discussions with a number of private funds, the CMF recommends the adoption of a uniform approach and seeks stakeholder feedback on this issue.

Currently, British Columbia, Manitoba, Newfoundland & Labrador, Ontario and Quebec have a tax credit system in place, while Alberta, New Brunswick, Nova Scotia, the Northwest Territories, Nunavut, Saskatchewan and the Yukon have structured their incentives as grants/rebates.

e. Additional Stakeholder Proposals

Based on discussions with stakeholders, the CMF expects to receive additional proposals By November 10 and will post them to the web site as they are received.

APPENDIX A

EXTERNAL ENVIRONMENT

- Consumers
 - On demand viewing
 - Online video/short form
 - Overabundance
- Regulatory
 - Pick & Pay / skinny basic
 - Canadian programming expenditure / Programs of National Interest requirements
 - CRTC's Pilot Projects
- Industry
 - Consolidation
 - Globalization
 - New business models



EXTERNAL ENVIRONMENT

Potential impacts on Canadian content:

- CMF-reduced revenues / program budget;
- reduced access;
- reduced discoverability;
- new opportunities.

APPENDIX B



■ PROPOSED ACTIONS - FINANCE

PROGRAM VERTICALS	EMERGENCE	GROWTH	SUSTAINABILITY	
Objectives	Allow new production companies, new creators, new formats to emerge.	Escalate production companies to the next level. Support creative hubs and brands.	Drive production companies towards sustainability.	
Focus	Innovation Diversity and discovery R&D	Franchise-based approach Market-driven products High potential for commercial success and export	Exploitation of IP in domestic and foreign markets	
TARGETS	LANDMARK CONTENT	ENABLING TECH	LANDMARK CONTENT	IP CATALOGUE
Project types	New forms of storytelling, emerging voices, author-driven: <ul style="list-style-type: none"> ▪ Linear (for TV or web originals) ▪ Interactive ▪ Immersive 	Technologies, platforms or software applications dedicated to advance the creative industries (B2B or B2C)	Premium franchises, ambitious projects targeting broad audiences, with commercial appeal. <ul style="list-style-type: none"> ▪ Linear (e.g. TV – all genres, incl. formats) ▪ Interactive (e.g. Videogames) ▪ Multiplatform (i.e. Convergent, Transmedia) 	Projects aiming to revitalize high potential Canon libraries <ul style="list-style-type: none"> ▪ TV and Film

APPENDIX C



November 4, 2015

CMF Policy Proposal

While our industry has celebrated many wins over the last several years, we have also faced many challenges. In order to take control of our destiny and to ensure Canadian stories are seen and heard for many years to come, a strong Canadian content ecosystem, from creative origination to deficit financing and worldwide exploitation, is needed.

At a time when we are seeing more and more foreign players working within our borders, eOne believes it's more important than ever to institute ways for Canadian sales companies to remain healthy and continue to play a vital role in our industry. As such, we propose that an incentive be offered to Canadian drama producers to secure Canadian distributors.

As the CMF once again prepares their annual guidelines, we are putting forth the following:

Rationale:

Government policy that supports Canadian distribution companies is necessary for the Canadian television industry to continue in its growth and be competitive in a crowded international marketplace:

- Control in a production is largely dictated by the financing;
- Therefore, Canadian risk capital equates to a greater level of Canadian control;
- From a long-term value chain point of view, distribution rights are more valuable than copyright;
- Thus, in this time of change where audiences are moving on masse to digital platforms to view content on their own terms, it is more important than ever for the Canadian production and distribution ecosystem to be symbiotic and supported;
- The value chain of a production can only be fully realized through exploitation i.e. distribution/international sales;
- We firmly believe that the value of content created in Canada should stay in the hands of Canadian companies to reinvest in the ecosystem.

Proposal for discussion:

Our focus is on building a mutually-beneficial relationship between the production and distribution sectors to optimally serve the industry overall on a long-term basis.

The following is our multi-step approach:

1. The policy mandating producers to offer the international distribution rights to a Canadian distribution company first be reinstated in the CMF Guidelines for drama productions only, with immediate effect.
2. The CMF lobby for and work with Canadian Heritage to effect changes to the Contribution Agreement that provision for the following scenarios, to be implemented simultaneously and as one concept:
 - a. To encourage innovation in drama and add creative flexibility to the 10/10 scale model, CMF-qualifying productions receive two "points" for securing a Canadian distribution company to sell international rights. In exchange, the Canadian distributor will commit and cover a certain level of the budget for marketing and promotion, with a global focus.
 - b. Alongside point 2.a, on CMF qualifying projects where a foreign distribution company is attached to sell international rights, the foreign distribution fee is capped at 17.5%

APPENDIX C (continued)



and expenses capped at 5%. Where foreign distributors are attached to a CMF project, they are not entitled to any back-end recoupment (after fees, expenses, MG) or net profit participation.