Canadian Television Fund

CTF STANDARD RECOUPMENT POLICY
2006-2007

Overview

Beginning in 2006-2007, the CTF will no longer have a different recoupment schedule for English- and French-Language production. The CTF will now allow production companies who invest their provincial tax credits in English-language programming to recoup those amounts in a better position than CTF, in accordance with the same model previously afforded production companies producing French-Language production. The CTF expects that, through this transfer of the CTF's share of future revenues to independent production companies, the CTF will positively contribute to their capitalization. The value of this transfer is estimated to be between $3-4 million per year in future revenues.

The CTF is further amending the standard recoupment policy to improve the potential for production companies to raise international financing, to minimize negotiations between the CTF and producers and to reduce the administrative burden on producers and the Fund. Distribution advances from Eligible Distributors may now be recouped in their entirety prior to the CTF. Furthermore, the producer is no longer required to retain a major open territory from which the CTF may recoup its equity investment. From this change, we estimate the lost revenues to the CTF to be between $2-3 million per year in future years, although these losses are expected to be substantially offset by increased international financing to production budgets and reduced administration costs.

The details of the CTF's Recoupment Policy for 2006-2007 follow.

Standard Recoupment Policy

Producers applying for equity financing (ie: that portion of CTF participation in excess of the licence fee top-up) must provide to the CTF the opportunity to recoup its equity participation in a manner no less favourable than pro rata and pari passu with Other Financial Participants (as defined below). If a more preferential recoupment position is negotiated by any of the Other Financial Participants than outlined below, the CTF will insist on receiving similar treatment (pro rata and pari passu).

The Standard Policy was developed to eliminate negotiation of recoupment deals between the CTF and Producers, to save time, and to provide producers with predictability in the form of pre-approved recoupment structures. The CTF recognizes that in the case of official treaty co-productions financial structures, distribution arrangements, marketability and other elements vary considerably. The CTF in its sole discretion will consider alternative recoupment proposals in these situations on a case-by-case basis, but no such deal will be approved by the CTF unless it can be demonstrated that it provides an expectation of revenue that is no less favourable than that provided through Model B, described below.

Projects without an Eligible Distributor attached must comply with the recoupment schedule outlined in Model A. Projects with an Eligible Distributor attached, regardless of the level of their distribution advance, must comply with the recoupment schedule outlined in Model B.

Model A – No Eligible Distributor Attached

CTF – English and French-Language Productions
Territory: Worldwide

	Producer (Provincial Tax Credits)	Producer (Federal Tax Credits)	CTF	Other Financial Participants[1]
Tier 1 (200% of provincial tax credit)	100% of the provincial tax credit participation (equal to 50% of total net revenue in Tier 1)	% = tax credit participation as % of recoupable sources of production financing multiplied by 50%	% = CTF's Equity as % of recoupable sources of production financing multiplied by 50%	% = financial participation as % of recoupable sources of production financing multiplied by 50%
Tier 2 (balance of recoupable financing)	% = 0	balance of federal tax credit	balance of CTF Equity	balance of Other Financial Participants' participation

[1] *"Other Financial Participants"* include but are not limited to: broadcaster investment, producer deferral, private fund and provincial agency investment, craft and creative deferrals (whether or not by related parties) and any form of producer-related financial participation which is directly or indirectly supported by producer fees or corporate overhead ("Other Financial Participants").

Model B – An Eligible Distributor is attached

"Net Distribution Revenue" (as explained in more detail in Appendix A) is briefly defined as world-wide gross revenue received from the sale of the CTF project to end users less:

- distribution fees/commissions to a maximum of 30%
- distribution expenses to a maximum of 10%
- administration fee of 5% to the production company

Eligible Distributors

Eligible Distributors are given a sole first Tier recoupment position.

CTF and Other Financial Participants

Until full recoupment of the provincial tax credits, this amount will recoup at an amount equal to 50% of all Net Distribution Revenue in Tier 2. Other Financial Participants, with the exception of Federal Tax Credits, will share in the remaining 50% in an amount equivalent to their portion of the overall recoupable sources of production financing (excluding the distribution advance and tax credits). Amounts not recouped in Tier 2 will recoup pro rata and pari passu in Tier 3. Federal tax credits will recoup in Tier 4.

CTF – English and French Language Productions
Territory: Worldwide

	Eligible Distributor	Producer (Tax Credits)	CTF	Other Financial Participants
Tier 1	100% = Distribution advance	% = 0	% = 0	% = 0
Tier 2	% = 0	100% of the provincial tax credit (equal to 50% of total net revenue in Tier 2)	% = CTF's Equity as % of recoupable sources of production financing (excluding the distribution advance) multiplied by 50% of remaining revenue in the Tier	% = financial participation as % of recoupable sources of production financing (excluding distributors and tax credits) multiplied by 50% of remaining revenue in the Tier
Tier 3	% = 0	% = 0	balance of CTF Equity	balance of Other Financial Participants' participation (except tax credits)
Tier 4	% = 0	100% = federal tax credits	% = 0	% = 0

Notes: The Standard Terms and Conditions (Appendix A) must be adhered to.

The CTF will consider “gap” financing (a financial guarantee against future revenues) from a recognized gap financier as distribution advances, for the purposes of determining their recoupment position, and will ensure that the terms of such gap financing are in accordance with the Standard Terms and Conditions.

In all cases, approved budget over-runs, facilities and service deferrals (deferred payments to commercial laboratories, equipment rental companies and post-production facilities) may be recouped only after the CTF has recouped.

The CTF in its discretion may consider approving “star breakage” (where additional expenditure beyond that originally budgeted is required to contract marquee cast) to recoup preferentially, but only on a case-by-base basis.

Profit Participation: The CTF will continue to receive a share of Net Distribution Revenue after full recoupment by all participants in accordance with the final recoupment schedule. The CTF will receive an amount equivalent to the CTF’s equity participation as a percentage of total equity participation in the production multiplied by Net Distribution Revenue. The CTF’s profit participation shall be calculated no less favourably than any Other Financial Participant, and will be calculated before any profit participation entitlement of a non-equity participant. The CTF will forego 50% of its profit participation for the benefit of the Producer. Other Financial Participants are not obliged to similarly forego any portion of their profit participation.

Appendix A
Standard Terms and Conditions

1. Eligible Distributor

The preferential recoupment position will only be provided to Eligible Distributors. An eligible distributor ("Eligible Distributor") is one that has demonstrated to the CTF's satisfaction:

- A level of experience and expertise sufficient to arrange for the distribution of the Canadian television production in question;
- A sufficient volume of business and a business plan to ensure the company's future financial viability;
- That it regularly attends relevant international television markets;
- That it has distributed productions of a similar size and nature; and
- That for projects that the distributor will distribute in Canada or Canada plus other territories, the distributor is Canadian-controlled within the meaning of the *Investment Canada Act*, as amended from time to time.

A producer who is unsure of this process should contact their appropriate regional Telefilm office for more information.

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, CTF will seek to ensure that priority is given to Canadian international sales companies.

An agency, Crown corporation, broadcaster, or other entity which is financed primarily through provincial or federal public funding may be recognized by the CTF as an Eligible Distributor (such as the National Film Board of Canada or CBC International Sales) or a gap financier. Such a publicly funded Eligible Distributor may recoup its distribution advance and receive fees/commissions and expenses in accordance with those outlined herein for Eligible Distributors. The CTF will monitor this policy to ensure that private sector distributors are not compromised. The CTF may, in its discretion, apply a less favourable recoupment standard to publicly funded Eligible Distributors in the event that there is an increase in the distribution advances being provided at the expense of historical levels of broadcast licenses and equity investments from these same organizations.

2. Broadcaster-Affiliated Eligible Distributors

An Eligible Distributor affiliated to a broadcaster (whether public or private sector) may distribute a project in which CTF invests if it meets the requirements outlined herein, and the following safeguards. The goal of these safeguards is to ensure fair dealing for producers and for other distribution companies in situations in which the trigger broadcaster(s) is affiliated with an eligible distribution company. The CTF will use the definition of “affiliate” set out in the *Canada Business Corporations Act*.

SAFEGUARDS:

The negotiation process for distribution rights must be conducted separately from the negotiation process for a broadcaster licence fee commitment to a project. There should be a two-week delay after the producer and broadcaster have completed a short form broadcast agreement and before the broadcaster-affiliated distributor and producer commence negotiation of a distribution commitment.

This delay is to allow the producer to solicit offers from other distributors. In the event the producer elects to grant distribution rights to another distributor, the broadcaster shall not reduce its licence fee commitment.

The broadcaster-affiliated distribution company is prohibited from accessing information from its affiliated broadcaster that would give it an undue advantage in the negotiating process with the producer.

The CTF will ensure that these safeguards are enforced, acting as an arbiter as required. This entails receiving and assessing complaints and enforcing other measures at its own discretion.

In the event that the CTF determines that a broadcaster-affiliated distribution company has used undue leverage or coercion in the negotiation processes described above, the CTF at its discretion may elect to disqualify the distribution company as an Eligible Distributor for two years. The CTF will conduct an annual review to ensure that the eligibility of broadcaster-affiliated distribution companies does not have an adverse impact on the distribution industry in general.

3. Distributor Fees

Fees deducted must not exceed 30% of gross revenues regardless of medium, language or territory. This includes sales for:

- Broadcast
- Non-theatrical
- Video sell-through
- Video rental (or a 20% royalty payable to producer)

In exceptional situations, the CTF will evaluate requests for royalties on Gross Revenues as opposed to these Standard Terms and Conditions.

For distributors acquiring only non-theatrical rights (ie: schools, libraries, etc.), without access to commissions from any other media, the commission will be raised to the historical standard of a 70% royalty payable to the Distributor.

All distributor fees must be inclusive of fees/commissions payable to sub-distributors, agents and local distributors.

The CTF will also allow for production companies without an affiliated distribution entity to receive 15% of revenues regardless of medium, language or territory, for sales they directly complete (with the exception of pre-sales included in the financing of the production). This also applies to non-eligible distributors.

Fees for media not expressively described above (eg. merchandising, music publishing) are subject to negotiation on a case-by-case basis.

4. Distribution Expenses

Distribution expenses incurred in connection with the exploitation of a production must be actual and verifiable and include only those reasonably incurred to a maximum of 10% of gross receipts, with the exception of standard guild and union royalties/residuals and net versioning expenses. Versioning expenses are limited to the costs incurred in the creation of a language master and a sub-master for the purposes of creating dubs.

Distribution expenses may exceed 10% of gross receipts in the first two years of reporting on the production, provided that a reconciliation is made at the end of the second year of reporting (the fourth reporting period). At that time, the cumulative total of the distribution expenses must not exceed 10% of the cumulative total of the gross receipts for the two-year period.

Allowable distribution expenses are costs related to campaign creation, publicity, material production costs, printing, dubs and other related costs. Other related costs include packing, transportation, insurance customs tariffs, import taxes and those related to censorship requirements and festival entries/market costs (i.e. the Geminis), including travel accommodation/living expenses for actors and directors. Distribution expenses must be net of any non-recoupable financial assistance the distributor has received from Telefilm, the CTF or elsewhere.

Inadmissible Distribution Expenses are any costs not specifically listed above and include travel/accommodation/living expenses for producers, distributors and their employees.

The CTF will also allow for production companies without an affiliated distribution entity to deduct distribution expenses on sales which they directly complete in the same manner as for distributors as outlined above.

5. Collection Costs

On revenue generated by arm's length distributors, Production Companies may take 5% of the Net Distribution Revenue payable to the CTF after allowable fees/expenses are calculated. This 5% is to compensate for administrative costs related to the collection, reporting and remitting of distribution revenues and retransmission royalties.

6. Other Requirements

1.1 Withholding taxes are to be included in distributor's gross receipts for the period in which the taxes were returned to the distributor (i.e. a distributor may only calculate fees/commissions and expenses on Gross Receipts when actually paid to the distributor and not on any amounts withheld by government sources). As such, withholding taxes are not considered to be Distribution Expenses.

1.2 The CTF's share of television retransmission and music (i.e. SOCAN) royalties must be paid directly to the CTF without deduction. Producers are responsible to collect and distribute retransmission and music royalties for the benefit of investors.

1.3 Cross-collateralization of North American revenues and expenses with that of other territories is not allowed.

1.4 Cross-collateralization of revenues and expenses against other titles carried by the distributor is not allowed.

1.5 Finder's fees for the arranging of the production financing or commercial exploitation of the production (including excessive gap financing fees) must be included in the calculation of producers fees and corporate overhead. Additionally, any fees for responsibilities of a producer payable to financiers (including broadcaster, distributors and agencies) must either be included within the cap or alternatively reduce the level of recoupable financing from such financier.

1.6 A production may be sold as part of a package of productions provided that:

> a) the distributor has made its best efforts to maximize revenues for the production by selling the production separately;
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> b) the allocation of revenues and expenses among the productions sold as a package will be fair and reasonable; and
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> c) distribution reports (via notes) disclose any package sales and the allocation of the revenues and expenses to the production.

1.7 Interest charged on distribution advances/minimum guarantees or gap financing, prior to delivery of the production must be included in the production budget. Interest charged after delivery of the production must be included in the cap on distribution expenses of 10%.

1.8 Distributors must maintain books and accounts in accordance with generally accepted accounting principles and the CTF must have unrestricted rights, without time limitations, to audit the distributor’s accounts for a production.

1.9 No limitation may be placed on the producer’s right to contest revenue reports.

1.10 The producer should also include within the production budget sufficient resources to acquire exploitation rights in perpetuity within Canada and for at least 5 years in the rest of the world for all elements of the production including music, stock footage, stars, writers, etc. unless otherwise approved by the CTF. Exploitation rights must be purchased for a period of at least 5 years for all territories in which pre-sales have been made or for which a distributor has acquired exploitation rights. The cost of acquiring extended exploitation rights are excluded from the calculation of the cap on distribution expenses.

1.11 Revenues must be reported to Telefilm Canada on behalf of the CTF twice a year.

1.12 Distribution agreements must provide for the producer to recover the distribution rights to a production in the event of bankruptcy or insolvency of the distributor.

1.13 The initial licence term of the distribution agreement(s) entered into with the producer shall only be renewable subject to mutual written approval between producer and distributor.

1.14 Distribution agreements must provide that all expenses deducted are net of any non-recoupable financial assistance the distributor has received from the CTF or elsewhere.