Canadian Media Production Association

Submission to

The Canada Media Fund

Industry Consultation 2013

November 19, 2013

A. INTRODUCTION

The Canadian Media Production Association (CMPA) represents the interests of nearly 400 Canadian-owned and controlled independent production companies engaged in the production and exploitation of English-language television programs, feature films and interactive media works in all regions of the country.

The financing made available by the Canada Media Fund (CMF) is critical to the success of our members. As such, any changes to the CMF guidelines are taken very seriously by the CMPA's CMF Working Group comprised of production companies from across the country. We thank the CMF for providing us with a meaningful opportunity to participate in these most current Guideline discussions. As we have already provided some of our opinions and suggestions at the various CMF Advisory Group meetings, the purpose of this document is to expand upon those earlier remarks and outline further items/issues which we have not yet had a chance to communicate.

Broadly speaking, the CMPA continues to support the funding initiatives of the CMF through the Guidelines in their current form and structure. While throughout this document we may provide various proposals to increase a particular fund or amend access criteria to another, in general, our members feel the Guidelines are working. As our industry continues to evolve and transform, we will need to revisit incentives, funding allocations and the creation of new programs, but at this time we feel the needs of the independent production sector are generally being met. The CMPA does not, therefore, support changes to the Guidelines that introduce support for additional activities or the creation of new programs or changes that would expand or modify those genres currently eligible for CMF funding. More specifically, we do not support the reduction of any current CMF funding allocations unless such reductions are merely redistribution from one existing fund to another, as further outlined in this document.

B. PERFORMANCE ENVELOPES AND PRODUCTION PROGRAMS

1. Factor Weights

The CMPA has considered the various factor weight proposals made both in the CMF Briefing Notes and at the Advisory Group meeting. In general, we support the current Audience Success factor weight at its current level (55%). The CMPA does not oppose amending the factor weights within the existing 55% (i.e. THT, OFR), provided the Audience Success factor weight, as a whole, does not increase. It is our opinion that the broadcasters are best positioned to assess what tweaks, if any, should be made.

The CMPA does not support the CBC's proposal for a Canadian focus factor weight. We believe the ERs adequately address the need for the production of Canadian programming by Canadian producers and broadcasters do not need to be rewarded or incentivized for exceeding their CRTC mandated scheduling obligations.

Finally, the CMPA would support the re-introduction of the above-threshold licence factor weight as this would incentivize broadcasters to make greater contributions to ever-increasing production budgets.

Please note that the factor weight discussion above is premised on the Guidelines in their current form. Should the CMF adopt the CMPA's phase-in proposal with respect to English regional production, as detailed in section F below, the CMPA welcomes the opportunity to work with the CMF and other stakeholders if and when the time comes to revisit these issues.

2. Digital Content Commitment

With the exception of POV documentaries discussed further below, the CMPA supports the greatest degree of flexibility as to whether or not a project warrants a rich and substantial digital content component and how much of the broadcasters' envelopes should be committed to this type of content. As the digital world continues to evolve, the CMPA believes our members, together with their broadcasting partners, are best placed to determine where and when a project requires substantial digital resources/investment.

3. Essential Requirements

The CMPA proposes that two amendments be made to the existing ER exceptions.

First, for live-action drama, currently one point, according to the CAVCO scale, may go to a non-Canadian performer who has significant recognition among Canadian audiences provided that the non-Canadian may not play the role of the protagonist. The CMPA proposes that this exception be tweaked such that either the non-Canadian OR the Canadian performer may play the role of protagonist. This change would be beneficial to our members in three key ways. First, since both CAVCO and Telefilm, through its treaty co-production guidelines, allow one leading role to go to a non-Canadian performer (without restrictions of any kind), this change would align the CMF with these key stakeholders that trigger vital Canadian financing. Second, providing a greater degree of flexibility as to which role the non-Canadian performer may play will be very helpful to our members when trying to attract foreign partners who may require a non-Canadian performer to play the lead role. Finally, in cases of productions that involve ensemble casts or co-protagonist stories, producers would have clarity in the rules, without putting the onus on the CMF to determine which role the lead is. This change will provide clarity in casting and allow for the continued participation of Canadian actors in lead while simultaneously providing an incentive for foreign broadcaster involvement.

Second, with respect to children's animation production, the current ER exception for a non-Canadian Camera Operator does not reflect the realities of digital animation production. The position of Camera Operator is specific to *traditional* animation. In *digital* animation, the position of 'Camera Operator' is typically performed by the 'Layout Supervisor'. Since the 'Camera Operator' position is essentially moot in digital animation, these types of productions cannot capitalize on the existing 8/10 point flexibility offered by the ER exception in this category. The CMPA, therefore, proposes that 'Layout & Background' be added to the ER exception as an allowable non-Canadian point, thereby still requiring digital animation productions to meet the 8/10 point requirement but providing some flexibility as to how this is achieved. It should be noted that the Shaw Rocket Fund, the other major fund supporting Canadian children's programming, allows a production to qualify for financing with 8/10 points without restrictions of any kind.

4. Aboriginal Program Fund

Based on the information contained in the March 2013 MDR report on the Aboriginal Screen-based production sector, it is clear that Aboriginal independent producers face greater challenges than the rest of the independent sector in terms of achieving long-term sustainability. These challenges are largely the result of Aboriginal producers having less access to sources of funding beyond the CMF, by virtue of the fact that they are somewhat limited to one broadcaster - APTN. Aboriginal programming, therefore, requires enhanced support from the CMF in an attempt to level the financing playing field for Aboriginal producers. The CMPA recommends that the Aboriginal Program Fund, which is consistently oversubscribed, be increased to an amount equal to the Francophone Minority Fund. Francophone speakers outside of Quebec are considered a "minority voice" and they receive approximately $10 million per year from the CMF. Meanwhile the Aboriginal voice, which is made up of at least as many producers working in the Canadian screen industry, receives approximately $6.7 million. The CMPA proposes that these amounts be made equal.

C. DOCUMENTARIES

1. Development Funding

The CMPA supports DOC's proposal to increase English-language broadcaster development funding to a percentage that corresponds with that spent on production financing. For the English-language documentary genre this would represent 16.5% of the development envelope. In supporting this proposal we do encourage the CMF to ensure safeguards are in place that would prevent the broadcasters' from decreasing their production spend as a way to make up for increases in development expenditures.

2. Licence Fee Thresholds

Based on information we received from DOC and our members, the CMPA agrees that the current formulae used to calculate English-language thresholds for higher budget documentaries creates a threshold that is too expensive for most broadcasters to meet. Simply lowering licence fee thresholds will not produce the desired results as it may put more pressure on documentary producers to either lower budgets or find financing outside of the CMF that simply may not be available. Given that the French language market has lower threshold percentages and greater segmentation based on budget level, the CMPAsupports DOC's proposal that English-language licence fee thresholds be harmonized with those established for the French-language market.

3. Funding Triggers

The CMPA supports DOC's proposal to expand the definition of eligible broadcast licence triggers for the POV Fund only, by allowing international broadcasters to contribute to a project's ability to meet threshold. Given the size and popularity of the POV Fund, it provides a perfect test case to evaluate the potential benefits and/or possible drawbacks of expanding broadcaster triggers in other funds/envelopes.

4. Weighting Factors

Again, based on information we received from DOC and our members, the CMPA supports DOC's proposal to adjust the weighting factors of the POV evaluation grid. The evaluation grid should increase its focus on the creative elements of the project, the production team and the program objectives. In so doing, the POV Fund could more appropriately fund projects on the merits of the creative components. In order to accomplish this shift in weighting factors, the CMPA supports DOC's proposal to reduce the market interest points. The CMPA further supports the removal of the digital media component from the POV evaluation grid, as broadcasters are often not interested in funding one-off digital media strategies, and other sources of financing are difficult to find. A VOD window should be sufficient to meet the digital media requirement for POV documentaries.

5. Aboriginal POV Documentaries

As discussed above, the Aboriginal production sector faces greater challenges accessing financing as compared to the rest of the independent production sector. According to our members, Aboriginal POV documentaries have, in particular, become incredibly difficult to finance since the National Film Board discontinued its Aboriginal Filmmaker Program. The CMPA, therefore, proposes that the CMF dedicate funds specifically to Aboriginal POV documentaries.

6. Eligible Costs

With respect to documentary programming, the CMPA proposes that costs for non-Canadian consultants or experts with in-depth knowledge on a subject be deemed eligible in the development phase. Expanding the eligible development costs to include such experts does not diminish the project's ability to speak to its intended Canadian audience, nor does it impact the geographical essential requirements. Including non-Canadain consultants or experts would simply acknowledge the fact that our members are dealing with global subject matters that may, in some instances, be best served by having access to international experts who are best positioned to improve the quality of the documentary during the important development stages.

D. FUNDING MECHANISMS

1. Recoupment policies – General

As the CMF is aware, the independent production sector is in a precarious financial state, given the rise in production budgets and declining broadcaster contributions coupled with increasing broadcaster demands. While Terms of Trade have been instrumental in restoring some measure of balance in negotiating power between our members and the hyper-consolidated broadcasters, the adoption of a recoupment policy that does not adequately protect distribution advances (third party or otherwise) and the investment of producer tax credits could undo many of the gains that Terms of Trade have achieved.

While our members consistently seek out new and creative ways to raise production financing, funding options that will work within the CMF framework remain fairly limited. As such, distribution advances and producer tax credits remain critical to our members. They are consistently the only funds available to close the financing gap that broadcasters and other funding sources are simply unable or unwilling to fill.

With the above in mind, the CMPA strongly opposes the informal proposal raised at the CMF Funding Mechanisms Advisory Group on October 10, 2013. Any proposal that forces distributors to share their recoupment tier would seriously jeopardize our members' ability to attract financing in the global marketplace. As distributors arguably provide the most 'at risk' money to production financing, they should continue to recoup preferentially, as historically has been the case. To suggest that the solution lies with the independent producer repaying the distribution advance out of their share of recoupment is not a realistic business approach. First, the distributor simply will not wait that long to be paid back. Second, it will compromise the distributor's willingness to provide an advance in the first place.

In addition, proposals that impact our members' ability to recoup their tax credit investment are equally problematic. The recoupment model can only be successful and worthwhile when the independent producer occupies a meaningful recoupment position which will allow them to build equity in their companies as opposed to continuing to try and sustain themselves on a project-by-project basis. Furthermore, any significant changes to how and when our members recoup their tax credit investments will impact their ability to fund the development of new shows which has become increasingly expensive, with broadcasters expecting ever-more elaborate pre-development materials. Should the development of new projects be compromised by changes to the CMF's recoupment policy, the inevitable result will be both a smaller number and smaller variety of shows being produced. Ultimately, it will also result in reduced recoupment to the CMF itself.

Notwithstanding our comments above, the independent production sector is sensitive to the growing pressure from equity investors to recoup their investments at a faster rate. The CMPA is fully prepared to work with the CMF and other stakeholders to address these recoupment issues but we feel it would be premature to introduce a change to the CMF recoupment policy without further consultation and analysis. This analysis would likely be best served through the introduction of a concrete proposal containing modeling data.

2. Recoupment Policy – Flexibility for Additional CMF Equity Financing

As stated above, until such time that further analysis leads to the creation of a recoupment policy that works for all stakeholders, the CMPA proposes that, with one small exception set out below, the CMF recoupment policy remain as is.

Our members have informed us that, in very rare circumstances, a broadcaster will add CMF equity to a production's financing after all equity partners have already negotiated the recoupment schedule. An example of this can occur when additional financing is needed to cover breakage items the broadcaster requests for the benefit of the show (e.g. a high-priced guest performer or additional CGI requirements, etc.). Once CMF equity is introduced into the financing, the CMF requires that its standard recoupment schedule be put in place, regardless of how big or small the actual CMF equity investment is. As you can imagine, re-negotiating an entirely new recoupment schedule with all equity investors is a very time consuming and costly process for all parties. The CMPA, therefore, requests that the CMF consider, on a case-by-case basis, having its equity investment recoup in generally the same manner as that already agreed upon by the other equity investors prior to the introduction of the CMF equity money. In these rare instances, the CMF recoupment policy should accommodate flexibility to its standard recoupment model.

3. Recoupment Policy – Audit term limits

The CMPA supports the CMF's suggestion to adopt a term limit on its right to audit the distributor's accounts for a production. Our members have suggested that the CMF align its audit term with the record keeping requirements of the Canada Revenue Agency, namely, six years from the end of the last tax year to which they relate.

4. Funding Formula

While it is possible for the CMF to adopt an approach whereby a greater proportion of production support would be available in the form of equity, such an approach has several significant downsides to the production community.

First, compared to licence fee top-ups, equity investments are an expensive form of public assistance to manage for both the CMF's administrators and for producers. Equity contracts are more detailed compared to licence fee top-up agreements; they take longer to conclude and, hence, they typically incur greater legal costs. Reporting is also time-consuming and more costly, particularly for a producer with a large inventory of CMF-supported projects. And lastly, some five to ten years down the road, the cost of reporting on an equity investment for some types of productions begins to far outweigh any financial return that may be realized by that property. In our view, this increased administrative burden and the cost it would entail would only serve to decrease the already limited funding that is available for production under the

CMF. From a producer's perspective, the increased administrative responsibility would also detract from his/her primary function, which is to produce the next program.

Second, as already noted by the CMF in its Funding Mechanisms Briefing Note, the "grind" factor is also another significant disadvantage. That is, increasing the level of CMF resources made available in the form of equity would proportionally decrease the effective value of the Canadian Film or Video Production Tax Credit. This approach, again, would only serve to decrease the overall financial resources that are available to help build capacity in the independent production sector and, ultimately to produce quality Canadian television programming.

Finally, reducing the percentage of its licence fee top up contribution to allow for greater CMF equity investment will not, in itself, guarantee that the CMF will improve its return on investment from the Canadian market. Since most broadcasters now typically acquire all domestic rights, across all platforms, for unlimited plays and on unlimited channels in their Broadcast Groups, the only way to achieve a return on investment is to exploit the program in other countries. While there are many examples of success in this regard, the fact that the CMF favours productions that are primarily targeted to the Canadian market can increase the challenge in exploiting those productions in foreign territories.

5. Corporate-Based Funding

The CMPA is fully prepared to work with the CMF and other stakeholders to address a corporate-based funding approach. In order to give proper consideration to this issue, our members have requested that the CMF provide them with a concrete proposal for evaluation.

E. DIGITAL MEASUREMENT FRAMEWORK

1. Measurement Reporting Options

The CMPA recommends that we move forward with only one measurement option. Data reported by Google Analytics and comScore are not guaranteed to be congruent, and the ability for developers to report their performance online negates any attempt to create a baseline for comparison against other projects. Since the current system does nothing to unify the data reported by the three systems, it prevents any meaningful comparison of projects. Our members propose that the CMF move forward with a single system, be it comScore, Google Analytics, or another vendor. We further recommend that some kind of conversion method be offered to convert legacy data from other systems into a common set of baseline metrics as measured by the chosen system.

2. Performance Metrics and KPIs

The current set of five performance metrics is adequate for websites but is unsuitable for describing the performance of mobile applications and other digital media products that are not consumed in a web browser. The CMPA, therefore, recommends that a different set of metrics be defined for desktop and mobile applications to more accurately gauge performance and avoid skewing of the data. There are, however, two metrics that our members feel can remain across all delivery methods - unique users and time spent consuming content. The recommended metrics to track for mobile and desktop applications include: installs, bootups, in-app purchases (if relevant), application-specific user actions, updates (if relevant), and average daily revenue.

The KPIs outlined in the Digital Media Performance Measurement Guidelines are more than adequate for websites, but our members have suggested the use of some additional KPIs in connection with our above recommendation for app metrics. First, a 'User Retention' KPI to compare the number of original installs to the number of users who update. This gives an indicator of user retention as new content is added and bugs are fixed. Second, a 'Daily Active Users' KPI to measure the number of bootups each day versus the total install. This will give an indicator to how many users are actively engaged with the application. Finally, an 'Average Revenue per Daily Active User' KPI to determine revenue performance by dividing the daily average revenue by the number of daily active users. This is more relevant to free-to-play applications or projects that contain in-app purchases.

3. Classification Matrix

Our members feel the current classification matrix is more than adequate for representing digital media products across all delivery platforms and content types that are currently relevant.

4. Performance Sharing

The CMPA recommends that DM performance be shared in aggregate where possible, as individual projects and developers will have differing thresholds for success and confidentiality requirements. As digital media is still an emerging market, many content producers do not feel comfortable sharing this data in isolation other than what is required to satisfy the Department of Canadian Heritage.

5. Unique Visitor Exploitation

The CMF's concerns regarding unique and new visitors being falsely counted due to browser refreshes is essentially a non-issue. If the number of visitors is small enough for false positives to be statistically significant, then it can be assumed that the project is not currently performing positively. The CMPA, therefore, recommends that the CMF not devote any additional time to finding a solution to this particular problem.

6. Children's Online Protection Privacy Act (COPPA)

This is a major issue for developers working in the children's space (especially if deployment also occurs outside of Canada) and it has become a driving factor in new rules being adopted by Apple, Google, Blackberry and Microsoft for applications that are deployed to their platforms. We highly recommend that any analytics system adopted by the CMF be compliant with all of the latest terms and conditions of COPPA. Should Canada adopt similar legislation it is highly likely that it will resemble COPPA in many ways and it is the CMPA's belief that adherence to its privacy requirements would go a long way to help prevent any issues in the future.

7. DM Performance Metrics and Performance Envelope Allocation

While it is tempting to use calculated performance metrics as a direct means of calculating Performance Envelopes for future years, the CMPA recommends that this be only a part of the decision, as aggregate measures of project success do not reflect the individual challenges faced by developers. Uncontrollable issues such as shifting market trends and government (and platform holder) policy changes need to be taken into account alongside the actual competencies of the developers and performance of the digital media commercially and critically when deciding on the overall success of the previous year's funded projects.

F. ENGLISH REGIONAL PRODUCTION

As the CMF is aware, the CMPA has a Regional Task Force dedicated to analyzing and discussing regional issues. The Regional Task Force consists of production companies from across the country, including Toronto. In early 2013, the Regional Task Force began its work by interviewing key stakeholders to discuss changes in the environment since the substantial research into regional production undertaken in 2010. Stakeholders and task force members expressed significant fatigue in continuing to debate regional production issues. The increase in regional production reported in 2012-2013 was felt to be a good sign but precarious due to fluctuating broadcaster promise of performance requirements. There was general consensus that the time had come to take concrete steps that would ensure no one region received a disproportionately higher share of CMF resources.

Over the course of the summer and into the fall, the Regional Task Force debated many policy and program ideas, including those recently put forward in the CMF consultations. The recommendations outlined below have received the unanimous support of both the CMPA's Regional Task Force and the CMF Working Group.

First, the CMPA recommends that the 25% Licence Threshold and the 20% Regional Production Licence weighting factor continue as currently defined in the Broadcaster Development Envelopes (BDEs) and the Broadcaster Performance Envelopes (BPEs), respectively.

Second, we propose that the current English Production Incentive (EPI) program be increased from its 2013-14 level of $12 million to $16 million (representing a 33.3% increase) and that such increase be distributed across the regions according to the formula already in place. In keeping with the above recommendation, we would also propose that the Anglophone Minority Incentive be increased proportionately (i.e. 33% - from $3 million to $4 million) provided that a pro rata increase does not result in an envelope that is more favorable than if English-Quebec had been included within the EPI program with all other regions.

Third, the CMPA recommends that the CMF phase in a minimum 40% floor for expenditure on English regional production in both BDEs and BPEs for those Broadcaster Groups with BDEs of $10 million or more. Subject to CMF modeling and consultation to ensure that this approach does not have unintended harmful consequences for Toronto and/or the regions, the 40% floor could be calculated for each Broadcaster Group on a rolling three year average, commencing with 2015 as the baseline year (i.e. Year 1 of 3). During the phase in period, as the 40% expenditure floor takes hold, the Regional Production Licence weighting factor would also be phased out in favour of other weighting factors to be determined (such as the above-threshold licence discussed in section B1 above).

The increased EPI allocation proposed above would serve to ensure that, during the phase-in period, the industry is not destabilized by unanticipated swings in expenditure from Toronto to the regions, or vice versa. In due course, the EPI program would also be phased out in favour of higher performance envelopes provided that, in doing so, care is taken to maintain regional diversity.

Finally, with respect to pre-development and development, the CMPA is deeply concerned by the important underage within the BDEs every year. The development phases are critical for our members to generate programming that achieves the CMF's objectives. When available development funds are not spent, production opportunities are lost. While the Pre-Development Program was a welcome attempt to address concerns of underspending, particularly in the regions, the program's success can only be measured by the number of projects that translate from pre-development to development and ultimately move into production. Once the CMF is able to compile this data, we will be in a better position to evaluate whether the program is meeting its objectives. In the meantime we recommend discussion with underspending broadcasters to further assess how best to allocate these scarce resources.

G. EXPERIMENTAL STREAM

For all of the reasons previously stated, the CMPA advocates that a portion of the Experimental Stream be dedicated to Aboriginal producers.

H. CONCLUSION

The CMPA very much appreciates the CMF's efforts to engage in ongoing consultation with the industry, and remains committed to collaborating with the CMF and other stakeholders to increase the efficiency and effectiveness of the fund.

Thank you for providing us with the opportunity to provide our feedback. We welcome any questions or comments that you may have.