CANADA MEDIA FUND

Recoupment Working Group

Date: October 30, 2014

Introduction and background

Since the introduction of a formal Standard Recoupment Policy ("**SRP"**) in 2004-2005[1], the Canada Media Fund (**"CMF"**) publishes the SRP for its Convergent Stream on an annual basis. A formal SRP was introduced to avoid negotiations of recoupment on a case-by-case basis due to the volume of projects in which the CMF is an equity investor (see Appendix A) and to provide predictability for producers and distributors in negotiating agreements on CMF equity projects.

The current SRP has not been significantly reviewed since 2005-2006. Until that time, the Equity Investment Program ("**EIP"**) was administered by Telefilm Canada and the Canadian Television Fund ("**CTF**") administered the License-Fee Top-Up Program ("**LFP"**), which provided financial support in the form of a non-recoupable contribution (or grant). As the CTF was not associated in the development of the SRP, we are not in a position to speak to the underlying policy rationale for changes made to the SRP until 2006-2007, the year during which oversight for the EIP was transferred to the CTF.

Since 2006-2007, the CTF and CMF have made some changes to the SRP, but no comprehensive review had been undertaken to-date. Given the substantial changes in the industry over the last decade, from the point of view of technology, viewing habits, regulation and financing, to name only a few, the CMF considers that such a review is necessary. The review also provides the opportunity to ensure that the SRP is aligned with the CMF's corporate strategic objectives (see Appendix D).

Since 2006-2007, both the dollar value and percentage of equity the CMF provides in Television production assistance has dropped (Appendix A, Figure 1). Further, other than in 2013-2014, the aggregate recoupment revenue from the Convergent Stream has declined since 2006-2007 (Appendix A, Figure 2). Step 1 in tackling these declining figures was CMF's 2014-2015 implementation of a revised funding policy where the CMF increased its share of LFP and reduced its share of EIP in returning series of all genres and languages.

This Recoupment Working Group and eventual revisions to the SRP is Step 2.

While some issues may not be ready to implement for 2015-2016, the goal of the CMF in its review of the SRP is threefold:

A) <u>Update and align</u> the SRP so that it reflects current market realties.
B) Where practicable and in the interest of efficacy of administration and transparency to stakeholders, <u>simplify</u> the SRP and its application.
C) While recognizing the primacy of points A and B above, <u>maximize the CMF's return on investment</u> (**"ROI"**) so that the CMF can continue to reinvest any funds recouped from projects in which it has an equity stake into its program budget in the following fiscal year.

In advance of this Working Group, the CMF conducted a series of pre-consultations with a variety of industry stakeholders from across Canada, including producers' associations, broadcasters, distributors, independent production funds and provincial funding agencies to obtain their comments on the current SRP and to gather information on the areas where improvements and simplification might be achieved.

[1] Prior to 2014-2015, some recoupment rules were in place, but not in the form of a comprehensive policy.

As expected based on the wide assortment of industry players who participated in the pre-consultation process, very different and often conflicting views were presented to the CMF. While some proposals made by the industry and the CMF seemed to achieve a consensus, other topics were more contentious and the CMF hopes to have open, honest and productive discussions with stakeholders during this Working Group.

The CMF recognizes it does not operate in a vacuum and that any changes to its SRP may have impacts on other CMF policies (as expressed through the Guidelines) as well as other the policies of other funding agencies, or other agreements between industry stakeholders, notably Terms of Trade agreements (“**TOT”**).

With regards to TOT, the CMF first acknowledges that there are points of discussion in this document that relate to various TOT issues that are currently before an arbitrator. The CMF appreciates the sensitivity in discussing these matters and respects that some parties may not want to discuss such issues in this forum.

Second, the CMF recognizes the challenges that changes to the SRP may have on the TOT and their interpretation and administration. However, in a position paper published on September 15, 2011 (CMF Approach to Projects Governed by a Terms of Trade Agreement), the CMF stated that “notwithstanding the Terms of Trade Agreement, the CMF’s Standard Recoupment Policy will continue to apply to all CMF-Funded projects receiving equity investment from CMF”, even suggesting that projects may have to live with two different recoupment structures to meet the terms of both the TOT’s agreements and the CMF’s policies.

For ease of reference, CMF recoupment statistics can be found in Appendix B and the SRP can be found in Appendix E.

Topics for discussions

With the goals of alignment, simplification and maximizing the CMF’s ROI, the following points will be discussed in the Working Group:

A) Update and align the SRP to reflect current market realities.
B) Simplify the SRP and its application.

1. Distributor fees/commissions
2. Distribution expenses
3. Retransmission rights
4. Cross-collaterization (between territories)
5. Distributor Audits

C) Maximize the CMF’s ROI.

6. Profit participation
7. Recoupment position against broadcast licenses
8. Treatment of tax credits
9. Related-party distributor advances

For the 2015-2016 Guidelines, the CMF will also make further clarifications to some aspects of its SRP, for which input from the Working Group was not deemed necessary. These include:

- Definition of syndication.
- Royalty model: the SRP will clarify that in all royalty models, the share retained by the distributor is calculated on gross sales and must be inclusive of all fees, commissions and expenses paid to distributors, sub-distributors, sales agents and local distributors.
- Cross-collaterization between seasons of a given series.

- Feature-length productions for theatrical release: the CMF recognizes the major differences between the theatrical and television markets, one of which being that the P&A expenses required to properly launch a project in theaters is often higher than the 10% allowed. In recent years and on limited occasions, the CMF has granted exceptions to the 10% cap for the theatrical release of feature-length projects. In order to better support the marketing efforts needed for a more robust campaign surrounding theatrical release – efforts that will also benefit the subsequent broadcast presentations – the CMF proposes to waive the 10% cap for producers and distributors for this type of production. However, CMF will publish a list of eligible expenses that will be allowed for the theatrical release of feature-length projects.

Other topics were also discussed but were not deemed sufficiently advanced for presentation to the Working Group, such as the treatment of format sales under the SRP. Given the limited number of CMF-funded programs that are subsequently sold as formats into foreign markets, the CMF will continue to treat these on a case-by-case basis until more market data can be gathered and analyzed.

1. Distributor fees/commissions

Foreign Markets

In the current SRP, Distributor fees on sales in foreign markets are the same (35%) regardless of the medium being sold. During pre-consultations, the feedback the CMF received is that this unique fee is not aligned with current market realties and fees for sales in foreign markets should be deducted at the same levels as Canadian fees (i.e., the fee percentage would be based on the medium).

The CMF is thus proposing to have the same set of fees, regardless of the territory where the sale is made (as illustrated in Figure 11 below).

Electronic Sell-Through or digital rental (“**EST”**)

In the current SRP, in addition to a 10% cap on expenses, Distributor fees for EST (i.e., iTunes, Amazon) rights are capped at 30% of gross revenues. Based on more recent distribution agreements viewed by the CMF and industry feedback, it appears that a revenue share model of 50/50 on gross revenues, rather than a fixed commission, is becoming more prevalent. The CMF proposes to adopt this revised approach (as illustrated in Figure 11) for a variety of reasons. First, the disparity between a 50/50 revenue share and the fixed commission and expenses (30% + 10%) is not substantial. Second, there would be less of an administration burden on the CMF as the Distributor’s 50% share would include all fees and expenses and there would no longer be a need to vet expenses to confirm their eligibility. Finally, under section 3.2.TV.5.3 of the Performance Envelope Guidelines, broadcasters are already allowed to use a 50/50 revenue share model for EST. This new approach would bring the Guidelines and SRP into further alignment.

Non-Theatrical

In the current SRP, fees for non-theatrical rights are capped at 50% of gross revenues, with the exception that distributors acquiring only non-theatrical rights without fees on any other media, are entitled to a 70% royalty. Based on feedback received by the CMF from relevant industry stakeholders, the existing 50% fee should be replaced by a 70% royalty to align with current market realities (as illustrated in Figure 11).

Figure 11 - Distributor Fees

Medium	Existing Distributor Fee	Proposed Distributor Fee
Television (conventional, pay)	30%	30%
Television (syndicated)	35%	35%
Theatrical	35%	35%
Home Video	30% (or 20% royalty payable to producer)	30% (or 20% royalty payable to producer)
Electronic Sell-Through	30%	50% royalty (payable to producer)
Free Internet broadcast/distribution	30%	30%
Paid Internet broadcast/distribution	30%	30%
Mobile/Wireless distribution	30%	30%
Foreign (regardless of medium)	35%	Based on medium distributed
Non-theatrical*	50%	70% royalty (payable to distributor)

*Non-theatrical includes airlines, military bases, hotels, hospitals, schools, museums, libraries, etc.

2. <u>Distribution expenses</u>

Expenses outside the 10% cap.

While there are currently only two types of expenses allowed outside the expense cap of 10% in the SRP (versioning and guild and union royalties and residuals), in an effort to align the SRP with current market realities, the CMF proposes allowing the following expenses to be added to the list of expenses that fall outside the 10% cap:

- Trademark registration
- Extension of Errors & Omissions Insurance
- Royalties to 3rd party rights holders for projects based on underlying works (i.e., books, plays).

3. <u>Retransmission rights</u>

Under the current SRP, the CMF recoups on television retransmission and music royalties. This involves a cumbersome process for producers who are responsible to collect and distribute retransmission and music royalties for the benefit of investors As the recoupment achieved through these royalties is marginal, the CMF, in view of simplification and supported by many stakeholders, recommends to stop recouping on television retransmission and music royalties.

4. <u>Cross-collaterization (between territories)</u>

Section 5. 1.3 of the SRP states that “Cross-collateralization between North American revenues and expenses with that of other territories is not allowed.” The feedback received by the CMF emphasized that international distributors are having a difficult time delineating what marketing costs were spent on North America vs. the rest of the world.

As the distribution model and industry standards are more firmly entrenched in the Canadian market, and that most Canadian sales are generally pre-sales required for production financing, in the interest of simplifying the administration of cross-collaterization and aligning the SRP with current market realties, the CMF proposes to narrow the defined territory of allowable cross-collaterization from North America to Canada, amending the rule as follows: “Cross-collateralization between *Canadian* revenues and expenses with that of other territories is not allowed.”

The CMF does not expect this change to materially alter its recoupment as the maximum potential impact would be that an increased number of projects could potentially reach the 10% cap on distribution expenses. The CMF is currently gathering data to better assess the situation.

5. **Distributor Audits**

Under the current SRP, paragraph 1.7 of Section 5 states that the CMF's option to audit a Distributor's accounts on a given production is not restricted by any time limitations. Further, paragraph 1.8 of Section 5 states that a producer's right to contest revenue reports is not subject to any limitations.

Based on feedback from industry stakeholders and the CMF's own internal evaluation of its audit rights and procedures, in the interest of simplifying the SRP and aligning it with current market realties, and since the CMF has introduced in 2012-2013 a policy through which it stops recouping after 7 years following the submission of 1st exploitation report, the CMF proposes to qualify the following paragraphs under Section 5 of the SRP:

The CMF's right to audit under paragraph 1.7 will be subject to a limitation of 10 years (7 years following the submission of first exploitation report plus 3 years thereafter). The producer's right would follow the same approach.

6. **Profit Participation**

Under the recoupment structure in the current SRP, once the CMF's initial investment is fully recouped, the CMF forfeits 50% of its share of revenues at the profit stage for the benefit of the producer. This policy, coupled with the fact that the CMF stops recouping its investment and participating in profits after 7 years following the submission of the first exploitation report for a project (a change introduced in 2012-2013), makes it exceedingly difficult for the CMF to see any profit in projects in which it has an equity stake. In fact, since 1996-1997, the CMF has received only $1,596,343 in profits from 15 projects.

Therefore, the CMF proposes to eliminate the foregoing of 50% profits to the Producer and to participate in profits at the same level of its recoupment share, on a *pro rata pari passu* basis with all other investors.

7. **Recoupment Position against broadcast licenses**

Under the current Guidelines, projects must have Eligible License Fees that meet License Fee Thresholds (**"LFT"**) in order to trigger CMF funding. A broadcaster may acquire additional rights as long as those rights are not part of the rights being acquired in exchange for the Eligible License Fee. Thus, a broadcaster may, in addition to providing an Eligible License Fee, invest in a production and be entitled to recoupment. For ease of reference, Figure 12 below lists equity investment by broadcasters from 2010-2011 until 2013-2014. The figures show that broadcaster investment in CMF-funded projects is limited, with the exception of French language Drama projects.

Figure 12 - Equity Investment by broadcasters in television productions

English Drama	2010-2011	2011-2012	2012-2013	2013-2014
# of projects	6	4	6	5
Average $K of equity	1663	1562	786	982
Average % of budget	13.1	7.2	10.2	5.6
English C & Y				
# of projects	None	1	1	3
Average $K of equity	N/A	N/A	N/A	155
Average % of budget	N/A	N/A	N/A	12.9
English Doc #	None	1	None	None
English VAPA #	None	None	None	1
French Drama				
# of projects	10	11	11	9
Average $K of equity	141	145	106	146
Average % of budget	3.4	3.1	2.3	3.0
French VAPA				
# of projects	None	1	2	5
Average $K of equity	N/A	N/A	N/A	179
Average % of budget	N/A	N/A	N/A	8.4
French C & Y #	None	None	2	None
French Doc #	None	None	2	None

* Note: All convergent televsion production (with or without CMF equity)

During the pre-consultation process, several broadcasters stated their view that, as they are making substantial contributions to projects via cash (license fees) or 'in-kind' (creative collaboration, brand development, marketing) and therefore sharing the initial risk on projects, these contributions should be recognized and their Eligible License Fees should (in whole or in part) be considered recoupable.

Other stakeholders however suggested that, if license fees are to be recognized as recoupable amounts, it should be for amounts that exceed a certain threshold (e.g. above the CMF LFT or over a certain % above the LFT).

Stated otherwise, if licenses that meet current LFTs were to be deemed recoupable, this would automatically dilute the recoupment position of all investors, including the CMF.

Accordingly, these stakeholders consider that before the broadcasters' proposal can be contemplated, the CMF would need to conduct a comprehensive review of its current LFTs, the vast majority of which have not been reviewed since the introduction of Performance Envelopes[2], as well as the treatment of Other Rights (defined in section 3.2.TV.5.3 of the Guidelines).

As this issue is difficult to disassociate from Terms of Trade Agreements, the CMF is of the view that it may be preferable to continue to monitor this issue in view of potential changes in 2016-2017.

[2] Some LFTs were eliminated in 2014-2015 in an exercise to simplify the CMF Guidelines.

8. **Related-party Distributor Advances**

In the current SRP (Model B), Eligible Distributors receive a sole first Tier recoupment position. As shown by the statistics below in Figure 13 (and the more detailed results presented in Appendix C), companies with related distribution arms are able to offer significant advances to productions instead of the same corporation's production arm contributing a producer's investment – particularly in English Drama and English C&Y. As a result, these companies recoup in first position, making it increasingly difficult for other equity investors, including the CMF, to recoup as a large share of the revenues goes toward the reimbursement of the distribution advance. This is particularly challenging for the CMF given the seven-year limit on its recoupment position.

Figure 13 - Overall - Equity recipients only

2013-2014			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	512,052	7%	21
3rd party distributors	25,900	1%	7
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	1,473,344	11%	27
3rd party distributors	212,075	7%	15

On the other hand, the CMF strives to leverage its funding and as a result would be reluctant to enact measures which could result in reduced distribution advances for the projects it supports.

The CMF is therefore seeking feedback from stakeholders on potential options to ensuring the CMF's SRP continues to remain fair, efficient and transparent for all participating parties.

For example, other funding agencies currently limit the amount a related-party distributor can recoup alone on the first tier to 50% of the advance. The other 50% is treated with other investments on the subsequent tiers as per their applicable recoupment models.

Another option could be that related-party distribution advances up to a maximum percentage of the budget (say 10%) would be allowed to be recouped on the first tier and that the portion over this threshold would fall to subsequent tiers and be recouped as per the applicable recoupment model.

9. Treatment of tax credits

The current SRP allows for a preferential recoupment position for producers based on their investments and their provincial tax credits. This policy was first developed in the nineties by SODEC (which invests in feature films and documentaries) with the objective of assisting in capitalizing independent production companies. The policy was then mirrored at the CTF in 1997-1998 for the French market only, and then extended to the English market in 2004-2005, in order to treat projects from both markets in an equitable way.

During pre-consultations, and in previous working group discussions, certain stakeholders have stated that this preferential recoupment position of the provincial tax credit prevents them from investing in projects in which the CMF is also an equity investor.

Specifically, broadcasters stated that they are more likely to invest in projects where the CMF has no equity participation because they are not bound by the SRP and they can negotiate deals that are more advantageous. They argue that the preferential recoupment position for tax credits is problematic because it prevents other investors to recoup their contribution in a timely manner. A new approach to tax credit recoupment would encourage broadcasters and other potential investors to invest in projects, since they would have better and faster access to revenues.

Other private and public funding agencies tend to agree with this view. They also negotiate different recoupment structures when the CMF is not involved as an investor in a project, and some see significant ROI, while others are struggling to see any return.

Producers, on the other hand, argue that the recoupment of tax credits is one of the only measures that allows them to capitalize their companies, thus enabling them to invest in development where their risk is higher and where the financing is not always available.

As mentioned in the Introduction and background section above, the treatment of tax credits is currently the object of a dispute in the TOT agreement between the CMPA and certain private broadcasters. As such, the CMF understands that these parties may not wish to comment on this issue at this time, and the CMF by no means wishes to influence the outcome of such dispute by discussing the matter at the Working Group.

For greater clarity, the CMF only wishes to provide other stakeholders with an opportunity to discuss the potential future scenarios that were raised during pre-consultations, which the CMF may or may not choose to implement in the future.

Based on the above, the CMF offers the following option for discussion:

- Model 1: All investors share the second tier (or first tier when there is no advance from an eligible distributor) on a *pro rata pari passu* basis, including producer investments and 50% of the provincial tax credit. The remaining 50% of provincial tax credits would be recouped on the third tier.

- Model 2: The second tier (or first tier when there is no advance from an eligible distributor) would be reserved for all 3rd party investors (on a pro rate pari passu basis), excluding the producer investment and the provincial tax credit, which would be recouped on the third tier once other investors have recouped their entire investment. An alternative to this model could include in the second tier the producer investment, but not the provincial tax credit.

Both models would encourage greater investments by broadcasters, independent production funds and provincial agencies, but would be less favourable for producers, although they could still fully recoup their tax credits before the profit stage.

- Model 3 (was proposed during last year's Working Group on funding mechanisms, but not fully debated): The first tier would be calculated on the total contribution of all third party investors excluding producer investments and the provincial and federal tax credits. The producer would keep 50% of the tier (whether or not the financial structure includes producer investment and provincial tax credits), and third party investors would share the other 50% of the tier on a pro rata pari passu basis. The producer would be responsible for reimbursing from his 50% share all distribution advances, deferrals and any other royalties due to other parties (unions, guilds, etc.)

  The CMF, however, does not recommend the adoption of this model as it does not align with market practices, particularly with respect to the recoupment of distribution advances, and would likely have a detrimental effect on producer's ability to secure such advances.

APPENDIX A – CMF funding

Figure 1: Total CMF Television Production Assistance, 2003-2004 to 2013-2014, $M

Signature Year	Licence Fee Top-up		Equity		Total Production Assistance
2003-2004	$122.1	56%	$96.4	44%	$218.5
2004-2005	$146.1	63%	$87.1	37%	$233.2
2005-2006	$162.1	65%	$87.4	35%	$249.5
2006-2007	$172.0	69%	$78.0	31%	$250.0
2007-2008	$169.9	70%	$72.2	30%	$242.1
2008-2009	$188.4	69%	$86.3	31%	$274.7
2009-2010	$212.1	69%	$94.0	31%	$306.1
2010-2011	$204.2	70%	$86.2	30%	$290.4
2011-2012	$216.3	71%	$86.5	29%	$302.8
2012-2013	$226.7	76%	$73.1	24%	$299.8
2013-2014	$208.4	74%	$72.2	26%	$280.6
Totals	**$2,028.3**	**69%**	**$919.4**	**31%**	**$2,947.7**

Note: excludes Diverse Language funding

Figure 2: Recoupment Revenue by the year of receipt
$M

Fiscal Year	Convergent	Experimental	Total
2006-2007	7.4	0.0	7.4
2007-2008	7.6	0.0	7.6
2008-2009	5.3	0.0	5.3
2009-2010	5.3	0.0	5.3
2010-2011	5.8	0.0	5.8
2011-2012	5.9	0.0	5.9
2012-2013	5.2	0.7	5.9
2013-2014	6.7	2.0	8.7
2014-2015*	3.5	0.5	4.0
Total	52.7	3.3	56.0

* As at September 30, 2014

APPENDIX A – CMF funding

Figure 3: Number of funded applications with equity

		2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
English												
Drama	#	29	41	33	41	30	39	40	27	25	22	12
	%	78	91	92	72	70	68	80	64	63	54	35
Children's & Youth	#	9	16	15	17	14	23	22	15	21	17	17
	%	43	41	33	41	34	52	51	37	48	40	35
Docu-mentary	#	87	99	82	78	80	74	80	83	77	63	65
	%	58	65	53	48	58	54	62	69	54	49	53
Variety & Performing Arts	#	7	11	13	7	12	9	12	9	9	14	11
	%	58	55	68	39	75	75	60	69	60	82	69
Total - EN	#	132	167	143	143	136	145	154	134	132	116	105
	%	60	65	56	51	57	58	63	62	55	51	47
French												
Drama	#	16	19	25	24	19	22	25	22	19	19	19
	%	80	70	76	75	63	71	71	69	68	70	61
Children's & Youth	#	9	15	17	19	18	20	18	23	22	24	22
	%	45	63	81	73	69	77	69	77	67	67	63
Docu-mentary	#	43	81	86	89	102	94	100	89	96	91	94
	%	61	70	69	75	83	79	80	77	76	81	75
Variety & Performing Arts	#	9	7	5	8	9	16	7	5	7	9	1
	%	56	22	20	22	28	48	23	14	15	22	3
Total - FR	#	77	122	133	140	148	152	150	139	144	143	136
	%	61	62	65	65	70	73	69	65	61	66	62
Grand Total	#	209	289	276	283	284	297	304	273	276	259	241
	%	60	64	60	57	63	65	66	63	58	58	54

APPENDIX A – CMF funding

Figure 4: CMF Production Assistance, Equity Investments by Genre, English-language Market

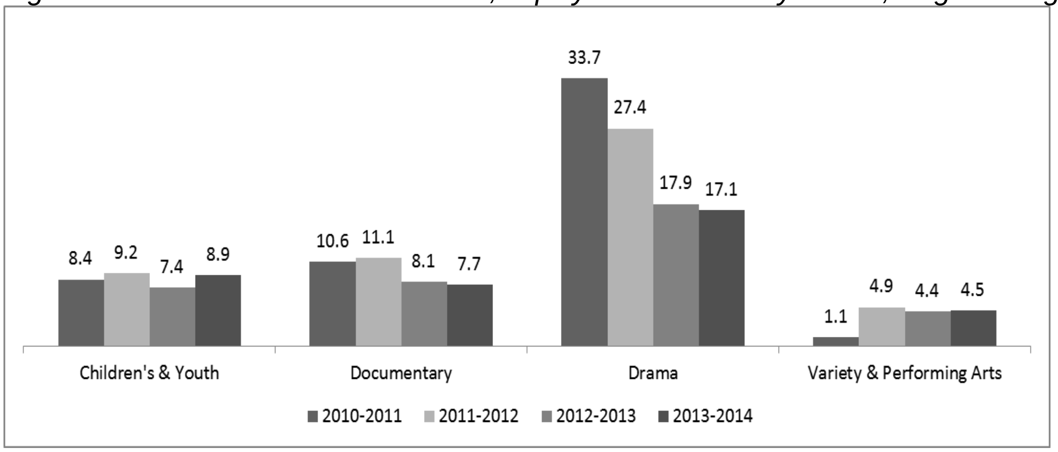


Figure 5: CMF Production Assistance, Equity Investments by Genre, French-language Market

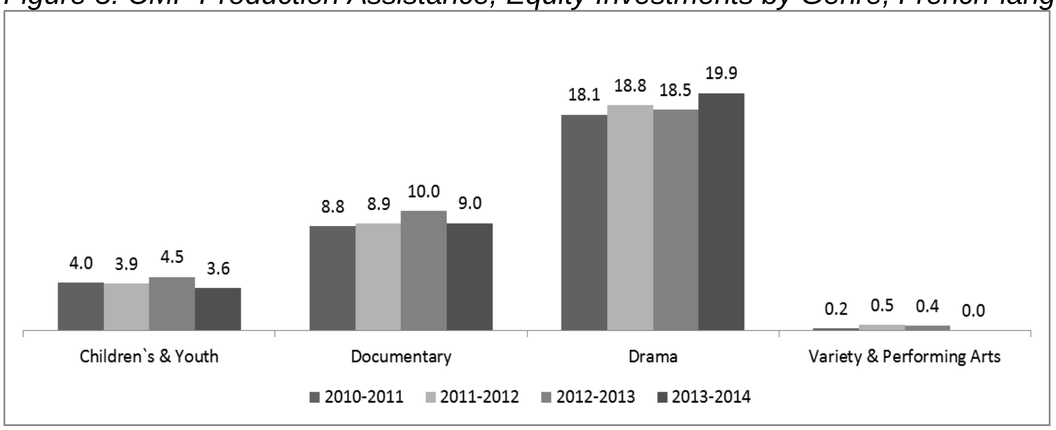


Figure 6: Average equity per project

Equity % of budget	2010-2011	2011-2012	2012-2013	2013-2014	Trends
English					
Drama	8.4	5.5	3.8	4.0	
Children's & Youth	5.0	5.8	4.7	5.0	
Documentary	9.3	8.8	6.4	5.9	
Variety & Performing Arts	9.2	14.3	19.7	19.3	
French					
Drama	10.9	12.0	11.7	12.0	
Children's & Youth	7.5	6.1	6.8	5.9	
Documentary	14.1	13.5	15.7	13.4	
Variety & Performing Arts	0.3	0.7	0.7	0.0	

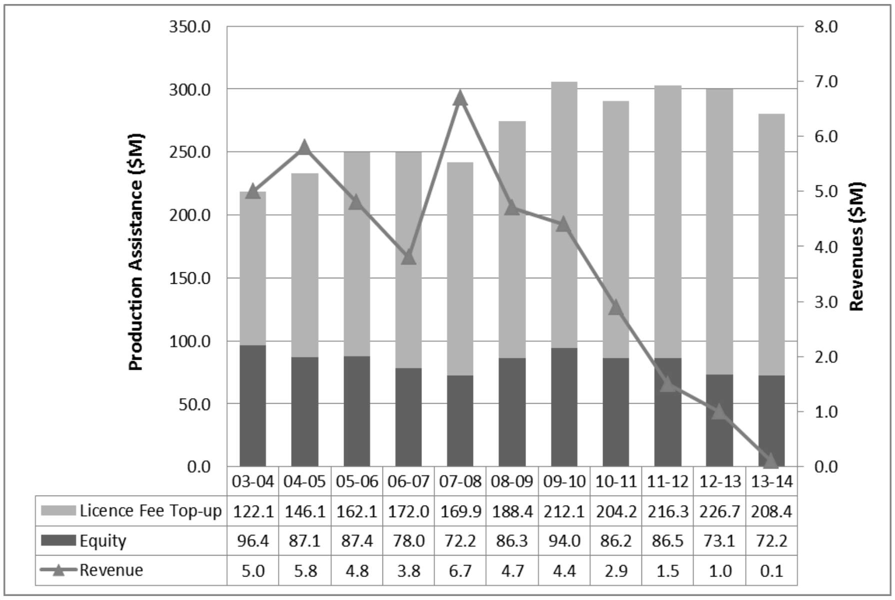
APPENDIX A – CMF funding

Figure 7: Equity trends in English Drama

	2010-2011	2011-2012	2012-2013	2013-2014	Trends
Equity $M	**32.3**	**27.6**	**18.0**	**17.1**	
% of total TV funding	29%	25%	15%	16%	
Average % of budgets	8.4	5.5	3.8	4.0	
# of projects with equity	27	25	22	12	
% of all TV projects	64%	63%	54%	35%	
Average total CMF % of budgets	29%	23%	25%	24%	
Total budgets $M	384.4	497.1	474.4	430.7	
# of projects with Incentive funds	5	8	16	8	
Incentive funds $M	3.4	3.7	7.7	4.1	

APPENDIX B – CMF Recoupment

Figure 8: Total CMF Television Production Assistance and Revenue: 2003-2004 to 2013-2014



	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
Licence Fee Top-up	122.1	146.1	162.1	172.0	169.9	188.4	212.1	204.2	216.3	226.7	208.4
Equity	96.4	87.1	87.4	78.0	72.2	86.3	94.0	86.2	86.5	73.1	72.2
Revenue	5.0	5.8	4.8	3.8	6.7	4.7	4.4	2.9	1.5	1.0	0.1

Updated with revenue data at September 30, 2014
Note 1: excludes Diverse Language funding.
Note 2: Recoupment data is presented based on the year in which projects were funded, as shown in Figure 8 above, the downwards trend is at least in part attributable to the fact that projects funded in recent years, may not have yet made it to the market.

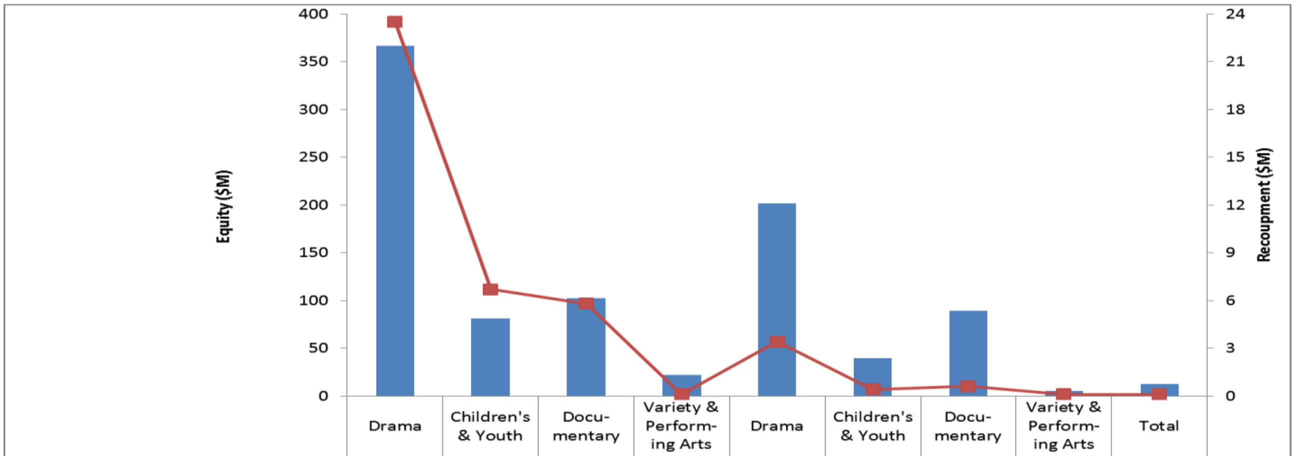
Figure 9: Overview of Equity Investments and Recoupment by Language Market and Genre, 2003-2004 to 2013-2014

Language Market	Genre	CMF Equity Investments ($M)	Cumulative Amount Recouped ($M)	Return on Investment* %
English-Language Market	Drama	366.3	23.5	6.4
	Children's & Youth	81.4	6.7	8.2
	Documentary	102.0	5.8	5.7
	Variety & Performing Arts	22.1	0.1	0.5
	Sub-Total	571.8	36.1	6.3
French-Language Market	Drama	201.4	3.4	1.7
	Children's & Youth	39.6	0.4	1.0
	Documentary	89.4	0.6	0.7
	Variety & Performing Arts	4.8	0.1	2.1
	Sub-Total	335.2	4.5	1.3
Aboriginal Languages Market	**Sub-Total**	12.4	0.1	0.8
Total		**919.4**	**40.7**	**4.4**

* Revenues as a percentage of equity investments

APPENDIX B – CMF Recoupment

Figure 10: Revenues Recouped by Language Market and Genre, in CMF Convergent Stream, 2003-2004 to 2013-2014



	Drama	Children's & Youth	Docu-mentary	Variety & Perform-ing Arts	Drama	Children's & Youth	Docu-mentary	Variety & Perform-ing Arts	Total
	English				French				Aboriginal
CMF Equity Investments	366.3	81.4	102.0	22.1	201.4	39.6	89.4	4.8	12.4
Cumulative Amount Recouped	23.5	6.7	5.8	0.1	3.4	0.4	0.6	0.1	0.1

APPENDIX C – Distribution Advances

Note: only television projects with advances or minimum guarantees are shown.

Related parties were determined by Telefilm's company linkages.

Figure 13 - Overall - Equity recipients only

2013-2014			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	512,052	7%	21
3rd party distributors	25,900	1%	7
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	1,473,344	11%	27
3rd party distributors	212,075	7%	15

Figure 14 - English C & Y

2013-2014			
	High $ of Distribution Advances	High % of budget	# of projects
Related distributors	3,860,000	25%	2
3rd party distributors	N/A	N/A	0
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	1,086,823	19%	5
3rd party distributors	162,481	6%	1
English Doc			
2013-2014			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	102,660	6%	11
3rd party distributors	32,500	4%	2
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	40,545	3%	6
3rd party distributors	168,098	8%	8
1 English VAPA in 13-14 and 0 in 12-13			

APPENDIX C – Distribution Advances

Figure 15 - Equity recipients only – English Drama

2013-2014			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	1,319,933	12%	4
3rd party distributors	28,151	0%	2
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	2,807,203	14%	12
3rd party distributors	413,468	7%	4

Figure 16 - Equity recipients only – French Drama

2013-2014			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	100,000	1%	1
3rd party distributors	20,000	1%	3
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	295,689	3%	1
3rd party distributors	10,000	0%	2

Figure 17 - French C & Y

2013-2014			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	185,318	3%	2
3rd party distributors	N/A	N/A	0
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	55,392	1%	2
3rd party distributors	N/A	N/A	0
0 French doc in 13-14 and 1 in 12-13			
0 French VAPA in both years			

APPENDIX C – Distribution Advances

Figure 18 - Overall

2013-2014			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	1,244,826	13%	56
3rd party distributors	518,376	8%	38
2012-2013			
	Average $ of Distribution Advances	Average % of budget	# of projects
Related distributors	1,470,269	14%	63
3rd party distributors	624,209	9%	33

APPENDIX D – CMF Strategic Objectives

1. Support the creation of Canadian content for all digital audiovisual platforms.
2. Leverage funding by rewarding those who make and those who distribute successful content.
3. Foster industry innovation.
4. Ensure diversity of voices from a regional, language and point of view perspective.
5. Guide Canadian content toward a competitive global digital environment.
6. Create access and demand for, and promote Canadian content.
7. Broaden knowledge and interest in the success of Canadian content, its impact and Canada's positioning as a co-production partner through targeted national and international public affairs initiatives.
8. Ensure the CMF's processes and operations meet the highest standards and are kept current and optimal.

APPENDIX E – Standard Recoupment Policy

CHAPTER 6

STANDARD RECOUPMENT POLICY – CONVERGENT STREAM

IN EFFECT AS OF APRIL 1, 2014

This policy applies to the CMF's equity investments in television components of projects in the Convergent Stream. The policy relating to the Experimental Stream is available in a separate document on the CMF's

STANDARD RECOUPMENT POLICY

Producers receiving equity financing (i.e., that portion of CMF participation in excess of the licence fee top-up) must provide to the CMF 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 CMF will require similar treatment (pro rata and pari passu).

The Standard Recoupment Policy was developed to eliminate negotiation of recoupment deals between the CMF and Producers, to save time, and to provide producers with predictability in the form of pre-approved recoupment structures. The CMF recognizes that in the case of audiovisual treaty co-productions financial structures, distribution arrangements, marketability and other elements vary considerably. The CMF 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 CMF 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.

The mandate and objectives of the CMF include maximizing the CMF's return on investment when it is an equity investor. The CMF will apply the Standard Recoupment Policy in an adaptable and purposive manner with this objective in mind. In particular, the CMF may:

- Reject a distribution arrangement where it determines that the entity to do the distribution is unable, or likely will not, exploit the rights in an effective and/or timely manner;
- Require that a distribution arrangement includes and expresses all terms and conditions necessary for the CMF to meaningfully assess the arrangement—this may include requiring that distribution arrangements be provided for in a separate legal agreement; and/or
- Take different approaches to distribution of traditional distribution rights (e.g. television rights for non- Canadian markets, theatrical, non-theatrical, DVD/Blu-ray, and traditional ancillary rights such as merchandising and music publishing) and digital distribution rights (e.g. electronic sell-through, Internet distribution, mobile/wireless distribution, and digital ancillary rights such as interactive rights).

CMF-APPROVED RECOUPMENT MODELS

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

CMF – English and French-Language Productions
Territory: Worldwide

	PRODUCER (PROVINCIAL TAX CREDITS)	PRODUCER (FEDERAL TAX CREDITS)	CANADA MEDIA FUND	OTHER FINANCIAL PARTICIPANTS*
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%	% = CMF'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	% =	balance of federal tax credit	balance of CMF Equity	Balance of Other Financial Participants' participation

* "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 to this document) is briefly defined as world-wide gross revenue received from the sale of the CMF project to end users less:

- distribution fees/commissions;
- distribution expenses to a maximum of 10%;

Eligible Distributors

Eligible Distributors are given a sole first Tier recoupment position.

CMF 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.

CMF – English and French Language Productions
Territory: Worldwide

	ELIGIBLE DISTRIBUTOR	PRODUCER (TAX CREDITS)	CANADA MEDIA FUND	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	% = CMF'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 CMF Equity	balance of Other Financial Participants' participation (except tax credits)
Tier 4	% = 0	100% = federal tax credits	% = 0	% = 0

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

The following applies to all CMF recoupment**, whether under Model A, Model B, or an alternative model**:

- The CMF will stop recouping its investments and participating in profits after 7 years from the date of the submission of the first exploitation report for the project. However, where revenues are generated by the project pursuant to a syndication arrangement, the CMF may, at its sole discretion, elect to continue to recoup and/or participate in profits beyond 7 years.

- The CMF 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 CMF has recouped.

- The CMF 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-case basis.

- Profit Participation: The CMF will continue to receive a share of Net Distribution Revenue after full recoupment by all participants in accordance with the final recoupment schedule. The CMF will receive an amount equivalent to the CMF’s equity participation as a percentage of total equity participation in the production multiplied by Net Distribution Revenue. The CMF’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 CMF 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 CMF’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.

An agency, Crown corporation, broadcaster, or other entity which is financed primarily through provincial or federal public funding may be recognized by the CMF as an Eligible Distributor (such as the National Film Board of Canada) 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.

2. BROADCASTER-AFFILIATED ELIGIBLE DISTRIBUTORS

An Eligible Distributor affiliated to a broadcaster (whether public or private sector) may distribute a project in which CMF 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 CMF will use the definition of "affiliate" set out in the Canada Business Corporations Act.

SAFEGUARDS:

The negotiation process for traditional distribution rights (e.g. television rights for non-Canadian markets, theatrical, non-theatrical, DVD/Blu-ray, traditional ancillary rights, etc.) 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 CMF 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 CMF determines that a broadcaster-affiliated distribution company has used undue leverage or coercion in the negotiation processes described above, the CMF at its discretion may elect to disqualify the distribution company as an Eligible Distributor for two years. The CMF 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 the following percentages of gross revenues:

- Television (conventional, pay) 30%
- Television (syndicated) 35%
- Theatrical 35%
- Home video (rental or sell-through) 30% (or 20% royalty payable to producer)
- Electronic sell-through or digital rental 30%
- Free Internet broadcast/distribution 30%
- Paid Internet broadcast/distribution 30%
- Mobile/wireless distribution 30%

- Foreign (regardless of medium) 35%
- Non-theatrical 50%
  - “Non-theatrical” includes airlines, military bases, hotels, hospitals, schools, museums, libraries, etc. For distributors acquiring only non-theatrical rights 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.

In exceptional situations, or as described at section 3.2.TV.5.3(1)(a) of the guidelines for the applicable production Program (i.e. the 50/50 revenue share), the CMF will evaluate requests for royalties on Gross Revenues as opposed to these Standard Terms and Conditions.

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

The CMF 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 sales of ancillary rights (e.g. merchandising, music publishing, format sales) 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 (ie.g., the Canadian Screen Awards), 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 CMF or elsewhere.

Expenses for sales of ancillary rights (eg. merchandising, music publishing, format sales) and digital rights are subject to negotiation on a case-by-case basis.

Non-eligible Distribution Expenses are any costs (other than costs for sales of ancillary and digital rights) not specifically listed above and include travel/accommodation/living expenses for producers, distributors and their employees.

The CMF 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. 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 CMF's share of television retransmission and music (i.e., SOCAN) royalties must be paid directly to the CMF 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. "Title" means any project, program, series or seasons (of a series). For certainty, cross-collateralization between seasons of a series is not permitted.

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;

B. the allocation of revenues and expenses among the productions sold as a package will be fair and reasonable; and

C. distribution reports (via notes) disclose any package sales and the allocation of the revenues and expenses to the production.

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

1.8 No limitation may be placed on the producer's right to contest revenue reports.

1.9 The producer should also include within the production budget sufficient resources to acquire exploitation rights 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 CMF. 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.

1.10 Revenues must be reported to Telefilm Canada on behalf of the CMF twice a year.

1.11 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.

1.12 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.

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