CACE
CANADIAN ASSOCIATION OF CONTENT EXPORTERS

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ASSOCIATION CANADIENNE DES EXPORTATEURS DE CONTENU

Submission to the Government of Canada's review of Telecommunications and Broadcasting Acts

JANUARY 11, 2019

The Canadian Association of Content Exporters (CACE-ACEC) welcomes the opportunity to provide input into the Government of Canada's review of the Telecommunications and Broadcasting Acts.

The Canadian Association of Content Exporters / l'Association Canadienne des Exportateurs de Contenu (CACE-ACEC) is a trade association that represents Canadian-based, global television and digital content distribution companies who are responsible for the export of the majority of audio-visual content created by Canadian independent producers. We are experts in the field of exporting Canadian content, with decades of experience in financing, marketing and selling productions created here at home, to buyers all over the world. We have endeavored here to use our collective knowledge base to make specific recommendations that we believe will improve the entire Canadian production/export ecosystem.

Our members include 9 Story Media Group, Blue Ant Media, Cineflix Media, Corus Entertainment, DHX Media, Incendo Media, Distribution360, Entertainment One (eOne) and its Quebec subsidiary Les Films Séville. CACE-ACEC member companies operate internationally with dedicated staff in major markets around the world.

CACE-ACEC welcomes the government's commitment and investment in engagement with stakeholders in anticipation of the needed modernization of our legislative framework. There are several priority areas outlined in the review that are of particular interest to CACE. Issues around *Competition, Innovation and Affordability* and the legislative changes warranted to promote these more effectively (Q2.1); the changing concept of broadcasting and how legislation can promote access to voices on all platforms (Q8.1); the need for evolving objectives under the broadcast act to ensure competitiveness in the more open and global environment (Q9.1) and the development of a modern legislative context (Q9.3).

Additionally, ensuring global online players play a role in financially supporting the creation, production and distribution of Canadian content (Q10.1) is an important piece in an evolved and modernized framework that will require new approaches and legislative tools (Q10.3). We believe other statements by stakeholders, such as the CMPA, have covered these topics comprehensively, and accordingly have not made this a focus of our submission.

CACE-ACEC would like to acknowledge John Barrack's policy paper Taking Canada to the World: Toward a National Export Strategy for Canadian Television and Digital Media Content which formed much of the foundation for this submission.

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Overview

The Opportunity

To create a studio system that elevates the position of Canadian content in the global market, builds a sustainable domestic industry, and grows and retains Canadian creative talent through public and private partnerships and regulatory incentives that maximize ROI for the public funds already at work.

Canadian distributors represent material incremental investment dollars sitting on the sidelines of the current regulatory framework. In this submission, CACE will propose a series of strategies that will put this money to work through public private partnerships that best leverage the dollars Canadians are already directing toward the broadcast and cultural sectors; and maximize return on investment for all stakeholders, including Canadian audiences.

The objectives of CACE's proposals are:

- The creation of the highest quality exportable content;
- That is sold for the highest possible price in the most territories and media;
- Sales of which are controlled by Canadian companies;
- Companies which return the revenue from this content back into Canada;
- Revenue is reinvested in Canada to the betterment of the Canadian content creation ecosystem.

To do this more effectively, Canadian distributors need to work collaboratively with producers in Canada, and have a seat at the regulatory table with other stakeholders. For reasons to be outlined in this submission, CACE proposes the addition of federal incentives for Canadian producers to work with Canadian distributors at earlier stages. This will stem the current leakage of public investment for the benefit of foreign studios and OTT players. It will allow us to collectively elevate the content produced in Canada to make it even more exportable. It will increase the retention of Canadian creative talent north of the border. And our reinvestment of profit will create jobs for Canadians.

Our distributors play a vital role in the financing and creation of Canadian television and digital media programs. Without the direct investment to content that is made by our collective companies, many Canadian programs would not get made. Beyond this investment, our companies have built corporate capacity and scale by investing in human resources, development of expertise, development of international relationships and networks, and global brand marketing, all of which has established a solid export infrastructure for Canadian content.

The current policy measures and support programs have not adapted to new global and domestic market realities. Due to consolidation, there are fewer broadcasters, resulting in fewer commissions for Canadian producers. And, as production budgets grow, Canadian broadcaster licence fees are declining as a percentage of the total project financing resulting in good projects failing due to a lack of funding.

This is why Canadian-based global distribution companies play an increasingly critical role in the success of a project: by awarding distribution advances to producers, the distributor provides critical production financing that allows a show to get off the ground. Our member companies are key partners in production; they act as studios that steer creative and business decision-making. We know that there are potentially great Canadian shows that are not going forward due to a lack of resources and outmoded support models in our current content creation ecosystem.

Accordingly, CACE-ACEC is proposing new measures that recognize the central role played by Canadian distribution companies of scale in this ecosystem; proposals that will leverage their commitment of private dollars through new incentive programs and provide the best opportunity for Canadian content creators to be true contenders on the world stage.

The new policy mechanisms we propose below will result in our global distributors investing more risk capital by incentivizing Canadian producers to engage with them much earlier in the creative process. This will lead to the creation of the highest quality and most discoverable content possible, and as such the most exportable. At the same time, these new mechanisms will enable new shows to be made that might not otherwise be financed under our present system.

Our proposals better match private financing brought by Canadian-based global distribution companies with public resources so both of these outcomes can be achieved.

Our Recommendations

CACE-ACEC has three complementary proposals that will encourage our distributors to take even greater financial and creative risks in partnership with Canadian independent producers:

1. The first proposal contemplates the creation of a Distribution Advance Top-Up Fund, that will match private investment with public resources.
2. The second proposal suggests two ways to enhance access to, and the value of, the Canadian Film or Video Production Tax Credit received by the producer in circumstances where a Canadian-based global distribution company is attached prior to the commencement of principal photography.
3. The third proposal would see modifications to the Canadian Media Fund, creating a Distributors' Matching Funds Envelope which would be triggered by investment by Canadian distributors.

Having strong forward-looking policies that ensure Canadian production and distribution companies remain at the heart of the content value chain allows

revenue earned through the export of Canadian cultural products to be returned to Canadians and reinvested in Canada. Our members have the capacity and drive to deliver these outcomes and place Canada at the forefront of the international content industry.

The Role of the Canadian-Based Global Distributor

The role of the Canadian-based global distribution company is often misunderstood. Distributors are not mere sales agents. In fact, Canadian-based distribution companies directly invest in Canadian productions by paying independent production companies *distribution advances* that form an essential piece of the production's financing, while at the same time playing a key role in the creative development of a program, which enhances its exportability. This is an investment of capital, time, energy and market intelligence made because there certainly is an expectation of a return or, at the very least, risk mitigation, but neither is tangible.

More specifically, a Canadian-based global distribution company's participation in a production unlocks economic value, attracts other investment, and establishes the financing necessary for productions to be developed, shot, and brought to market, thereby employing more Canadians in the cultural sector. This is the return, but to *all* stakeholders.

To better understand the role of the distributor, it is often helpful to look at the value chain for the financing and sale of the television programs.

The production of a television program is a lengthy process involving producers, broadcasters, and distributors. Traditionally, Canadian broadcasters have been the first sale the producer makes through which the broadcaster acquires the first right to broadcast in Canada. The license fees paid by the broadcaster contribute to the production financing, however, increasingly the license fees are insufficient to complete the financing of a production. A Canadian broadcast license fee covers only a portion of the production budget; producers seek the balance of the financing from public funding sources and distribution advances. This is where the distributor comes in. Apart from pre-sales (made before the start of principal photography), sales may also be made at the stage when the production is completed.

CMPA's May 2017 study referenced below provides an excellent overview of the value chain for value programming:

The Value Chain for Television Programs: Financing and Sales[1]

ACTIVITIES	FINANCING
Development	
Script/concept development, acquisition of rights to material, search for creative team.	Pre-financing - through investments by producers and distributors. Possibility of public funding or television license / often conditioned on territorial exclusivity.
Pre-production financing/financing and pre-sales	
Final script, casting, crew hiring, sets construction, transportation, preparation of shooting, budgeting, business planning, rights clearance, etc.	Pre-selling of the program/series - to primary commissioning broadcaster(s) or digital platforms. Pre-selling of secondary window licenses.
Production	
Production design and organization. Shooting and generation of publicity material.	May be supervised by primary licensees/ distributor.
Post-Production	
Editing, special effects, generation of marketing and publicity material.	Possibility to consult licensees/ distributor.
International sales and licensing	
Finished program/series is delivered to first window licensees. Distributor markets the completed program/series at international television markets.	Selling the unsold distribution, broadcast and or digital rights to the completed program/series.
First Window Exploitation	
First window exploitation of the program/series on payTV, cable, or digital platforms, usually on a territorial basis (digital may be world-wide). Development of format bible.	Sales of unsold rights to broadcasters/digital platforms or distributors in different territories in the world. Sales of new seasons. Sales of format rights.
Additional Seasons, Subsequent Windows and Syndication	
Exploitation of original program/series in subsequent windows and syndication. Exploitation of new seasons. Management of format rights.	Sales of additional seasons. Net revenues from sales or rental pass back to the financers and producers according to revenue shares.

From the long-term investment standpoint of Canadian-based global distribution companies, distribution rights are more valuable than copyright *per se*. It is for these reasons that our member companies are prepared to make distribution advance payments to producers against the exploitation of those rights, including pre-sales.

A distribution advance is risk capital that is critical to financing production and augments, or increasingly, takes the place of the Canadian broadcast license fee paid to the producer. The upfront payment of a distribution advance gives the distributor the right to

[1] Op. cit., page 11

sell/license the producer's content in various media and territories worldwide and provides the producer with a capital commitment that gets the production up and running while leveraging other investments and support mechanisms such as tax credits.

Beyond the financial investment in Canadian production through a distribution advance, Canadian-based global distribution companies also invest in sales infrastructure, marketing, publicity and human resources in Canada and around the world to such a significant extent that they are experts in knowing what content the marketplace is looking for. Canadian-based global distribution companies are mature businesses that compete with American and European large-scale, vertically integrated conglomerates often, as well as other online media players such as Netflix and Amazon.

As a result, Canadian distributors provide the producer with invaluable advice and guidance on the production so as to maximize export potential.

The Benefits of Early Stage Involvement by Canadian-Based Global Distribution Companies in the Production Process

Encouraging independent producers to form partnerships with Canadian-based global distribution companies early in the creative process will foster content that will appeal to the largest possible international audience and in turn create the greatest return on investment.

Historically and all too often, Canadian-based global distribution companies have been brought into the conversation late stage or even after the conclusion of the creative process. This belated inclusion of Canadian distributors initially made some sense as the producer often worked with a commissioning Canadian broadcaster who was putting up a substantial broadcast license fee that would trigger a variety of other forms of funding. In those circumstances, Canadian independent producers were fortunate to fully finance a program out of Canada using a combination of tax credits, broadcaster license fees, and advances from funds such as the Canada Media Fund. International sales or export of the content was sometimes an afterthought as it was often not necessary to have those sales in hand to get the show made. But times have changed. Production budgets have risen significantly in recent years, and challenges faced by Canadian broadcasters have made it difficult for their licence fees to meet these increased costs. Producers are thus increasingly looking to international markets to make pre-sales that will enable them to finance their shows.

CACE-ACEC submits that when Canadian-based global distribution companies are brought in to the project by the Canadian producer at the front end of the process, they can be of the greatest value both financially and strategically. **Our proposals below encourage early stage partnerships.** In short, when Canadian-based global distribution companies partner with independent producers *early* in the creative process, the distributors are able to bring their market intelligence and other relationships to bear, which benefits the producer who can make better informed creative decisions tailored to the needs of the international marketplace. Furthermore, independent producers benefit from the financial, relationship, and marketing resources of the global Canadian-based distribution company so that the producer is able to attract the necessary financing, as well as the best writing, acting, directing, and other talent increasing the likelihood that their show will be a hit at home and abroad. Hits are exportable.

Acting as early stage intermediaries, Canadian-based global distribution companies give the Canadian producer, and concurrently Canadian productions, greater heft and reach domestically and internationally.

Notably, the export revenue derived by these partnerships between Canadian-based global distributors and Canadian independent producers is returned to Canadians and reinvested in Canada.

Overview of Canada's Distribution Environment

The sale, or more technically the *licensing*, of Canadian audio-visual content that one might have traditionally called *television content,* has typically been handled in one of three ways in circumstances where the Canadian independent production company – the producer, owns the copyright of the content it produces – the production:

i) The independent production company self-distributes its content, making its first sale to a Canadian broadcaster and then to other domestic and international buyers in different territories and media (traditional broadcast, paid television, online distribution, DVD, etc.); or

ii) The independent production company will make its initial sale to Canadian broadcasters and then sell the balance at worldwide rights *en bloc* in the majority of media to a foreign distributor, or more recently to a foreign online distribution service such as Netflix or Amazon; or

iii) The independent production company will make an initial sale to a Canadian **broadcaster and also engage a Canadian-based global distribution** company who will then sell the content for uses in a variety of media, on a territory-by-territory basis worldwide.

Each of these models has been conventionally predicated upon an initial sale to a Canadian broadcaster. As a result of changing market realities, the early-stage participation of a global distributor has become increasingly crucial.

Distribution advances now account for the majority of all international television pre-sales. Canadian broadcaster licence fees have not increased over time and, in

a market of rising budgets, these license fees are actually declining as a percentage of the total financing requirements.

We suggest the use of a Canadian broadcast fees as the only eligible trigger for Canadian Media Fund funding is an outdated regulatory mechanism, given the variety of online platforms that presently exist. Accordingly, Canadian distributors that are platform agnostic will increasingly play a role in advancing the private investment necessary to launch the creation of Canadian audio-visual content, and our federal incentive programs ought to correspond with this new reality. Distributors who are putting up risk capital should also be able to trigger CMF funding.

Analysis of Three Distribution Models

i) Self-Distribution by the Producer

Even before the market forces that have been emerging over the past ten years came to fruition in the global marketplace, the self-distribution of content by Canadian independent producers was only somewhat successful in extracting value from content produced in Canada. CACE-ACEC submits that *one-off* self-distribution does not maximize either export sales opportunities or the return on investment made in producing the content. Usually, producers do not have the infrastructure or international presence required to optimize the value of their products on a global scale.

ii) Distribution by en Bloc, Sub-Distribution to a Foreign Distribution Entity or Online Service Provider

In the development of a national export strategy, CACE-ACEC would encourage consideration of the fact that new internationally available online services such as Netflix and the resulting change in viewing patterns, has placed many Canadian independent production companies in a position where in order to get a production financed, they have completed business deals with foreign online services that are not necessarily in the long-term best interests of these companies or the Canadian content ecosystem.

In short, many Canadian independent production companies are now entering into contractual arrangements with these foreign online services that pay the Canadian producer a one-time payment for all of their distribution rights in all territories in the majority of media outside of Canada. While at first blush, these deals may seem attractive as it provides the producer with a modest *cost-plus* rate of return, these transactions do *not* maximize the export value of those rights.

Canadian-based global distribution companies are platform agnostic exporters of scale that offer an alternative to the Canadian producer allowing for the maximization of the return on both the public and private investments made in order to create our content. In certain circumstances, limited sales to online services are commercially sensible but the Canadian distributor is often best placed to determine when these deals are or are not likely to generate the highest value return, and to generate competing interest in order to maximize value.

The situation that is emerging with Netflix and other online services is strikingly similar to the more traditional arrangement where the Canadian independent producer simply sub-licenses all international rights to a foreign owned and controlled distribution company. If anything, the new deal structures are worse for Canadian producers than the traditional arrangement because the Canadian producer does not share in proceeds from international sales of their product.

These *one-off* transactions do not maximize the export value of the rights sub-licensed by the producer. Furthermore, both examples highlighted above result in a modest return on the public-private investment that is required to create the content.

In each of these cases, the majority of the export value associated with the content, is derived by a foreign entity that has, in a sense, had *back-door* access to the support systems intended to benefit Canadian companies and is contrary to the spirit of our cultural objectives and policies.

iii) Distribution by Canadian-Based Global Distribution Companies

If we are dissatisfied with the outcome described in the scenario above, then we require polices that will maximize the return on both the public and private investments made to create our content. For the reasons described in the foregoing pages, Canadian-based global distribution companies can achieve these more favourable outcomes as a result of their significant investment in export infrastructure and human resources both in Canada and around the world.

The investments made by our distributors have made them experts in their field with deep relationships among buyers in every media and in every territory around the world. While we cannot ignore the competitive reality presented by large-scale foreign distributors and online services such as Netflix and others, smart policy can give Canadian companies a better chance of promoting and selling Canadian content in various media markets around the world and in doing so returning revenues to Canadians for reinvestment in Canada.

The Current Financing/Production Challenge

The current system that underpins the financing and creation of television and digital media content has not adequately kept pace with market realities in Canada and around the world.

Our global competitors, particularly in the UK and America, are better financed and that means they have a better chance at making more discoverable shows that not only sell at home, but also internationally.

Budgets are Rising Across All Genres of Programming:

Drama Series

- A typical high-quality Canadian drama series has a budget of between $2-2.5M per hour whereas our U.S. competitors would typically be more in the range of $5M.
- That same drama series in Canada tends to take approximately 7-8 days to shoot per episode; American counterparts typically shoot for 9-12 days.
- Post-production schedules also vary dramatically between Canadian and U.S. productions. A Canadian drama would typically have between 18-21 post-production days per episode relative to roughly double the amount on the U.S. show that would have between 18-40.
- Cast budget is anywhere from 4-8 times higher on an American drama than on its Canadian counterpart.
- Writer budgets for a U.S. drama series can be from 2-3 times greater than a Canadian drama series.
- Below the line spending that relates to technical crew and other production team members other than cast, directors, and writing personnel is anywhere from 45-60% lower in Canada than on a typical U.S. drama, meaning far fewer job opportunities for Canadians, and increased migration of Canadian talent and creative minds to the U.S.

Animated Series

- In respect of Canadian children's animated series, we note that the combined CMF and CPTC structures mean that the average budget for a half-hour program is approximately $320,000-340,000 per episode, while its U.S. counterpart, often produced by Canadians on service contracts, is double that amount.

Documentary/Factual Entertainment Series

- As with drama and animation series, factual series made in Canada are often at a lower price point than their American counterparts with the per/hour budget in Canada averaging $250,000.00 per one-hour episode relative to $400,000 in the U.S.
- CACE-ACEC notes that generally speaking; Canadian factual content has smaller crews in fewer locations with fewer post-production days than the foreign competition.
- CMF rules make most Factual Entertainment ineligible for funding.

CMF Funding Guidelines Require Modification to Align with Changes in the International Marketplace

CMF rules, while very supportive of content creation generally, have limited flexibility that is not necessarily geared toward the creation of maximally exportable content because of:

- The requirement that a Canadian broadcaster be attached;
- Increased production costs have outpaced mandated threshold broadcast license fees due to a range of market pressures;
- Cost budget caps that limit production budgets.

The unintended consequence of these rules is that Canadian content has become less competitive globally.

The Significance of the Canadian Independent Producer

Without a doubt, the producer plays the central role in the creative development and production of audio-visual content. The more tools and resources that can be placed in the hands of producers to make excellent shows, the greater the likelihood their content will be discovered by the widest possible international audience.

CACE-ACEC recognizes that some content created by Canadian-based production companies will be primarily intended for Canadian audiences; however, more often than not, the market requires that Canadian producers choose to create content that appeals to both domestic as well as global audiences.

CACE-ACEC submits that the most successful shows come from strong partnerships at the earliest possible stages: when Canadian-based global distribution companies partner early on creative content with Canadian production companies, along with broadcasters and platforms to discover it - the combined effort of all parties is more likely to lead to the creation of top quality content that is most exportable.

We are mindful that effective implementation of our policy proposals will require working with key stakeholders including Canadian Media Producers Association (CMPA), Association Québécoise De La Production Médiatique (AQPM), Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), and Director's Guild of Canada (DGC). These organizations have recognized that Canada is already a success story in the international arena.

But we can and must do better. Notably we are concerned about the continued investment of public funds to the benefit of foreign studios who do not reinvest their profits in Canada. **Although Canadian producers are creating production jobs through the use of Canadian production tax credits, the value of this investment of public funds is not maximized when the distribution rights to Canadian productions are licenced to foreign studios who reap the ultimate economic value of the content. Profits from these productions are reinvested in the growth of those foreign entities.**

Our vision is to create a system that maximizes the value of Canadian taxpayer funded incentives, to create Canadian jobs and build a sustainable Canadian studio system.

Accordingly, each of our proposals is predicated upon a *binding contractual relationship* between an independent producer and a Canadian-based global distribution company whereby the distributor is granted worldwide rights, exclusive of pre-sales, to exploit the production in all media. The details of these proposals are set out below.

CACE Proposals

CACE-ACEC represents material, incremental investment dollars sitting outside of the regulatory framework. We are not looking for a handout. We want to create a public/private partnership which will put our risk capital to work beside public funds that are already at work and, at the same time, direct revenues back to Canadians for reinvestment in Canada.

Implementing the proposals set out below leverages the private investment by Canadian distributors and will allow for greater focus on writing, casting, or other key creative elements that ultimately enhances the discoverability and by extension the exportability of our audio-visual content to benefit all stakeholders.

Proposal 1: Creation of a $100M Distribution Advance Top-Up Fund

CACE-ACEC propose the creation of a $100M fund (the "Fund") that would match distribution advances provided to Canadian productions by qualifying Canadian-based global distribution companies.

Condition 1: A Binding Contractual Relationship Between Producer and Distributor

In order to access the fund, a Canadian-based global distribution company would be required to demonstrate a binding contractual relationship with a Canadian production company in which the producer grants to the Canadian-based global distribution company worldwide rights, exclusive of pre-sales, to exploit the production in all media prior to the first day of principal photography.[2]

Condition 2: Defining Eligible Canadian Producers and Productions

Both the Canadian production company (or "producer") and the content being produced (the "production") would be required to satisfy the pre-conditions of the Canadian Film Video Production Tax Credit Program (CPTC), meaning generally that:

i) The production company must be a taxable Canadian corporation that satisfies the criteria established by the *Income Tax Act* Regulations, as interpreted and administered by CAVCO;
ii) The corporation must be primarily in the business of Canadian film or television production;
iii) The production company must own the copyright of the production;

[2] Canadian-based global distribution companies may contract with Canadian production companies through any wholly owned subsidiary company.

iv) The production must meet CAVCO's key creative point requirements;
v) The production itself must not fall under the excluded genres categories or productions as listed by CAVCO;
vi) The production company must be owned and controlled either directly or indirectly by Canadian citizens or permanent residents in accordance with the definitions found in a combination of the *Citizenship Act*, the *Immigration Act*, and the *Investment Canada Act*;
vii) All producer-related personnel must be Canadian with exemptions for productions involving for non-Canadian development;
viii) Not less than seventy-five percent (75%) of total labour costs must be payable for services provided to/by individuals who are Canadian;
ix) The production company must control the initial worldwide exploitation rights over the production;
x) Confirmation in writing from a Canadian distributor or a CRTC licensed broadcaster that the production will be shown in Canada within a two (2) year period following its completion;
xi) The production cannot be distributed in Canada by an entity that is not Canadian within the two (2) year period that begins when the production first becomes commercially exploitable; and
xii) The production company or related Canadian taxable corporation must retain an acceptable share of revenues from the exploitation of the production in non-Canadian markets.

CACE-ACEC acknowledges that some modification to the above provisions would be necessary in the case of treaty co-productions.

Condition 3: Defining Eligible Canadian-Based Global Distribution Companies

The Canadian-based global distribution company that has contracted with the Canadian producer must also satisfy the mandatory eligibility requirements set out below. Accordingly, access to the Fund would be limited to:

i) Canadian-controlled companies that have their head office in Canada;
ii) Companies that have a portion of their business activities meaningfully and materially dedicated to the marketing, distribution, and sale of audio-visual content internationally;
iii) Companies that are in the business of acquiring, marketing, and distributing third-party audio-visual content internationally that are also able to demonstrate a track record of investing in third-party content in the form of distribution advances against international rights. This investment is distinct from investment in the form of Canadian Broadcaster License Fees;
iv) Companies that represent at least fifty (50) distinct audio-visual content titles;

v) Companies that have staff in at least one territory outside of Canada exclusively dedicated to the licensing/sale of audio-visual content rights under their contract; and

vi) Companies that have a track record of attending a minimum of four (4) international markets annually.

CACE-ACEC acknowledges that modifications to this definition may be required for Quebec-based distribution companies distributing primarily French-language content.

Condition 4: Threshold Distribution Advance Paid by Canadian-Based Global Distribution Companies in Respect of the Production

i) Canadian-based global distribution companies would be required to pay a minimum threshold distribution advance to the production company in respect of the production. A “distribution advance threshold” is the minimum amount of a distribution advance that a production must receive from an eligible Canadian-based global distribution company to qualify to receive payment from the Fund. As a pre-condition to advancing matching monies from the Fund, a binding commitment to make the threshold distribution advance must be in place between the Canadian-based global distribution company and the production company in respect of the subject production on or before the first day of principal photography;

ii) Minimum threshold distribution advance amounts would be established through consultations between Department officials, CACE-ACEC, the CMPA representing Canadian English-language producers, and the AQPM representing Quebec producers. Minimum distribution advance thresholds, akin to CMF license fee thresholds, would be established considering a matrix of:

a) Genre;

b) Whether the principal language of the production is French or English; and

c) Production Budget.

iii) The Fund would match distribution advances made at or above the established threshold on a dollar-for-dollar basis with the amount contributed by the Canadian-based global distribution company. The maximum amount that the Fund would contribute per project would be capped at a level to be determined by the Department, again in consultation with the aforementioned key stakeholders. Monies advanced by the Fund would be payable to the Production.

iv) The Fund will be allocated for the first three years of the Program on a first-come-first-served basis until a track record is established as and amongst Canadian-based global distribution companies. The first-come-first-served model would then be replaced by a performance envelope system as amongst Canadian-based global distribution companies, again, akin to the broadcaster performance envelope system currently employed by the CMF.

v) Monies advanced under the Fund would be non-recoupable akin to CMF License Fee Top-Ups.

CACE-ACEC understands that the international distribution of French-language content often takes place when English-language versions of these French shows are developed and produced for the global English marketplace. Accordingly, access to the Fund would need to accommodate this and other realities of the French-language market.

Safeguards

Safeguards would be built into the system to ensure that the distribution rights related to a production receiving funding from the Distribution Advance Top-Up Fund would not be substantially sub-licensed *en bloc* to either a foreign online video service or non-Canadian sub-distributor. The safeguards would not preclude rights holders from negotiating with foreign online video services or sub-distributors as part of an overall sales strategy.

Further safeguards would need to be put in place that would ensure completion of the production.

Fund safeguards are necessary to ensure that the fund is additive in its nature, and that it does not result in a decrease of investment in the system through means such as broadcast licenses or distributor advances.

Rationale for Proposal 1: The Creation of the Distribution Advance Top-Up Fund

Throughout our submission, we have highlighted the emerging significance of the distribution advance to the creation of exportable Canadian content. At the same time, we have emphasized that the timing of *when* the distributor is brought into the creative process in relation to the program's ultimate success domestically and internationally is of significance.

The proposed Fund is not designed to replace or substitute the private investment made by Canadian-based global distribution companies but rather augment or leverage those investments and encourage expanded private investment by Canadian distributors in the sector. To protect this outcome, we are proposing that baseline threshold distribution advances must be paid by Canadian-based global distribution companies if they wish to access the Fund. We have also designed the Fund to encourage early stage partnerships between producers and distributors.

The Fund is not to be used as a marketing fund or otherwise used to offset distribution company overheads.

The need to measure outcomes and effectiveness is paramount to the viability of all funding programs. CACE-ACEC welcomes the opportunity to undertake an impact study on this whereby jobs, commissions, cultural impact and sales would all be measurable outcomes to better understand the impact of the fund.

As our proposal is additive in nature, we submit for your consideration various ways in which the additional resources provided by the Fund to Canadian producers will drive exports. Below are some examples:

i) Access to the Fund will enable Canadian-based companies to compete in the global distribution marketplace so as to win bids on premium Canadian content as against large, vertically integrated foreign competitors such as NBC Universal, Sony, and ITV, each of which have broadcast channels that can afford to pay higher advances for content. When Canadian companies are successful, the true value of these Canadian shows is maximized and returned to Canada.

ii) The Fund will enable Canadian distribution companies to have increased leverage in their deal making when licensing/selling distribution rights in various territories and media, including sales to online services such as Netflix and Amazon. Better quality content means more robust revenue streams that maximize returns wherever possible, which again are returned to Canada and ultimately flow to Canadian producers for the development of more shows.

iii) The Distribution Advance Top-Up Fund will allow for larger overall production budgets. In the case of television or digital media *series* this means:

a) Bigger per episode production budgets;

b) A greater number of episodes being produced;

c) Greater ability to invest in writing, acting, directing, and other talent, which is the biggest driver of international export success of a series;

d) Increased opportunities to introduce more characters, more sets, and more storylines that increase the job opportunities for Canadian writers, actors, directors, and technicians;

e) Greater focus on the meaningful development of scripts so as to ensure the best quality material, which requires time and financial resources;

f) Larger production budgets inevitably mean that a show's overall look has a higher finish and is more polished akin to the best series being produced anywhere in the world; and

g) Larger budgets encourage Canadian-based global distribution companies to spend *more* of their own money on deploying their marketing and sales teams around a product that is more likely to succeed. These companies will also spend more on international marketing campaigns, sales road shows, and other events, including traveling talent to key markets in support of selling the higher quality shows that generate more revenue.

iv) Monies from the Fund will allow Canadian producers to be less reliant upon Canadian broadcast license fees providing Canadian producers and distributors with more control over the creative direction allow more productions to be greenlit, and improve and quality of the content that is relevant to all markets, both domestic and international.

v) Resources from the Fund will help Canadian producers retain more ownership in their productions. By working with Canadian-based global distribution companies, producers are able to avoid the easy temptation of selling directly to foreign online platforms such as Netflix and Amazon or foreign international conglomerates such as NBC Universal, Sony, and ITV who take worldwide rights in all media for what amounts to a *cost-plus* deal that returns little or no value beyond this initial sale to Canadians.

Recognizing that $100M is a significant sum of money, CACE-ACEC submits that this number parallels the Federal contribution made to the CMF encouraging Canadian-based global distribution companies to increase the amount of private money placed into the system. We have observed and commented on the rise in production budgets and the challenges faced by Canadian broadcast license fees to meet this cost increase and compete globally. Landmark, exportable content requires a significant public-private investment. A fund of this size can achieve the outcome of seeing the most Canadian content exported in a way that returns on the public-private investments made in the content.

As the proposed Fund would help lift Canadian content to the next level, it also creates significantly enhanced work opportunities in Canada for Canadian actors, writers, directors, technicians, and other talent working in the audio-visual sector and encourages our best and brightest to remain working in Canada.

In short, great content is discoverable content. The value chain of a production can only be fully maximized through the highest and best exploitation of that content by sophisticated distribution and international sales networks. Canadian-based global distribution companies are well positioned to partner with independent producers to achieve these outcomes.

In the CMPA May 2017 study, *Exporting Canadian Television Globally*, it is noted that incentives are needed to encourage more high-budget series in the categories of drama, documentary, and animation.

In respect of drama programs, it has long been considered one of the most powerful export vehicles and Canadian cultural policy has long recognized its value.

CMPA emphasizes that:

> *To take advantage of the opportunities afforded for internationally successful drama, Canadian productions require greater investment in development and greater flexibility in how funding is triggered and in the attachment of marquee elements.*
>
> *Better-developed scripts and concepts will lead to productions that can compete in the global market. Globalization of the industry has created strong international players able to bring considerable resources to the development process. Canadian productions need to reflect more risk-taking, innovation and creativity. In conducting a review of television policy in 2015, the CRTC recognized the importance of this when it recommended that, "Broadcasters and independent producers need to spend more money to create better content. Put the focus on quality rather than quantity."*[3]

For all of these reasons, CACE-ACEC submits that the creation of a Distribution Advance Top-Up Fund could form a cornerstone in Canada's content export strategy.

[3] Ibid, page 5

Proposal 2: Modification of the CAVCO Key Creative Point System

CACE-ACEC proposes that the CAVCO Key Creative Point System be modified to add one (1) additional point in respect of a production where the producer has contracted with a Canadian-based global distribution company so as to grant the worldwide rights, exclusive of pre-sales, to exploit the production in all media, prior to the commencement of principal photography.

This would increase the total number of points available up to eleven (11) points from ten (10) with the project still required to earn a minimum of six (6) points in order to qualify for the CPTC.

The Canadian Film or Video Production Tax Credit Program or CPTC was established to aid in the development of the Canadian Film and Television Production Industry and more specifically to promote Canadian television programming. This tax credit is equal to twenty-five percent (25%) of eligible labour expenditures capped at sixty percent (60%) of total production costs. Amongst other eligibility requirements, it is the requirement that the production satisfy the Canadian Audio Visual Certification Office (CAVCO) key creative point requirements (the “Point System”).

The CAVCO Point System establishes that a production company must earn a minimum of six (6) of a possible ten (10) points based on two separate allocation systems, one for live action productions and the other for animated production, in order to qualify for the CPTC (higher points thresholds are required to access CMF funding). These point systems are described below:

Live Action Productions

The point system is as follows for productions other than animated productions:

Position	Points
Director	2
Screenwriter	2
Highest Paid Lead Performer (or first voice)	1
Second Highest Paid Lead Performer (or second voice)	1
Production Designer/Art Director	1
Director of Photography	1
Music Composer (original music only)	1
Picture Editor	1
Total	**10**

In addition, it should be noted that either the Director or the Screenwriter, and either one of the two highest paid leading performers must be Canadian.

Animated Productions

A different 10-point scale applies to animated productions. Animated productions must satisfy a minimum of six (6) of the following ten (10) points to qualify as a Canadian film or video production. Points are only awarded where the function is wholly performed by a Canadian.

Position	**Points**
Director	1
Writer and Storyboard Supervisor	1
Highest Paid or Second Highest Paid Lead Voice	1
Design Supervisor	1
Composer of the Musical Score (original music only)	1
Picture Editor	1
Layout and Background performed in Canada	1
Key Animation performed in Canada	1
Assistant Animation/In-betweening performed in Canada	1
Total	**10**

As with live action productions, at least one of the Director or the Writer and Storyboard Supervisor must be Canadian. In addition, the highest or second highest paid lead voice must be Canadian and all key animation must be done in Canada.

[NOTE: There are modifications to these rules that apply when the production in question is being produced pursuant to official co-production treaty.]

Rationale for Proposal 2: Modification of the CAVCO Key Creative Point System

NOTE: CACE-ACEC recognizes that any modifications made to the CAVCO Point System will generate a great deal of debate amongst stakeholders. It is in that spirit that CACE-ACEC has developed two alternate proposals that would directly impact upon accessibility to and/or the value of the CPTC.

This proposal, which would add a key creative point where a Canadian-based global distribution company is contractually bound to a production prior to principal photography, is designed on the one hand to recognize the valuable contribution made by the Canadian-based global distribution company and on the other hand provide greater flexibility to Canadian producers in accessing the CPTC.

In CMPA's May 2017 study, *Exporting Canadian Television Globally*, the need for greater flexibility around the triggers for funding is considered at length:

> *Public funding must also recognize the need for greater flexibility in attaching marquee talent to productions that are intended for international audiences. As noted by a number of interviewees the current funding system restricts the ability of producers to attach recognizable writers, show-runners, directors and actors, necessary for creating a package attractive to financiers and buyers, such as broadcasters and distributors.*
>
> *It is worth noting that the CRTC has recently made changes to its policy framework on Certified Independent Production Funds (CIPF). The decision grants greater flexibility to the CIPF. The CIPF will no longer require a licensed-broadcaster trigger, will have the latitude to support projects with a reduced number of Canadian certification points and to support coventures and projects in development.*[4]

Ultimately, the goal of this proposal is to allow Canadian independent producers to maximize their access to the CPTC, which in turn allows them to make the most exportable and highest quality Canadian content possible. As has been stated elsewhere, exceptional content is discoverable content is exportable content.

- OR –

<u>Proposal 2A: Canadian Film and Video Production Tax Credit – Bonus Program</u>

CACE-ACEC proposes that the Canadian Film and Video Production Tax Credit (CPTC), which currently provides a tax credit equal to twenty-five percent (25%) of eligible labour expenditures, capped at sixty-percent (60%) of total production costs, be bonussed upward by ten percent (10%) in those circumstances where an independent production contracts with a Canadian-based global distribution company in respect of a production, whereby the producer grants to the distributor worldwide rights exclusive of pre-sales, to exploit the production in all media. In addition to the ten percent (10%) bonus applied to the CPTC, CACE-ACEC would also propose that the current cap of sixty percent (60%)

[4] Ibid, page 6.

of total production costs be raised to seventy-five percent (75%) in order to make this bonus meaningful for those productions that would otherwise reach the cap.

The bonus program would work akin to the Ontario Regional Bonus, which is applied to the Ontario Film and Television Tax Credit. Ontario's Regional Bonus provides that a production shot in Ontario and entirely outside of the Greater Toronto Area (GTA) is eligible to receive a ten percent (10%) bonus on all Ontario labour expenditures.

Rationale for Proposal 2B: Canadian Film and Video Production Tax Credit – Bonus Program

CACE-ACEC submits that enhancing the value of the CPTC received by a Canadian independent producer when it contracts with a Canadian-based global distribution company in respect of the production, places more resources in the hands of the producer that will enable it to make the highest quality content possible.

Accordingly, the rationale that supports CACE-ACEC position in respect of the creation of the Distribution Advance Top-Up Fund applies here with easy adaptation to this proposal.

The significance of this proposal is that it would enhance the resources available to Canadian production in those circumstances where either:

i) The Distribution Advance Top-Up Fund was oversubscribed; and/or
ii) In those circumstances where the Canadian-based global distribution company is not willing to invest the threshold distribution advance required for the independent producer to access the Distribution Advance Top-Up Fund.

Accordingly, this proposal is a necessary companion piece to Proposal 1.

Proposal 3: Modification of the CMF Funding Guidelines

3A. Canadian Distributors' Matching Funding Envelopes

Currently the only entities able to trigger CMF project funding are broadcasters. Given the increasing importance of global distributors we propose Canadian distributors be similarly granted access to funding envelopes.

The intention of the funding envelope is to encourage earlier collaboration between qualified Canadian distribution companies of scale, writers, or other content creators and producers without there being the requirement of a commitment from a Canadian broadcaster as a precondition to funding. The funding will offer greater opportunity to promote the export of new Canadian productions and meet the demands of a competitive international market.

We propose that Canadian global distributors would match whatever funds are made available by the CMF.

Eligible Distributor: Qualified Canadian Distributors of Scale ("QCDS")

While CACE-ACEC recognizes the role that small-scale distributors play in the Canadian system, we submit that in order to be eligible for the enhanced incentives proposed, the bar must be raised if we hope to achieve greater success in the area of export of Canadian content around the world. QCDS need *not* be CACE-ACEC members, however, we submit that only established Canadian-based distribution businesses of this kind, which are making the kind of significant and long-term investment in the global export of Canadian content are appropriately positioned to maximize the return on both the public funds and private investments made in content.

Currently, CMF defines a "Qualified Distributor" as one that has demonstrated to 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;
- One that 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.

Telefilm Canada's guidelines are substantially the same.

For the purposes of this matching fund program, CACE-ACEC proposes defining QCDS as Canadian-based global distribution companies as being companies of scale that are:

i. Canadian-controlled companies that have their head office in Canada;
ii. Companies that have a portion of their business activities meaningfully and materially dedicated to the marketing, distribution, and sale of audio-visual content internationally;
iii. Companies that are in the business of acquiring, marketing, and distributing third-party audio-visual content internationally that are also able to demonstrate a track record of investing in third-party content in the form of distribution advances against international rights. This investment is distinct from investment in the form of Canadian Broadcaster License Fees;
iv. Companies that represent at least fifty (50) distinct audio-visual content titles;
v. Companies that have staff in at least one territory outside of Canada, exclusively dedicated to the licensing/sale of audio-visual content rights under their control; and

vi. Companies that have a track record of attending a minimum of four (4) international markets annually.

CACE-ACEC acknowledges that modifications to this definition may be required for Quebec-based distribution companies distributing primarily French-language content.

Proposed Eligibility Requirements for Participation in the Matching Fund Program

i. Projects in CMF eligible genres would have access to this new fund and the matching Distributor contributions.
ii. Only projects with Canadian writers attached will be eligible to receive funding. In addition, eligible projects may include adaptation of foreign formats provided that a Canadian writer is central to the creative process.
iii. Projects must have a Qualified Canadian Producer attached. Distribution companies with affiliated production arms may serve as Producers of projects; however, fifty percent (50%) or more of projects funded under this new fund must attach Producers that are *not* affiliated with the Distribution Companies providing matching funds.
iv. Only Qualified "Canadian Distributors of Scale", as defined above, would be eligible to participate in the matching program.

As CACE-ACEC has proposed that all projects funded under this program *must* have a Qualified Canadian Producer independent producer attached, *all* money, be it private or CMF money, would necessarily flow through those production companies regardless of whether or not they happen to be affiliated with a QCDS company.

CACE-ACEC does not consider a jury system necessary in these circumstances; however, if CMF decides that a jury structure is appropriate, it should not include Canadian broadcasters. This is an export-matching fund that is expressly designed *not* rely on the traditional Canadian broadcast triggers, and is intended to focus on the creation of internationally marketable programming.

CACE-ACEC has proposed a definition of QCDS as a safeguard to ensure that the projects that are eligible under this new fund will be represented by strong Canadian distribution entities that can maximize value. It is vital for the health of the Canadian ecosystem that rights of these properties be managed effectively by Canadian companies and not simply farmed out to third parties that may lack the resources to properly execute an international strategy or non-Canadian companies that do not prioritize Canadian properties or that do no reinvest in the Canadian content ecosystem.

Distributor Conditions

In exchange for providing matching funds, Distributors would require the first negotiation right and right of last refusal to worldwide distribution, including the right to pre-sell or sub-license key territories.

Minimum program threshold budgets would need to be established by genre.

Access to the Matching Funds is through a designated envelope system for each Qualified Distributor based on the proposed project budget.

3B. Modification of the CMF Points System

CACE-ACEC proposes that the CMF Key Creative Point System be modified to add one (1) additional point in respect of a production where the producer has contracted with a Canadian-based global distribution company so as to grant the worldwide rights, exclusive of pre-sales, to exploit the production in all media, prior to the commencement of principal photography.

Our proposal would effectively increase the total number of points available to eleven (11) points from ten (10) with the project still required to earn a minimum of ten (10) points in order to qualify for the Canadian Distributors' Matching Funds Envelopes. As long as a producer works with a Canadian-based global distribution company, the producer may have flexibility with regard to any of the other points.

We are mindful that effective implementation of our policy proposals will require working with key stakeholders including Canadian Media Producers Association (CMPA), Association Québécoise De La Production Médiatique (AQPM), as well as collectives representing actors, directors, composers, editors, designers and animators. We already share many goals and objectives which will provide a solid foundation for productive, forward-looking discussions.

These organizations and we agree that Canada is a success story in the international arena; but we can and must do better. The continued investment of public funds to the benefit of foreign studios who do not reinvest their profits in Canada should be a concern to all stakeholders. To maximize the return on investment of public funds, and build an industry of scale in Canada, we must look to innovative solutions.

Other Considerations

i) Canada's National Export Strategy Does Not Directly Address Challenges Faced by Our Industry

Recent export initiatives are not designed to materially address the issues raised by the Government's review of the Acts. We propose renewed consultations with key stakeholders to put forward proposals addressing how to maximize return on the investment of public funds being made in export initiatives.

CACE-ACEC agrees with the recommendation in the CMPA's May 2017 study, *Exporting Canadian Television Globally*, that Canada needs a television and digital content export strategy in order to increase the exportability of Canadian television and digital programs. As part of this recommendation, the CMPA urges the creation of a national authority for the coordination of export sales in concert with other levels of government and greater investment in development and flexibility in the policies that govern access through public funding and tax credits. This study concludes that these measures will encourage a more robust production sector better able to export television productions. We agree.

Specifically, the study notes that:

Export strategies are critical to succeeding in today's highly competitive global television landscape, as evidenced by the success of the UK and France. Among the lessons to be drawn from countries having success with exporting their television programs are the importance of export development strategies founded on reliable market intelligence on sales trends in foreign markets and the identification of priority markets. Successful exporting countries gather intelligence and measure their progress on international sales, which support development of strategic orientations and identification of priority markets. Both countries target resources to export development, and encourage both coproductions and coventures.

* * *

The development of a national Canadian export strategy should involve the industry and different levels of government working together to propel the Canadian television sector forward into the next decade.

Any strategy for enhancing exports must consider the distinct challenges facing the French-language market. Annual sales targets could be set for English- and French-language programs, and for each genre. The growth of the Canadian industry depends on its ability to compete in a new global economy of television.[5]

CACE-ACEC is offering to work with the Federal government in order to lead discussions around the development of a national export strategy, from the private sector perspective.

ii) All Participants in the System Should Contribute to the System

CACE-ACEC agrees with statements from other industry stakeholders that all participants in the Canadian system should make meaningful "incremental" contributions to the system. This includes digital platforms and OTT players.

[5] Ibid, pages 3 & 4.

Conclusion

CACE-ACEC has attempted to craft proposals that are additive to the system and that benefit all stakeholders including but not limited to independent producers, actors, writers, directors, technicians, and other service providers and which at this same time are respectful of the public investment made through agencies such as the CMF and through programs such as the CPTC that support the creation of Canadian programs. Ultimately, we are aiming to achieve tangible outcomes in a form of:

- The creation of the highest quality exportable content;
- That is sold for the highest possible price in the most territories and media;
- Sales of which are controlled by Canadian companies;
- Companies which in turn return the value of the content to Canadians;
- Value which is reinvested in Canada to the betterment of the Canadian content creation ecosystem.

We would welcome the opportunity to discuss these proposals with you and your officials at your convenience, all of which is respectfully submitted by CACE-ACEC.