



## Co-Production Updates

March 5, 2012 by Ken Dhaliwal

Two items of note relating to the issue of international treaty co-productions which I believe indicate their re-emergence as a way of producing (especially in the current financial climate).

First, Telefilm Canada recently announced some changes to its Canada Feature Film Fund ("CFFF") guidelines - and one in particular should be welcomed by the producers in this country who participate in international treaty co-productions which access the CFFF.

Prior to these announced changes, a project which received CFFF funding did so by way of a recoupable equity investment. In exchange for making this recoupable equity investment, CFFF required that a portion of the copyright in the subject production be transferred to it. In the context of an all-Canadian production, this was generally not a problem as the participants (distributors, bonders and financiers) had a very good sense of who and what CFFF (and Telefilm) was and their role in the industry.

However, in the case of international co-productions, the fact that the Canadian co-producer was transferring part of its copyright to a third party - and especially a Government body - did not always sit well with the other co-producers, and in some cases foreign lenders. I have personally spent many hours on a number of files over the years explaining to these concerned parties the role of CFFF and Telefilm, the rationale behind the taking of a copyright interest, and why such a thing should not cause the concerns it was causing. In many of these cases, the issue was resolved with a combination of reassurance and a leap of faith. However, in some cases, the issue went beyond faith and matters evolved (or devolved) into time consuming discussions on the importance of copyright in different jurisdictions - all of which was very intellectually stimulating to the lawyers, but did not go over too well with the clients.

The "fix" announced by Telefilm is something which seems to make complete sense and should be welcomed by most producers. The CFFF investment can now be taken by producers as either : (i) a recoupable equity investment as was previously the case with an accompanying transfer of copyright; or (ii) a recoupable advance which eliminates the transfer of copyright. The recoupment in either option is the same and remains unchanged i.e. a revenue corridor or open territories assigned to Telefilm.

One factor producers must evaluate in determining which option suits them is the potential impact on their tax credits- but beyond this issue, I believe that this change is a very helpful move by Telefilm.

On a related note, I recently participated in a panel in Berlin during the most recent edition of the Berlinale film festival. The event was hosted by our friends at Unverzagt Von Have, a leading German media law firm and was extremely well attended with people from Europe, North America and Asia.



## Entertainment & Media Law Signal

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The panel focused on international co-productions and related developments in the UK, Canada, India and Poland. Most of the participants prepared materials which can be found [here](#).

The materials I prepared relating to Canada were: (i) [an updated paper on co-producing with Canadians](#); and (ii) [a short overview on the benefits of co-producing with Canada](#).

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