



Broadcasting Regulatory Policy CRTC 2010-833

PDF version

Route reference: 2008-58

Ottawa, 9 November 2010

Contributions to Canadian programming by broadcasting distribution undertakings

The Commission amends the criteria for determining which independent production funds are eligible for contributions by broadcasting distribution undertakings established in Public Notices 1997-98 and 1999-29. The amended criteria, which provide such funds with greater flexibility to support new media projects and program development, are set out in the appendix to this document, and a list of eligible funds is available on the Commission's website. Public Notices 1997-98 and 1999-29 remain in force and unchanged in all other respects.

Introduction

1. The *Broadcasting Distribution Regulations* (the Regulations) allow licensees of Class 1 and Class 2 broadcasting distribution undertakings (BDUs) and direct-to-home (DTH) satellite BDUs to direct up to 20% of their required contributions to Canadian programming to one or more independent production funds that meet the eligibility criteria listed in the Commission's public notice entitled *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, as amended from time to time (see Public Notices 1997-98 and 1999-29).
2. Following extensive consultations with all sectors of the television broadcasting industry, the CRTC Task Force on the Canadian Television Fund (CTF)¹ issued a report on 29 June 2007 that made a number of recommendations, one of which was to amend the eligibility criteria for certified independent production funds to provide such funds with greater flexibility to support new media projects. On the same day, the Commission issued Broadcasting Public Notice 2007-70, calling for comments on the report's recommendations.²
3. On 5 June 2008, the Commission issued its own report on the CTF to the Minister of Canadian Heritage. Paragraphs 270 to 272 of the report set out the Commission's findings, including the recommendation that it amend its policy on certified

¹ On 9 March 2009, the Minister of Heritage announced that the CTF would be combined with the Canada New Media Fund into a single fund, the Canada Media Fund, to support Canadian content destined for multiple platforms.

² In light of the public comments received as a result of Broadcasting Public Notice 2007-70 concerning the Task Force's report, the Commission considered it appropriate to include an oral hearing phase, which was announced in Broadcasting Notice of Public Hearing 2007-15.

independent production funds. The Commission concluded that given the support expressed by some parties and the absence of any arguments to the contrary, it would issue a call for comments on proposed amendments to the criteria for the funds to provide them with the recommended flexibility to support new media projects.

Accordingly, in Notice of Consultation 2008-58, the Commission called for comments on amendments to that effect. Specifically, the Commission noted that the certified independent production funds are currently prevented from funding new media initiatives due to the requirement that productions receiving funding have obtained a licence fee. The Commission proposed to replace this criterion with one requiring written proof of support from a licensed broadcaster. The Commission also invited proposals to enhance the effectiveness of the funds, such as allowing the support of program development, including pilots.

4. The Commission received a number interventions commenting on a broad range of issues. The interventions are available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
5. The Commission has identified the following issues to be addressed in its determinations:
 - whether to permit certified independent production funds to support program development, such as pilots;
 - whether to permit such funds to support stand-alone new media projects and/or projects related to a specific television program; and if so,
 - whether to cap the amount that may be directed to stand-alone new media projects and/or projects related to a specific television program.

Program development

6. Interveners who commented on this matter supported providing the independent funds with greater flexibility to support program development.
7. It is the Commission's view that regardless of whether the programming produced is aired, the funding of program development will be a benefit to producers and broadcasters by providing them with the creative freedom to test new ideas and thus create the best programs. Accordingly, in the appendix to this document, the Commission has amended the criteria to permit the funding of program development, including pilot programs, where a licence or development agreement is in place.

Stand-alone and related new media projects

8. Producers and unions such as Canadian Media Production Association (CMPA, formerly known as the Canadian Film and Television Production Association), the Société des Auteurs de Radio, Télévision et Cinéma, the Alliance québécoise des techniciens de l'image et du son, the Union des artistes and the Association des

producteurs de films et de télévision du Québec stated that they preferred that funds for new media come from new sources.³ However, the CMPA and individual independent producers submitted that if the Commission were to permit new media projects to be funded by certified independent production funds, then it should limit the amount that could be directed to new media productions by way of a cap. The CMPA proposed a cap of 15% of the BDU contributions to one or more independent production funds, while individual independent producers suggested a cap of 10%. They argued that such a cap would ensure that the majority of the funds would continue to be directed to traditional television production and that this would be in keeping with the original purpose of the independent funds.

9. New media producers RPM Media and the Canadian Interactive Alliance (CIAIC) fully endorsed the Commission's proposal to permit the funding of new media projects supported by broadcasters. The CIAIC also advocated the funding of stand-alone projects.
10. BDUs and broadcasters were supportive of the Commission's proposal to support new media initiatives, as well. However, interveners representing broadcasters and BDUs, namely the Canadian Association of Broadcasters and Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell TV (collectively, the Companies), recommended a requirement that a new media project be linked to a specific television program to ensure that the funds benefit the regulated sector and the programming of a licensed broadcaster in a more direct way. Further, Aboriginal Peoples Television Network Incorporated (APTN) argued that a cap of 15% should be imposed on such projects.

Commission's analysis and determination

11. In Broadcasting Public Notice 2008-58, the Commission stated that projects supported by the certified independent production funds should benefit the regulated broadcasting sector. Accordingly, the Commission proposed that a written proof of support from a licensed broadcaster be added as a new criterion to the policy. The rationale for this proposal was the principle that money contributed by the regulated broadcasting sector should not subsidize the non-regulated sector (e.g. Internet service providers and/or web-based services).
12. It is the Commission's view that permitting the funding of stand-alone new media projects would provide more creative opportunities and that support by a licensed broadcaster would ensure a sufficient link to the regulated broadcasting sector. The Commission recognizes that there are concerns regarding a potentially looser connection to Canadian content with such projects given the difficulty in calculating

³ The Commission also received a joint submission expressing similar views by a coalition of organizations representing members who work in the Canadian independent production sector, namely the Alliance of Canadian Cinema, Television and Radio Artists; the Directors Guild of Canada; the Documentary Organization of Canada; the National Association of Broadcast Employees and Technicians; Local 700 CEP/Communications, Energy and Paperworkers Union of Canada; and the Writers Guild of Canada.

Canadian content in a new media environment. However, the Commission is of the view that such concerns are offset by the importance of encouraging the innovation and creativity associated with all types of new media projects, including stand-alone projects.

13. Accordingly, the certified independent production funds will be permitted to support both stand-alone and program-related new media projects where there is a development agreement with a licensed broadcasting undertaking, subject to the conditions established below and the clarifications set out in the appendix.

New media spending cap

14. As noted above, APTN, the CMPA and individual independent producers recommended that the Commission limit the level of funding that could be directed to new media productions to ensure that the majority of the funds are directed to traditional television production.

Commission's analysis and determination

15. The Commission considers that imposing a cap would provide the certified independent production funds with the flexibility to support new media projects while still ensuring that a significant level of funding remains for traditional television and film production. The Commission also notes that a cap could be reviewed at a certain point and adjusted accordingly and that this is consistent with the approach of the Canada Media Fund (CMF).
16. However, the Commission is of the view that there is little cause for concern over permitting the funding of new media projects linked to television programs as any new media content created as a result of such funding would still serve to support traditional television production. The Commission also concludes that the existence of a link to a television program will create a self-limiting process in that the producers and broadcasters will want to ensure that sufficient amounts remain for television production and development and will therefore make decisions in their own best interest. It will also be at the discretion of the funds whether they choose to fund program-related new media projects. As such, the Commission considers that a cap on such new media projects is not necessary.
17. However, to ensure that the funding of stand-alone new media projects does not unduly affect the funding of television productions, the Commission is instituting an annual cap of 10% of the BDU contributions to one or more independent production funds with respect to such projects, which is consistent with the approach of the CMF. Accordingly, in the appendix to this document, the Commission has included the cap in the amended criteria.

Implementation

18. The appendix to this document sets out a consolidated version of the criteria for certified independent production funds found in Public Notices 1997-98 and 1999-29, entitled *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, as amended by this policy. The determinations in Public Notices 1997-98 and 1999-29 and in particular paragraphs 18-25 of Public Notice 1999-29 remain unchanged in all other respects. However, any reference to the criteria in these public notices should be read as including the amendments found in the appendix to this document.

Secretary General

Related documents

- *Call for comments on proposed amendments to the criteria of the Certified Independent Productions Funds policy for broadcasting distribution undertakings*, Broadcasting Public Notice CRTC 2008-58, 30 June 2008
- *Proceeding on the Canadian Television Fund (CTF) Task Force Report*, Broadcasting Notice of Public Hearing CRTC 2007-15, 5 November 2007
- *Call for comments on the Canadian Television Fund (CTF) Task Force Report*, Broadcasting Public Notice CRTC 2007-70, 29 June 2007
- *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Public Notice CRTC 1999-29, 16 February 1999
- *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-98, 22 July 1997

Appendix to Broadcasting Regulatory Policy CRTC 2010-833

Criteria for Certified Independent Production Funds

A broadcasting distribution undertaking (BDU) may direct up to 20% of its required contribution to Canadian programming under section 29 of the *Broadcasting Distribution Regulations* to one or more new or existing independently administered funds, other than the Canada Media Fund (formerly known as the Canada Television and Cable Production Fund), provided that the fund meets the following criteria:

- the fund is a permanent fund;
- recoupments of equity payments or loans are reinvested in the fund;
- no more than 5% of the contributions from BDUs is spent on fund administration;
- BDU contributions do not serve to fund programs in categories 1 (News), 3 (Reporting and Actualities) or 6 (Sports);
- productions receiving funding achieve eight points out of ten for Canadian content certification as set out in *Amendment to the “8 out of 10” point count criterion for funding from the Cable Production Fund (CPF) with respect to its application to treaty co-productions*, Public Notice 1996-51, 3 April 1996;
- productions or new media projects receiving funding have obtained either a licence or a development agreement from a licensed broadcasting undertaking; and
- new media projects receiving funding are related to a production that would itself be eligible for funding under these criteria or, in the case of unrelated projects, receive no more than 10% of such funding.

Clarifications

An independent fund

The Commission is of the opinion that any production fund that receives and administers contributions from BDUs must be constituted and operated at arm's length from its contributors. The Commission will consider that funds are independently administered for the purpose of receiving and administering contributions from BDUs when they meet the following requirements:

a) Composition of the Board

- All members of the Board must be Canadian, as defined in *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998.
- No more than one third of the members of the Board may be members representing BDUs.
- Representatives of BDUs shall have the right to cast no more than one-third of the votes in a meeting.
- All decisions must be made by majority vote.

b) Funding Decisions

- The Board shall ensure that all monies are directed to fund the types of productions contemplated in *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-98, 22 July 1997, as clarified by Public Notice CRTC 1999-29, 16 February 1999, and amended by this regulatory policy.
- The Board shall have sole and exclusive responsibility for its funding decisions.
- The Board shall establish an effective and efficient process to ensure that applications for funding of productions are appraised objectively.
- The Board shall supervise the implementation of its funding decisions.

The fund is a permanent fund

The Commission considers that the mere absence of an expiry date is insufficient for a fund to qualify as a “permanent fund.” The Commission considers that permanence includes making provision for the distribution of the fund upon its dissolution so that the monies are directed to other qualifying production funds. Therefore, to be considered a permanent fund, the fund should have constituting documents that provide that, upon dissolution, monies held by the fund are to be transferred to one of the following:

- (a) the Canadian production fund, as defined in the *Broadcasting Distribution Regulations* (the Regulations); or
- (b) another eligible independent production fund, as defined in the Regulations.

Where provision is made for the transfer of contributions to a specific independent production fund under (b) above, provision should also be made that in the event that such a fund no longer exists at the time of dissolution, the contributions will be transferred to the Canadian production fund.

Recoupments of equity payments or loans are reinvested in the fund

Recoupments of equity payments or loans must be reinvested in the fund and not flow through to BDUs.

Recoupments of equity payments include: (i) any recoupment, refund or distribution of capital that a fund receives on account of its equity investment in a production and (ii) any dividends or other benefits received by a fund on account of any equity investment.

Recoupments of loans include: (i) any repayment of a loan made by a fund and (ii) any interest payments received by a fund on account of a loan.

In addition, since the purpose of the contribution regime is to allow contributions to be funneled directly to eligible productions, all contributions to production funds and any recoupments on equity or loans must be directed to productions within a period of two years from the date of the contribution or the recoupment. A scheme whereby only the recoupments or interest earned are used to finance productions would not achieve the purpose intended under this contributory regime.

BDU contributions do not serve to fund programs in categories 1 (News), 3 (Reporting and Actualities) or 6 (Sports)

The definitions of categories referred to in this criterion are found in *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010.

New media projects

The Commission expects these monies to be used for innovative projects such as story-driven videogames, webisodes, mobisodes and interactive web content. As such, broadcaster website development and information technology enhancements, such as software for streaming video or the simultaneous streaming of a production, shall not constitute new media projects eligible for support from the independent production funds.

Projects may not be primarily promotional in nature and must conform to the Canadian Association of Broadcasters' *Equitable Portrayal Code* and *CAB Violence Code*.