Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

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Policy framework for Certified Independent Production Funds

The Commission has reviewed its policy framework for Certified Independent Production Funds (CIPFs) to ensure that CIPFs contribute to the development of a robust Canadian production sector and that they have the flexibility necessary to operate in an increasingly multi-platform environment. A robust and forward-looking Canadian production sector will be better able to offer compelling high-quality content to Canadians and to global audiences.

The Commission is making the following changes to its policy framework:

- ***Eliminating the requirement that producers obtain a broadcast licence or development agreement to receive CIPF funding.***

  This will foster innovation and provide flexibility to both the CIPFs and producers to fund and create a wide variety of productions, destined for all platforms.

- ***Redefining "new media content" to include only "non-programming digital content" and maintaining the 10% cap on funding for such content. No limits will be placed on the funding of programming regardless of the platform on which it may be broadcast.***

  This will ensure CIPF funding is focused on programming content that will enhance and benefit the Canadian broadcasting system.

- ***Allowing CIPFs to fund productions achieving at least six Canadian certification points, and include the pilot projects recognized by the Commission.***

  A reduction in the minimum Canadian certification points requirement will allow more productions to be eligible for CIPF funding. Canadian production companies will be able to benefit from expertise from abroad.

- ***Including co-ventures in productions eligible to receive CIPF funding.***

  Permitting CIPFs to fund productions that are created in collaboration with non-treaty international partners will give Canadian producers involved in co-ventures access to a new funding stream and will assist in the discoverability of these projects and of the Canadian talent involved.

- ***Allowing and encouraging CIPFs to allocate funding for script and concept development.***

  This type of funding will give producers the ability to produce higher quality and "exportable" productions by allowing them to better develop their project or concept at an earlier stage of production.

- ***Allowing and encouraging CIPFs to allocate funding for promotion and discoverability.***

  Funding promotion and discoverability is an important element in the success of a project.

- ***Requiring all CIPFs to introduce a system to measure success.***

  Instituting evaluative measures that examine the success of the projects funded will enable the Commission and the public to understand the manner in which public funds are expended and how they have benefited the Canadian broadcasting system.

- ***Requiring that all programming supported by CIPFs, regardless of the platform on which it is distributed, be closed captioned and provided with described video.***

  Making accessibility a consideration early in the creative process—not only in post-production—will help create a cultural shift that will result in accessibility becoming just another consideration in the regular course of doing business.

- ***Requiring that at least one member of a CIPF's project selection committee is responsible for ensuring that official language minority communities' (OLMCs') reflection and issues are taken into account.***

  This is to ensure that the needs of OLMCs are considered when projects are selected.

- ***Amending the governance rules relative to the composition of the board as well as to the funding decision criteria.***

  The updates emphasize the importance of the board's independence from all private funding entities, including broadcasting distribution undertakings, broadcasters and their affiliates, and the notion that CIPF funding should not be self-serving.

- ***Requiring all CIPFs to report annually on their activities to ensure transparency and accountability.***

This policy replaces the policy entitled Contributions to Canadian programming by broadcasting distribution undertakings*. The revised policy will be effective 1 September 2016.*

Introduction

1. In Broadcasting Regulatory Policy 2015-86, one of the policies setting out the Commission's determinations relating to the Let's Talk TV proceeding, the Commission recognized the essential role played by the production sector in the success of the Canadian television system. It stated that a robust production sector will be better able to offer compelling high-quality content to Canadians and global audiences. The Commission also recognized that for the production sector to be successful, it must be supported by an appropriate funding infrastructure, comprised of both significant private investment by producers and others, as well as government supports.

2. In that policy, the Commission stated its intention to review its policies for Certified Independent Production Funds (CIPFs) to provide greater flexibility in the funding of Canadian programs. Accordingly, the Commission published Broadcasting Notice of Consultation 2015-467 (the Notice) to seek comments on the policies with respect to CIPFs.

3. The primary objective of this review is to ensure that CIPFs contribute to the development of a robust Canadian production sector as it evolves in an increasingly multi-platform environment. Accordingly, the Commission's determinations set out below are intended to achieve the following outcomes:

   - CIPFs help to develop a flexible and forward-looking television system.
   - The parameters under which CIPFs operate meet the needs of the television system.
   - CIPFs operate under clear governance and reporting requirements that ensure their independence and accountability.
   - Accessible programming is created through CIPF funding.
   - CIPF funding is used for productions linked to official language minority communities (OLMCs).

4. The Commission received comments from many parties in response to the Notice. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca.

Background

5. As part of the current funding system, the Commission mandates certain indirect financial contributions by broadcasting distribution undertakings (BDUs) to the creative sector through production funds. The largest of these funds is the Canada Media Fund (CMF), which receives funding from both the mandated contributions of BDUs and the federal government.

6. In addition to the CMF, the Commission has certified a number of independent production funds to receive funding from BDUs and tangible benefits packages.[1] These are known as CIPFs. To be certified to receive and administer contributions by BDUs, a fund must meet specific CIPF criteria established by the Commission, which are set out in Broadcasting Regulatory Policy 2010-833.[2]

Regulatory framework

7. In its review, the Commission is guided by the following objectives of the *Broadcasting Act* (the Act):

    - that the Canadian broadcasting system should encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view;
    - that the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector;
    - that each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources; and

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[1] Tangible benefits packages stem from the Commission's approval of changes in the ownership and effective control of television programming services.

[2] The criteria that must be met were first set out in Public Notice 1997-98, and were subsequently amended in Public Notices 1999-29 and 2001-30, and then Broadcasting Regulatory Policy 2010-833.

- that programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.

8. With respect to official languages, the Commission is guided by the following objectives of the Act:

   - the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

   - the Canadian broadcasting system should through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society.

9. Moreover, as a federal institution, the Commission must take into consideration the objectives set out in section 41 of the *Official Languages Act* when examining existing policies.

Issues

10. The Commission has been certifying independent production funds for almost 20 years. The certification criteria for these funds need to be updated to reflect the changing landscape of the Canadian broadcasting system.

11. Accordingly, in this policy, the Commission addresses the following issues:

    - the requirement for a broadcast licence or development agreement;
    - the definition and funding of new media projects;
    - the number of Canadian content certification points required to obtain CIPF funding;
    - eligibility of co-ventures for CIPF funding;
    - funding for script and concept development;
    - funding for promotion and discoverability;
    - audience success and measurements of success;
    - accessibility of programming created through CIPF funding;
    - reflection of OLMCs;
    - governance of CIPFs; and
    - reporting requirements.

Requirement for a broadcast licence or development agreement

Background

12. Currently, productions or new media projects receiving funding from a CIPF must obtain either a licence or a development agreement from a licensed broadcasting undertaking.

Positions of parties

13. Several parties were in favour of eliminating this requirement. The Writers Guild of Canada (WGC) and the Documentary Organization of Canada (DOC) were of the view that the removal of this requirement would provide CIPFs with additional flexibility.

14. While supportive of eliminating the requirement, some CIPFs suggested that the content must be made available to Canadians on a platform that is legally accessible to Canadians or on a platform that is owned by a Canadian entity.

15. Interactive Ontario suggested that alternative distribution models, outside of the traditional licensing model, would permit access by producers to broad audiences which could result in the discovery of new Canadian content on digital platforms.

16. Rogers suggested that the requirement be replaced with a requirement for a distribution agreement with a "qualified corporation" as defined in the *Direction to the CRTC (Ineligibility of Non-Canadians)*.

17. Convergent Productions submitted that funding provided without the need for an agreement will help ensure the development of script and concepts.

18. Other parties were opposed to the elimination of this requirement. The Directors Guild of Canada (DGC), the Association québécoise de la production médiatique (AQPM), the Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP), Shaw, BCE and Cogeco Cable argued that funding provided through the broadcast licence agreement is essential and generally ensures high-quality Canadian content. They argued that this provides a clear link between financing provided by BDUs and the content broadcast on the licensed system and suggest that ensuring the distribution of content on a platform with mass appeal is key to discoverability. DHX Media, the Canadian Broadcasting Corporation (CBC) and the Canadian Association of Public Educational Media (CAPEM) submitted that CIPF funding should benefit the licensed broadcasting sector.

19. Quebecor recommended that the requirement be amended to read: "Productions or new media projects receiving funding must be linked to a private broadcaster or a Canadian BDU."

Commission's analysis and decision

20. Licensed broadcasting undertakings are one part of a larger multi-platform broadcasting system from which Canadians obtain their preferred content. Canadians, in increasingly greater numbers, are sourcing multiple platforms for this content. It is therefore important that well financed programming made by Canadians be able to be broadcast throughout this system.

21. The current criteria requiring producers to obtain a broadcast licence or development agreement as a prerequisite to receiving CIPF funding limits the funds' ability to support projects that are not necessarily created for distribution in the licensed broadcasting system. Maintaining such a requirement, even one that includes a broadcast licence or development agreement with exempt services, such as hybrid video-on-demand (HVOD) services, may stifle the production of more innovative projects that would not necessarily be distributed in the more traditional system.

22. Eliminating this requirement will give more flexibility to producers to have their projects distributed on the platform of their choice by removing the distribution exclusivity associated with the licence agreement. It will also:

    - give producers more distribution options and potential bargaining power;
    - provide producers with more creative control over their projects to create higher quality programming;
    - allow producers to take more risks since the projects would not necessarily be adapted for traditional television broadcast; and
    - increase the potential visibility and discoverability of productions in global markets on various platforms.

23. Additionally, removing the requirement for a licensing agreement does not preclude the possibility that a producer may seek one out. Instead, the end result is one of greater flexibility for producers. However, to ensure that CIPF funding is used to support projects that Canadians can actually view and consume, the Commission considers it appropriate that the funding be reserved for producers who are able to demonstrate that their productions will be available on a platform that is accessible by Canadians.

24. Accordingly, the Commission will eliminate the criteria requiring producers to obtain a broadcast licence or development agreement with a licensed broadcasting undertaking in order to receive CIPF funding. The producer must however demonstrate that the production will be available on a platform accessible by Canadians.

Definition and funding of new media projects

Background

25. Currently, CIPF criteria specify that “new media projects” receiving funding must be 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.

26. In Broadcasting Regulatory Policy 2010-833, the Commission defined “new media project” as follows:

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

27. In Broadcasting Regulatory Policy 2015-86, the Commission stated that Canadians need more opportunities to discover Canadian-made programming on multiple platforms and that Canadian producers should be able to sell content both in Canada and abroad on a variety of platforms. The Commission stated that, looking forward, content distributors, broadcasters and creators will all increase their online activities and enjoy the benefits of growth on all platforms provided, in part, that innovation is encouraged in the production of programming.

Positions of parties

28. The Shaw Rocket Fund, Telus Fund, Bell Fund, Interactive Ontario and Regroupement des producteurs multimédia (RPM) stated that the elimination of the 10% limit would allow greater flexibility for CIPFs. The Shaw Rocket Fund added that, since children’s content is migrating online, the additional flexibility would allow for investments in this type of content where it is best suited for the audience.

29. Cogeco Fund and the Independent Production Fund (IPF) argued that the 10% limit is not sufficient. IPF added that CIPFs should have the necessary flexibility to adjust their fund to meet the changing needs of the audiences and reach them on new platforms. Rogers stated that audiences are currently consuming content on a variety of platforms, and that therefore, CIPFs should have the flexibility to finance productions on any platform.

30. Convergent Productions argued that CIPFs should be able to provide financing for all types of productions, regardless of the platform they will be distributed on.

31. Rogers Group of Funds proposed that the limit be increased to 15% to mirror the CMF’s Experimental Stream. It added that projects receiving this type of funding would not be required to have a specific broadcast commitment. This would allow licensees from Canadian online video services, among others, to trigger funding from CIPFs and thereby incent them to invest in original exclusive Canadian content.

32. DGC, the Alliance des producteurs francophones du Canada (APFC), the Quebec English-language Production Council (QEPC) and Creative BC proposed that the limit be increased, with the DGC and APFC proposing that it be increased to 20%. The DGC added the caveat that the 20% limit apply to both related and unrelated new media projects.

33. AQPM, the CPSC-SCFP and the Association des réalisateurs et réalisatrices du Québec (ARRQ) suggested that the limit should be maintained at 10%, arguing that there is a lack of evidence demonstrating a need to increase this amount.

34. DHX Media, Groupe V, CBC, CAPEM, Shaw, Cogeco Cable, BCE and Quebecor argued that a limit must be maintained to ensure that funds from the licensed broadcasting sector are not used to finance productions for the unlicensed sector.

35. Shaw proposed to reduce the limit to 5% and submitted that programming produced and developed without a broadcast licence or development agreement from a licensed Canadian broadcaster should be supported by direct government subsidy through a specific fund for that purpose.

36. Quebecor stated that funding should be contingent on the production being linked to a BDU or a private broadcaster.

Commission’s analysis and decision

Redefining “new media project”

37. The current definition for “new media project” relates to both programming and non-programming content. Webisodes and mobisodes are, in essence, a form of programming. The Commission considers that the current “new media project” designation is imprecise and outdated. The Commission is therefore amending the current definition so that it is adaptable and applicable to non-programming digital content only, by excluding programming such as webisodes and mobisodes from the definition.

38. Specifically, the definition should only encompass projects that can be adapted or modified by the viewer. In Public Notice 1999-84, the Commission defined this “customizable” content as content where end-users have an individual one-on-one experience through the creation of their own uniquely tailored content.

39. Consequently, the Commission will redesignate this content as “non-programming digital content” and define it as follows:

> Innovative projects such as story-driven videogames, interactive or customizable web content, apps and all other similar types of non-programming content.
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> However, broadcaster website development and information technology enhancements, such as software for streaming video or the simultaneous streaming of a production, will not be considered projects eligible for support from the independent production funds.

Funding for “non-programming digital content”

40. In Broadcasting Regulatory Policy 2010-833, the Commission set a limit on funding of unrelated, standalone new media projects by CIPFs who receive contributions from BDUs. At the time, the Commission indicated that imposing a cap of 10% would provide CIPFs with the flexibility to support new media projects while still ensuring that a significant level of funding remains for traditional television and film production. It also stated that a cap could be reviewed at a certain point and adjusted accordingly, which was consistent with the CMF’s approach.

41. Since the Commission introduced this limit in 2010, the Canadian broadcasting system, as well as the technology used for the delivery of audiovisual content and Canadians’ viewing habits, have changed greatly. While many Canadians continue to consume Canadian programming on traditional television platforms, new developments in technology are already responding to consumer demand for audiovisual content and leading to ongoing changes in consumption behaviour of this content among many Canadians (e.g. online and mobile viewing, binge viewing, exposure to new, global sources of content).

42. In light of these changing viewing habits, more programming is being developed for platforms other than those in the licensed broadcasting system. Moreover, the Commission has espoused approaches to regulation that prioritize the content being distributed, rather than the distributors (i.e. broadcasters) of this content. It is the Commission’s view that CIPFs should be able to:

    - finance programming produced for various platforms;
    - better meet the needs of Canadians who continually seek new forms of Canadian programming as well as new ways of consuming this content; and
    - allow Canadian producers to better compete in global markets because they would now be able to access a funding stream that was once very limited.

43. Accordingly, digital programming content, such as webisodes and mobisodes, will not be subject to a cap on CIPF funding.

44. While non-programming digital content is not generally considered to be “broadcasting” as defined in the Act, it can nonetheless help in the achievement of the policy objectives of the Act. For example, the creation of an app or an educational online game that is linked to a particular children’s program may help in the discoverability of this program in national and international markets and may enhance the viewing experience of its audience. Moreover, this type of content can be complementary to the television program by offering an educational component to the programming aired on television. It can also be reflective of Canadian culture and values, be a showcase for Canadian talent and serve the needs and interests of Canadians.

45. However, CIPF funding should generally be reserved for audiovisual programming content that will enhance and benefit the Canadian broadcasting system. Therefore, the Commission will maintain a 10% limit on funding that can be allocated to non-programming digital content.

Number of Canadian content certification points required to obtain CPIF funding

Background

46. As set out in Public Notice 1996-51, to qualify for funding from a CIPF, productions must achieve eight points out of ten for Canadian content certification.

47. To certify a program as Canadian, the production is assessed on a ten-point scale. Points are accorded for the number of Canadians fulfilling key creative roles. For the majority of productions, points are granted for the Director (2), Screenwriter (2), Lead Performer (1), Second Lead Performer (1), Production Designer (1), Director of Photography (1), Music Composer (1) and Picture Editor (1). Generally, productions must obtain six points out of the ten possible points to be certified as Canadian.

48. The Commission announced in Broadcasting Regulatory Policy 2015-86 that it would certify, as Canadian, programs that meet alternative certification criteria, including a reduced number of points, on a pilot project basis. These projects include:

    Pilot Project 1: As an exception to the standard Canadian program certification process, recognize live-action drama/comedy productions based on the adaptation of best-selling, Canadian-authored novels as Canadian.

    Pilot Project 2: As an exception to the standard Canadian program certification process, recognize live-action drama/comedy productions with a budget of at least $2 million/hour as Canadian.

Both pilot projects will be subject to the following additional criteria:

- the screenwriter is Canadian;
- one lead performer is Canadian; and
- the production company is Canadian:
    - at least 75% of the service costs are paid to Canadians; and
    - at least 75% of the post-production costs are paid to Canadians.

Co-ventures that meet the criteria above may also be considered eligible to participate in these pilot projects. The Commission also stated that it is open to considering other proposals for pilot projects. However, the Commission recognized that these pilot projects can only be successful with the participation and engagement of other partner groups and agencies, including Canadian Audio-Visual Certification Office (CAVCO) and the CMF.

Positions of parties

49. The DGC, ARRQ, DOC, AFPC, Fédération nationale des communications – CSN (FNC-CSN), WGC and CPSC-SCFP were in favour of maintaining the number of Canadian certification points required to qualify for CIPF funding, which is currently set at eight out of ten points. DGC, ARRQ, DOC and WGC expressed concern that projects with less Canadian creative talent could receive funding. DGC added that the eight out of ten requirement is critical for the CIPFs to contribute to a robust Canadian independent production sector and that a reduction in points would result in fewer opportunities for Canadians by allowing more non-Canadians to participate in the Canadian production sector.

50. Many parties were in favour of a reduction to six out of ten points in regard to the number of Canadian certification points required to qualify for CIPF funding and the inclusion of the Commission's proposed pilot projects. Telus Fund and Shaw added that a reduction to six out of ten points would align with requirements for the federal tax credit program.

51. The Rogers Group of Funds argued that this amendment would give producers creative flexibility in the development of Canadian productions, which would lead to international market appeal and the potential for international investment. This, in turn, would lead to better recoupment for CIPF-funded programs and would therefore provide more money for CIPFs to invest back into Canadian projects.

52. Rogers submitted that a reduction would broaden the appeal of Canadian productions in international markets, would help Canadian content compete with international players to gain international markets, and would improve the ability of Canadian producers to engage in international co-productions and co-ventures.

53. The Canadian Media Producers Association (CMPA) argued that a reduction in Canadian certification points required should be accompanied by a requirement for majority ownership of the project by a Canadian independent producer.

54. Harold Greenberg Fund and AQPM argued that all productions certified by the Commission or CAVCO should be eligible to receive CIPF funding, including the proposed pilot projects.

55. RPM submitted that the Commission could provide incentives for the development of pilot projects associated more closely with digital media producers.

Commission's analysis and decision

56. The current criterion requiring eight out of ten Canadian content certification points to qualify for CIPF funding is restrictive and excludes many productions that could otherwise be of high quality and qualify as Canadian. Moreover, a reduced requirement could help smaller and perhaps more innovative projects to qualify for funding.

57. A reduced requirement of at least six points could also facilitate the hiring by production companies of non-Canadian actors or creators, who may increase a project's attractiveness and visibility in international markets. A reduction in points would also align with the Canadian Film or Video Production Tax Credit Guidelines and, as discussed in the following section, would allow co-ventures to be eligible for CIPF funding.

58. With respect to productions meeting the criteria for the pilot projects announced in Broadcasting Regulatory Policy 2015-86, as well as any subsequent pilot project approved by the Commission, the Commission deems these productions eligible for CIPF funding. Including the pilot projects for CIPF funding eligibility may encourage and help the creation of these projects, since they currently do not qualify for financial support through tax credits or the CMF.

59. In light of the above, the Commission will allow CIPFs to allocate funding to productions having obtained at least six Canadian certification points as well as to the pilot projects recognized by the Commission. CIPFs will continue to have the discretion to finance the productions of their choice, based on their expertise and measurements of success.

Inclusion of co-ventures in productions eligible to receive CIPF funding

Background

60. Co-ventures and non-treaty[3] co-productions are currently not eligible to receive funding from CIPFs.

61. In Broadcasting Regulatory Policy 2015-86, the Commission recommended that government stakeholders work together to build a more robust Canadian independent production sector. One of its recommendations was that federal and provincial governments seek to develop strategies and processes to incent international co-productions and co-ventures.

Positions of parties

62. Telefilm, DOC, FNC-CSN, Quebecor and Rogers were in favour of the inclusion of treaty co-productions and co-ventures as projects eligible for CIPF funding. Telefilm suggested that, in a context in which CIPFs attain higher levels of financial resources, it could be encouraged to allocate a percentage of its resources to international co-productions.

63. Rogers argued that a reduction in the Canadian content certification points needed for CIPF funding eligibility (to six out of ten points) would facilitate the creation of more international co-productions and co-ventures. It also argued that an increase in the number of international partnerships and sales would create long-term revenue streams for Canadian producers.

64. Convergent Productions submitted that funding from CIPFs should be directed to programs that are mainly produced in Canada and tell Canadian stories.

Commission's analysis and decision

65. The inclusion of a criterion permitting CIPFs to fund more[4] productions that were created in collaboration with international partners would assist in achieving the objectives of fostering a more robust production sector that is better able to create and promote compelling, high-quality Canadian content on a national and international basis.

66. There are two types of productions that involve the participation of Canadian producers and foreign producers: treaty co-productions and co-ventures. Treaty co-productions are made in partnership with countries with whom Canada has signed a treaty, whereas co-ventures are made with producers from countries without

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[3] On 27 October 2016, a factual precision to paragraph 60 was added by making reference to "non-treaty co-productions" rather than "treaty co-productions." The word "more" was also added to paragraph 65 so that the first sentence now begins as follows: "The inclusion of a criterion permitting CIPFs to fund more productions that were created in collaboration with international partners…"

[4] See footnote 3.

an international treaty. Treaty co-productions are administered by Telefilm and CAVCO, while co-ventures are certified by the Commission.

67. Treaty co-productions already benefit from a funding framework that allows a great amount of flexibility for the Canadian producer:

    - treaty co-productions that have been certified are eligible for CMF funding; and
    - in general, the financial investment by any one participant in a treaty co-production need only be approximately 20% of the financing. This means that such a production is eligible for CMF funding and is eligible to be fully recognized as a Canadian production and be marketed internationally with what can be a comparatively minimal Canadian investment.

68. Co-ventures, on the other hand, are less able to access funding, including the CMF and certain tax credits. For a co-venture to receive Canadian certification, a Canadian production company must provide 50% of the financing, be responsible for 50% of the creative control and receive 50% of the profits. These productions are disadvantaged to a certain degree by not having access to the breadth of funding that is available for co-productions. This means that, in some cases, Canadian companies will seek funding agreements that allow a foreign (often a U.S.) production company, which is often more lucrative, to provide an advance or loan to the Canadian production company, with a recoupment of the equity once the project is profitable.

69. The Commission considers that co-ventures should have the ability to obtain funding from CIPFs and benefit from all funding possibilities offered by these funds (including at the development and production stages). In line with the objective of creating greater flexibility for producers and enhancing their ability to access international markets, the Commission will allow CIPFs to allocate funding to co-ventures.

Funding for script and concept development

Background

70. There are currently no CIPF criteria related to the funding of script and concept development. In Broadcasting Regulatory Policy 2015-86, the Commission recommended that federal and provincial governments put new mechanisms in place to enable the development of larger, better-capitalized Canadian production companies that have the financial capacity to engage in script and concept development and in the production and marketing of multiple high-quality Canadian programs capable of better competing in international markets.

Positions of parties

71. The allocation of CIPF funding for script and concept development was widely supported by many interveners.

72. IPF argued that early stage development is needed before pitches are made to broadcasters, and that the removal of the requirement for a broadcast licence agreement would enable early stage development through either individual pre-development of projects or corporate financing of a slate of development projects.

73. AQPM stated that CIPFs should be encouraged to invest in the development stages of television production since expenses and investments made during the pre-development and development stages of projects that do not get to the production stage represent net losses for producers.

74. Rogers submitted that financial support to producers in the development process could be provided on a revolving basis and that the CIPF could recoup the investment if the project picks up a broadcast licence agreement, distribution advances or international financiers.

75. Convergent Productions advanced that if producers could access CIPF development funding without a broadcast licence agreement, scripts and program concepts could be properly developed to a stage where a broadcaster would be willing to make a financial commitment to the project.

76. Conversely, the Shaw Fund submitted that there are better and more sustainable methods to provide development funding than to mandate CIPFs to allocate a set percentage towards script development. It recommended that giving CIPFs the flexibility rather than a requirement to fund development would allow CIPFs to support programming in the best manner suitable for the industry.

Commission’s analysis and decision

77. The financing of script and concept development would allow producers to access funding at an earlier stage in the development of their projects and would result in them not having to provide as much “out-of-pocket” money. It would also give more creative control to producers by allowing them to better develop their project or concept at an earlier stage of the production, which could facilitate the producer’s “pitch” to sell the project for distribution on the platform of its choice.

78. Moreover, in light of the elimination of the requirement for a broadcast licence or development agreement with a broadcaster, producers will no longer have to rely exclusively on the funding provided by the broadcaster through this agreement. As such, pre-development or script and concept development funding would help fill any potential funding void and would allow producers to access another funding stream through the CIPFs.

79. The Commission encourages CIPFs to allocate funding for script and concept development. In keeping with the overall objective of greater flexibility both for the producers and for the funds involved, the Commission will not mandate that a set amount be dedicated by each CIPF for this type of funding. While it appears that some CIPFs already fund early-development production, prescribing a set percentage or amount for script and concept development would not be appropriate for all

CIPFs, because not all funds support productions that require a high amount of funding for script or concept development (e.g. documentaries may not require as much script and concept development financing as dramas).

80. Currently CIPFs are permitted to recoup the costs of equity investments so long as those recoupments are reinvested in the fund. CIPFs will be permitted to recoup investments of script and concept development funding.

Funding for promotion and discoverability

Background

81. There are currently no criteria requiring CIPFs to fund promotion and discoverability initiatives.

82. In Broadcasting Regulatory Policy 2015-86, the Commission stated that in order for Canadian-made programming to succeed, it must be widely available and visible, and recognized that Canadians need more opportunities to discover Canadian-made programming on multiple platforms. In this respect, the Commission hosted a summit to engage directly with stakeholders to discuss ways to work together to develop strategies and mechanisms to improve the discoverability and promotion of Canadian programs.

83. In Broadcasting Regulatory Policy 2015-86, the Commission also announced that it would provide additional tools to incent the promotion of Canadian programming, such as permit independent programming services to count certain expenses for third-party promotion of Canadian programs towards a maximum of 10% of the Canadian programming expenditures and the use of local availabilities on non-Canadian services to promote first-run, original Canadian programs.

Positions of parties

84. Shaw Fund suggested that the 2% allocation from BDU contributions be dedicated specifically for industry and discoverability initiatives such as sponsorships, talent development and international initiatives.

85. Cogeco Program Development Fund suggested that CIPFs could direct a portion of funding specifically to a “Promotion Program” to finance the costs of social media and promotional online tools for the long-term exploitation of content.

86. IPF proposed that CIPFs could fund skills development for new forms of marketing and promotion (e.g. social media, online advertising). They could also fund a specific marketing program that would assist with the marketing and advertising costs. IPF suggested focusing on promotion on the online platforms, particularly since most millennials watch television and movies online. Regarding international distribution, IPF noted that CIPFs can facilitate the international reach of web series through marketing and promotion rather than international sales, since this type of production is not distributed in the traditional sense.

87. Telus Fund recommended allowing CIPFs to apply program funding outside of the 5% cap in administrative expenses towards specific initiatives to stimulate new content revenue streams on multiple distribution platforms in global markets. This would allow flexibility to use program funding for initiatives that increase discoverability of Canadian content.

88. ARRQ argued that while the Commission should encourage the promotion and discoverability of Canadian programming, this should not be the responsibility of CIPFs and should be left to Heritage Canada, Telefilm and other provincial agencies that support the audiovisual industries.

89. DOC argued that there should not be a separate fund under CIPFs for marketing and promotion unless there are increased revenues to the CIPFs.

90. WGC suggested that, if the Commission were to expand the scope for CIPFs to fund promotional activities, funding should be targeted to ensure effectiveness and be capped at a percentage of overall funds, preferably 10% or less.

91. CMPA stated that the discoverability and promotion of Canadian programming is of importance, but argued that the CIPFs' ability to support production should not be diluted by requiring or permitting them to allocate more funding to these initiatives.

92. FNC-CSN stated that promotion is essential. It argued that CIPFs should require that each application for funding be accompanied by a realistic plan regarding promotion and marketing.

93. Rogers proposed that CIPFs fund a minimum of 10% of the marketing costs for Canadian programming where the producer has not already secured marketing funds. These marketing costs could include social media campaigns to engage audiences who consume digital programming. Rogers also proposed that CIPFs require guaranteed financial commitments to purchase local advertising availabilities on U.S. cable channels from broadcasters where they sign licence agreements with CIPF-assisted productions.

94. Quebecor submitted that CIPFs could provide assistance in international exports, which would further entice producers to export their productions and to create working relationships with producers abroad.

95. Convergent Productions stated that promotion and discoverability are important, but these skills are normally beyond the abilities of producers. They added that there needs to be more market transparency, more creativity around deal structures, more collaboration between content creators and broadcasters, and greater access to information to improve these areas.

Commission's analysis and decision

96. The promotion and discoverability of a project are clearly of utmost importance to many stakeholders within the Canadian production sector. It is to the benefit of

everyone involved in the creation of a project, whether it be the CIPF who provides the funding, the broadcaster who licenses the project or the production company itself, that a production succeeds by being as widely available and as visible as possible. However, the challenge with the discoverability of a project in today's broadcasting environment lies in the fact that there is a vast array of content available on multiple platforms. As a result of this multitude of content and platforms, promotion becomes an essential means to ensure the discoverability and accessibility of Canadian programming. In other words, for a project to succeed and be viewed by a large audience, it must first be properly promoted for it to then be discovered.

97. Several interveners proposed that CIPFs allocate a set percentage of funding for promotion and discoverability. While promotion and discoverability are essential elements in determining the success of a project, mandating that CIPFs provide a specific amount of financial support for these initiatives may take away funding from other areas, namely funding for the development of the production itself. Given the limited financial resources of CIPFs and to grant CIPFs more flexibility regarding their decision-making processes related to funding, the Commission will not set a specific amount or percentage to allocate to promotion and discoverability. CIPFs are in the best position to determine if and how much to allocate for these initiatives. However, the Commission encourages CIPFs to allocate funding for promotion and discoverability initiatives.

Audience success and measurements of success

Background

98. There are currently no criteria relating to measurements of success for CIPFs. In Broadcasting Regulatory Policy 2015-86, the Commission recommended that federal and provincial governments continue to update support for program production, and in doing so, seek to develop strategies and processes to incent audience success.

Positions of parties

99. Several interveners were in support of CIPFs taking audience success into consideration. There was no consensus on the appropriate method used to measure audience success.

100. Some interveners indicated that the CIPFs should continue their process of selective assessment of audience success, look at the track record of the producer, including previous audience success with earlier season or other productions, the uniqueness of the genre of the production, the quality of the project, etc.

101. Rogers Group of Funds and Harold Greenberg Fund argued that it is extremely difficult and subjective to determine the potential audience for a new program. However, Rogers Group of Funds proposed to take into consideration the potential audience for a particular project, the investment in a program renewal as well as the program's previous audience success. Similarly, the Harold Greenberg Fund stated that it uses the same criteria as the Rogers Group of Funds, in addition to taking into

account the success or failure of previous projects by production companies, directors and screenwriters.

102. Telus Fund stated that success should have measurable objectives related to who the producers intend to reach with the project, how they will reach the audience and how the project will make a difference in the health and wellness of Canadians.

103. IPF suggested that measurements of success could be defined as the traffic numbers and online views by social media interactions, the number of “shares,” the buzz that the production is creating online, the merchandising sales, etc. IPF also indicated that project success could be measured by sales and revenues, spinoffs, adaptation to other platforms, critical reviews, awards, sponsorships, etc.

104. WGC stated that there are advantages to the CMF performance envelope system, namely predictability and transparency. For its part, the CMF stated that audience success is an essential element of its funding approval process. It stated that it would be amenable to leverage its skills and experience with audience analysis by providing CIPFs with audience measurement services.

105. Shaw argued that a requirement to measure success should be introduced as a certifying criterion for all CIPFs with the nuance that the criterion may be applied differently with respect to different programming. Shaw did not provide details as to what these nuances should be.

106. AQPM and ARRQ were of the view that CIPFs should not use audience success as a measure of success, but that these measures should be used by larger institutions such as the CMF. AQPM added that the CIPFs should take into account the potential success of a project among the criteria as well as the quality of the script or concept.

107. Rogers cautioned the Commission against using audience success as a universal or determining factor in assessing impact. Due to the imperfect nature of the audience measurement systems which are directly influenced by the size and reach of a particular broadcast group and the genre of the programming, audience success will mean different things to different broadcasters and producers.

108. Convergent Productions suggested that audience success is a difficult metric to measure, that ratings may indicate a level of audience engagement, but other factors should also be taken into consideration. It also argued that if CIPFs use audience success as a consideration for funding approval, there should be differences between how it is measured based on the channel the program is broadcast on. Shows on channels with fewer subscribers should have lower requirements.

Commission’s analysis and decision

109. Each CIPF operates pursuant to specific, internal guidelines as to the allocation of funding. While CIPFs do not operate on a “performance envelope” basis as does the CMF, they nonetheless rely on various criteria to ensure the funds will be used properly to finance a production that has the potential to be successful. Therefore, each CIPF assesses the potential for success in its funding evaluation process.

However, the criteria that each CIPF uses is largely dependent on the type of productions they finance. As a result, one CIPF's criteria for measuring success may not be relevant or appropriate for another CIPF. For example, a certain CIPF may rely on potential audience share to measure success, whereas another fund may not find this useful, given that the type of productions they finance are broadcast on less popular niche television services.

110. The Commission will not impose a specific criteria to measure success. However, it will require that all CIPFs report on their measurements of success in their annual reports (to be discussed in a later section) to reflect how each measures and defines success. This will ensure that the Commission and the public are informed on how CIPFs are making decisions in regard to the allocation of their funds, are operating in a manner that is transparent, and that CIPFs are held accountable for their funding decisions. To get a global picture of how success is being measured by all CIPFs, it is necessary to require that all CIPFs submit this type of information, not only those that are associated with or receive contributions from BDUs.

Accessibility of programming created through CIPF funding

Background

111. There are currently no CIPF criteria requiring that programming produced with CIPF funding be accessible.

112. In the Notice, the Commission stated that it is of the preliminary view that all programming resulting from CIPFs, regardless of the platform through which it is distributed, must be both captioned, meeting the closed captioning quality standards set out in Broadcasting Regulatory Policies 2011-741, 2011-741-1 and 2012-362 and any subsequent amendments to those quality standards, and provided with described video, and that the CIPF criteria should be amended to reflect these requirements.

Positions of parties

113. FNC-CSN, APFC, Telus Fund, the Forum for research and policy in communications (FRPC) and Rogers supported including described video as a criterion.

114. While they supported a closed captioning requirement, Rogers Group of Funds did not view as necessary at this time to amend the CIPF certification criteria to require that all programming resulting from the funds be provided with described video because the requirements for broadcasters to air described programming varies from broadcaster to broadcaster.

115. Interactive Ontario, Bell Fund and BCE were in support provided exceptions are applied for interactive digital media and other projects that do not involve programming (such as apps and games).

116. IPF, Cogeco Fund, Shaw Fund and CPSC-SCFP argued that captioning and described video are the responsibility of the broadcaster or platform. Saskatchewan

Media Production Industry Association submitted that regulation in this area is not needed since Canadian broadcasters already require productions to be closed captioned and described.

117. AQPM argued that it would be premature to require all productions, regardless of platform, to provide closed captioning and described video. AQPM also stated that imposing such a requirement on all CIPFs could compromise their efficiency and their ability to innovate. In addition, AQPM was of the view that if the CMF and other fiscal programs do not have the same requirements for closed captioning and described video, it would be unreasonable to make the CIPFs bear all of the responsibility. With respect to described video, AQPM added that some productions are not meant for television (for example, long-form fiction productions are meant to be aired in cinemas which are not equipped to offer described video).

118. Harold Greenberg Fund submitted that the accessibility requirements do not apply to their activities since they support the development of feature films or “TV format/concept.” Currently, the production investment programs they administer are primarily associated with feature films for theatrical release and it is not industry practice to require closed captioning or described video for feature films intended for theatrical release at the production stage, because the movie theatres that are the primary market for these feature films are not equipped to use them.

Commission’s analysis and decision

119. Programming, regardless of platform, should be accessible to all Canadians. Most recently, in Broadcasting Regulatory Policy 2015-104, the Commission stated that Canadians with disabilities should have more access to accessibility features and a seamless experience when accessing their content of choice. In that policy, the Commission considered that online availability of closed captioning should be increased and stated that it will expect broadcasters to include closed captioning on non-linear platforms when that programming was previously closed captioned for traditional television.

120. All elements of the broadcasting system should support the accessibility of programming, including CIPFs. In this way, accessibility will become a regular course of doing business, which will create efficiencies and will also result in the creation of programming that has broader market value. The use of inclusive design principles at the early stages of production would improve access to programming by as many people as possible, in a manner that would be more cost-effective and efficient than doing so only in post-production.

121. The Commission will therefore require that all programming resulting from CIPFs, regardless of the platform through which it is distributed, be closed captioned in a manner consistent with closed captioning quality standards set out in Broadcasting Regulatory Policies 2011-741, 2011-741-1 and 2012-362, and any amendments to those standards and provided with described video.

122. As part of their annual reports, CIPFs will be required to confirm that all programming is closed captioned and contains described video.

123. The Commission recognizes that the CIPFs are only one element of the current funding system supporting the creation of Canadian programming. The Commission encourages the CMF, as well as organizations like the CMPA, to consider adopting a public policy that all programming resulting from publicly established funds should be accessible, i.e. provided with closed captioning and described video.

Reflection of official language minority communities

Background

124. Currently, there are no requirements or expectations that CIPFs allocate funds to help finance productions that are made by, representative of, or include members of OLMCs.

Positions of parties

125. The QEPC and APFC proposed that 10% of funding should be spent on productions that target OLMCs. The APFC also stated that at least one member of the advisory committee should come from the OLMCs and that CIPF communications, including websites, be in both official languages.

126. Quebecor proposed that CIPFs with annual budgets of $10 million or more allocate at least two thirds of the funds for English-language projects and one third for French-language projects.

127. Several funds as well as AQPM opposed the inclusion of a CIPF criterion regarding OLMCs, primarily due to concerns in regard to the potential costs involved.

Commission’s analysis and decision

128. To ensure that OLMCs are reflected and that their issues are taken into account, the Commission will require CIPFs to have at least one CIPF project selection committee member who is responsible for the consideration of OLMCs’ realities. This new measure will help the financing of OLMC productions without limiting the flexibility of CIPF operations.

129. CIPFs that are already certified will be required to provide in their annual report a list of project selection committee members including the name of the person who is responsible and accountable for ensuring that OLMCs are properly reflected when making decisions.

130. Funds applying for CIPF certification will be required to submit a list of project selection committee members, which must include one person responsible and accountable for ensuring that OLMCs are properly reflected when making decisions.

131. In their annual reports, CIPFs will also be required to report on their activities related to OLMCs and how they have ensured proper reflection of these communities.

132. In light of the above requirements, the Commission considers that requiring that a percentage of funds be used for productions targeting OLMCs is not necessary at this time.

Governance of CIPFs

Background

133. To ensure that the funding of Canadian programming provided by the CIPFs benefits the broadcasting system as a whole, the Commission established in 1999 that any production fund that receives and administers contributions from BDUs must be constituted and must operate at arm's length from its contributors.

134. The Commission set out the following requirements regarding the composition of a CIPF's board and funding decisions in Public Notices 1997-98 and 1999-29, and most recently reiterated in Broadcasting Regulatory Policy 2010-833:

Composition of the Board

- All members of the Board must be Canadian.
- 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.

Funding Decision

- The Board shall ensure that all monies are directed to fund the types of productions contemplated in the relevant public notices and broadcasting 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.

Positions of parties

135. With respect to governance, CIPFs were viewed in a positive manner and considered to be effectively managed and transparent in their decision making. No issues related to the independence or to the composition of the board of any specific fund were raised and no potential recipient stated that a particular fund lacks independence or unduly favours entities or individuals.

136. Numerous television and film production companies, including White Pine Pictures, Shaftesbury Smokebomb, Entertainment One and Temple Street Productions, expressed the view that CIPFs are overall effectively managed, open and transparent. They also underlined the importance of having knowledgeable professionals in decision-making positions.

137. Many interveners were of the view that the status quo regarding the CIPFs' governance would be acceptable. However, some interveners commented on the continued applicability of certain governance rules and the need to clarify and update certain elements of the policy, namely those related to:

- the criteria designed to ensure the independence of the board of directors of CIPFs; and
- the rules and requirements around the independence relative to funding decisions.

138. With respect to the independence of the board of directors, the Canadian Union of Public Employees (CUPE) and the FRPC suggested amendments to the criteria to incorporate references to previous employment, financial involvement and family ties when assessing independence of a board member.

139. The CIPFs generally expressed the view that the current governance requirements are sufficient to ensure that the funds benefit the broadcasting system as a whole. They also indicated that revisions to the criteria that would tie independence to the concept of "economic interest" would be too broad and potentially too restrictive.

140. If the Commission were to revise the criteria, Bell Fund expressed the view that it could adopt a "no material interest" threshold modeled on the CMF by-laws. Rogers did not object to a revision of the requirement that two thirds of the board members be independent from BDUs and their affiliates and suggested that an independent member be defined as someone who is not an employee, officer or director of a contributing BDU or other private entity or their affiliate.

141. Shaw Rocket Fund stated that the fund defines an "independent member" as a member who is not a representative of a BDU and who does not receive any direct benefit from the BDU investments made by the fund.

142. With respect to independence relative to funding decisions, the television and film production companies and CIPFs were generally of the view that no changes were necessary in this regard.

143. CUPE was of the view that the current requirements relative to funding decisions are insufficient to avoid actual or perceived conflict of interest.

144. Bell Fund suggested that to avoid actual or perceived conflict of interest, CIPFs could benefit from a mandatory requirement that their governance documents contain safeguards such as Bell Fund's policy whereby the BCE representatives on the board recuse themselves from decisions where funding of Bell Media productions is up for consideration.

Commission's analysis and decision

145. The current CIPF governance rules as set out in Broadcasting Regulatory Policy 2010-833 are based on the premise that CIPF funding is derived from the contributions of BDUs pursuant to the *Broadcasting Distribution Regulations*. As such, they pertain solely to CIPFs that receive and administer contributions from BDUs and focus on the importance of CIPFs being constituted and operated at arm's length from BDU contributors.

146. Since the Commission's rules around the governance of CIPFs were last reviewed in 2010, there have been numerous changes, such as consolidation and vertical integration, within Canada's broadcasting industry. This has raised questions about whether the current governance rules sufficiently reflect the affiliation between broadcasters and BDUs, as vertically integrated companies can operate both a cable company that provides financial support to CIPFs, and a media company that broadcasts content which can benefit from the financial support of the CIPFs.

147. Furthermore, changes introduced to the Commission's tangible benefits policy set out in Broadcasting Regulatory Policy 2014-459 allow for a portion of all tangible benefits relating to changes in the ownership and effective control of licensed television undertakings to be allocated to CIPFs.

148. In light of the above, the governance rules relative to the composition of the board will be updated to reflect these new realities and to ensure the appropriate level of independence of the boards of directors of all CIPFs from private funding entities, including BDUs, broadcasters and their affiliates. Specifically, the following criteria:

- 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.

will be replaced by:

- At least two thirds of the Board members must be independent.
- Independent Board members shall cast no fewer than two thirds of the votes in a meeting.

For the purpose of these criteria, someone who is an employee, officer, director or an immediate family member of an officer or a director of a non-governmental contributor or its affiliates is not considered independent.

149. Based on the interventions received as well as the fact that no potential recipient has come forward stating that a particular fund lacks independence in its funding decisions, the Commission will not introduce detailed decision-making mechanisms that would significantly alter the funding decision criteria.

150. However, while the independence of the CIPFs in relation to their contributors is addressed by the board composition criteria, it is also important that CIPF funding decisions be free of conflicts of interest, or the appearance of, in relation to their recipients.

151. Therefore, the Commission will amend the funding decision criteria to incorporate the notion of conflict of interest. The following criterion:

- The Board shall establish an effective and efficient process to ensure that applications for funding of productions are appraised objectively.

will be replaced by:

- The Board shall establish an effective and efficient process to ensure that applications for funding of productions are appraised objectively and absent of actual or perceived conflicts of interest.

Reporting requirements

Background

152. CIPFs are currently not required to report on their activities and funding initiatives to the Commission. However, most CIPFs publish an annual report on their website. The information contained in these reports varies greatly from one fund to the next.

153. Absent reporting requirements, it is difficult to determine whether a CIPF continues to operate in a manner consistent with Commission policies or to know how funds are being allocated.

154. In the Notice, the Commission asked whether CIPFs should submit specific information to the Commission, such as:

- amounts spent on the administration of the fund;
- amounts dedicated to unrelated digital media projects;
- the composition of the Board and the relationship between each Board member and BDUs;
- amounts of funding allocated based on linguistic markets;
- amounts of funding given to local, regional, national and/or international productions; and
- the number of funded projects in relation to the number of applications received.

Positions of parties

155. There was widespread agreement among the interveners that commented on this issue that additional reporting requirements for CIPFs should be mandated. Some interveners were surprised to learn through this process that CIPFs are not required to give a report on their activities. Several interveners added to the list of information that they thought CIPFs should include in their annual reports.

156. The Harold Greenberg Fund indicated that it already includes in their annual report most of the information listed in the Notice. It argued that a breakdown for local, national or international production is not relevant.

157. Quebecor was of the view that the information listed in the Notice should not be part of the reporting requirements. However, it indicated that it should be given to the Commission if there is a complaint against a particular fund.

158. The CMPA expressed concern over the limited resources of the smaller funds and their ability to put together an annual report as a result. Groupe V stated that the requirements should not add to the administrative costs.

159. With respect to the confidentiality of information, some interveners suggested that the information should be made public, while others suggested that the following information, if it becomes required by the Commission, should be kept confidential:

    - financial statements;
    - amounts paid to external individual suppliers for a service;
    - individual salaries;
    - financial and audience results for individual programs; and
    - fees allocated to individual projects.

Commission’s analysis and decision

160. Requiring an annual report from each fund would provide accountability and transparency as CIPFs would provide specific and consistent information on their activities to Canadians, the Commission as well as the broadcasting industry. The Commission will therefore require all CIPFs to file with the Commission an annual report, including audited financial statements, no later than three months after the end of fiscal year, for their activities in the previous year. The reports must include the supplementary information set out in the appendix to this policy.

161. Some CIPFs expressed concerns that reporting on their funding activities would add to their administrative expenses, which are capped at 5%. In this respect, most CIPFs already produce some type of report that can be found on their website. If the information is not already found in their annual report, the Commission is of the view that the information should be easily available. However, to provide some flexibility for the smaller CIPFs, the Commission will allow CIPFs to request an

exception from the requirement to file audited financial statements, should they find this requirement to be unduly burdensome. The burden will be on the CIPF to clearly demonstrate and provide evidence as to why they should be granted an exception. Those granted an exception will still be required to file an annual report containing the information set out in the appendix to this policy.

162. In line with best practices as exemplified by the CMF's reporting, the current reporting practices of certain CIPFs, the Commission's practice, particularly with respect to the release of aggregate financial data for large broadcasting groups and other Commission practices or decisions where financial statements are or have been published, CIPFs are required to make their financial statements public. Financial statements are meant to present the financial information of the entity in question as clearly and concisely as possible for both the entity and for readers. The amounts spent on the administration of the fund should be clearly indicated in the statement of operations. The reports must be easily accessible and made publicly available by the fund itself on its own website and will also be made publicly available on the Commission's website.

Conclusion

163. This policy replaces the policy entitled *Contributions to Canadian programming by broadcasting distribution undertakings.* A consolidated version of the criteria for CIPFs, as amended by this policy, and a list of the information required in a CIPF's annual report are set out in the appendix to this policy.

164. The revised policy will be effective 1 September 2016.

Secretary General

Related documents

- *Call for comments on the Commission's policies relating to Certified Independent Production Funds*, Broadcasting Notice of Consultation CRTC 2015-467, 20 October 2015
- *Let's Talk TV: Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104, 26 March 2015
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Simplified approach to tangible benefits and determining the value of the transaction*, Broadcasting Regulatory Policy CRTC 2014-459, 5 September 2014
- *Quality standards for English-language closed captioning*, Broadcasting Regulatory Policy CRTC 2012-362, 5 July 2012

- *Quality standards for French-language closed captioning - Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012

- *Quality standards for French-language closed captioning*, Broadcasting Regulatory Policy CRTC 2011-741, 1 December 2011

- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010

- *New Media*, Public Notice CRTC 1999-84, 17 May 1999

- *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

- *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 CRTC 1996-51, 3 April 1996

Appendix to Broadcasting Regulatory Policy CRTC 2016-343

Criteria, clarifications and reporting requirements for Certified Independent Production Funds

Criteria

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* (the Regulations) to one or more independently administered funds, other than the Canada Media 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) as defined in *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010;
- the fund files with the Commission an annual report, including audited financial statements, no later than three months after the end of fiscal year, for its activities in the previous year;
- productions receiving funding achieve at least six points for Canadian content certification or are eligible as a pilot project recognized by the Commission;
- no more than 10% of funding is allocated to non-programming digital content;
- producers demonstrate that the production will be available on a platform accessible by Canadians;
- all programming receiving funding, regardless of the platform through which it is distributed, is closed captioned in a manner consistent with closed captioning quality standards,[5] and any amendments to those standards, and provided with described video; and
- one project selection committee member must be responsible for the consideration of official language minority communities' (OLMC) realities.

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[5] The quality standards are set out in *Quality standards for French-language closed captioning*, Broadcasting Regulatory Policy CRTC 2011-741, 1 December 2011, *Quality standards for French-language closed captioning - Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012 and *Quality standards for English-language closed captioning*, Broadcasting Regulatory Policy CRTC 2012-362, 5 July 2012.

Clarifications

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*.
- At least two thirds of the members of the Board must be independent.
- Independent Board members shall cast no fewer than two thirds of the votes in a meeting.

  For the purpose of these criteria, someone who is an employee, officer, director or an immediate family member of an officer or a director of a non-governmental contributor or its affiliates is not considered independent.
- 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 Broadcasting Regulatory Policy CRTC 2010-833, 9 November 2010, 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 and absent of actual or perceived conflicts of interest.
- The Board shall supervise the implementation of its funding decisions.

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 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

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.

Non-programming digital content

Non-programming digital content is defined as innovative projects such as story-driven videogames, interactive or customizable web content, apps and all other similar types of non-programming content.

However, broadcaster website development and information technology enhancements, such as software for streaming video or the simultaneous streaming of a production, will not be considered projects eligible for support from the independent production funds.

Co-ventures

CIPFs may allocate funding to co-ventures.

Script and concept development

CIPFs may allocate funding for script and concept development. CIPFs are permitted to recoup investments of script and concept development funding.

Promotion and discoverability initiatives

CIPFs may allocate funding for promotion and discoverability initiatives.

Reporting requirements

CIPFs must file with the Commission annual reports and audited financial statements no later than three months after the end of fiscal year for their activities in the previous year.

The report must be easily accessible and made publicly available by the fund on its website and will be made publicly available on the Commission's website.

The report must include audited financial statements. The amount spent on the administration of the fund should be clearly indicated in the statement of operations.

The report must also include the supplementary information set out below:

- The number of funded projects and the number of applications received.
- Information per project:
    - Project type (production, co-venture, script and concept development, promotion/discoverability, etc.)
    - Program title
    - Type of programming (drama, documentary, feature film, web series, etc.)
    - Brief description of content
    - Name of the production company and producer(s)
    - Location of production and location of production company
    - Broadcaster and/or platform on which the content is distributed (if applicable)
- Confirmation that all programming is closed captioned and contains described video
- Amount of funding allocated to productions in the English, French, Aboriginal and third languages, on an aggregate basis
- Amount of funding provided to non-programming digital content
- Amount of funding given to programming made in Canada's regions (i.e. outside of Toronto and Vancouver for English-language productions and outside of Montréal for French-language productions)
- Measurements of success employed by each fund
- A description of the composition of the board of directors, which clearly identifies members that are independent
- List of project selection committee members including the name of the person who is responsible for ensuring that OLMCs' reflection and issues are taken into consideration
- Details on activities relating to OLMCs and how the fund has ensured proper reflection of communities