



**Canadian Television Fund**

## **2006-2007 Guidelines**

### **Amendments to the 2006-2007 CTF Guidelines**

The COMPLETE Canadian Television Fund 2006-2007 Guidelines consist of:

Main Document (You must have this) and one of the following Guideline Modules as applicable to your production:

Broadcaster Performance Envelope Stream:

- Drama
- Children's and Youth
- Documentary
- Variety and Performing Arts

Special Initiatives Stream:

- Aboriginal-Language Productions
- French-Language Productions outside Quebec
- Development Financing
- Versioning Assistance

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**[www.FondsCanadiendeTele.ca](http://www.FondsCanadiendeTele.ca)**

This document amends Sections 6.5.2 and 6.5.3 of the Main Document of the 2006-2007 CTF Guidelines.

The changes to these sections of the Guidelines apply to all licence agreements, including licence agreements entered into before the amendment was announced. The CTF will not “grandfather” any licence agreements that do not comply with the Guidelines.

In order not to delay licensing activity, the CTF is posting this amendment to the Guidelines before all discussions among the CTF, industry stakeholders and the CBC have been concluded. Consequently, there may be a future notice of changes pertaining to Section 6.5.2 specific to the administration of “Other Rights” and CBC licences for projects produced outside of the province of Quebec.

### 6.5.2 Additional Rights

A licence fee that will contribute to threshold and/or trigger a CTF contribution cannot confer upon a Canadian broadcaster any of the following rights:

- An ownership, profit, repayment or recoupment position in the production;
- Broadcast rights for non-Canadian territories or restrictions on the Applicant’s ability to exploit these rights, with the exception of traditional broadcast spill-over protections and exclusive world premiere rights. Notwithstanding the foregoing exception, licence agreements must provide for waiver of the world premiere rights if a bona fide sale to a foreign entity is made provided the foreign entity agrees not to broadcast the program within six months of delivery to the Canadian broadcaster. For greater clarity, under no circumstances shall a broadcaster hold world premiere rights longer than six months from delivery where a bona fide sale was made to a foreign broadcaster; or
- Other Rights (e.g. home video, merchandising, new media, non-theatrical, on-line distribution, on-line broadcast/streaming or any form of video on demand) for Canadian or non-Canadian territories.

A broadcaster may acquire an ownership, profit, repayment or recoupment position in the production, as long as these additional rights do not form part of the licence fee. All such rights must be valued and paid for separately.

A broadcaster or an eligible distributor affiliated with the broadcaster may acquire other broadcast rights or broadcast rights for non-Canadian territories as long as these additional rights are not part of the rights being acquired in exchange for the licence fee that forms part of the threshold. All such rights must be valued and paid for separately. Notwithstanding the foregoing, Section 8.1.3 remains in effect.

### Safeguards for Negotiations of “Other Rights”

*The CTF recognizes that significant technological changes are occurring in the broadcast landscape that affect rights negotiations between broadcasters, producers and creators. To help ensure proper governance of negotiations pertaining to Other Rights, the CTF has created these temporary Safeguards. They are meant to be reviewed periodically as the industry progresses in settling guild agreements, in determining the impact of the technological changes on the value of different platform rights, etc.*

The CTF requirements regarding the negotiation and acquisition of “Other Rights” (as described in bullet point #3 of Section 6.5.2) differ according to the location of the producing company, and in some cases, the broadcaster licensing the project.

### 1. Productions produced by a company based *outside* the province of Quebec

The requirements that follow apply to all production companies based outside of Quebec regardless of the language of production, the language of the producer, the province of the licensing broadcaster(s), and the stream of CTF funding (i.e. Broadcaster Performance Envelope or Special Initiative):

Negotiation for Other Rights may commence no earlier than two weeks after the execution of a long-form licence agreement for broadcast rights in Canada. Such negotiation must, therefore, be separate and distinct from the broadcast rights negotiation. The producer and broadcaster may negotiate any exploitation arrangement for Other Rights if the arrangement is mutually agreed to. If no mutual agreement is reached, the exploitation of Other Rights by either party is forbidden for one year and the licence agreement for broadcast rights in Canada must remain in force. In regard to the foregoing negotiation for Other Rights, if both the producer and broadcaster agree that the negotiation for Other Rights be concurrent with the negotiation of the licence agreement, a letter signed by both parties to the President of the CTF may be used as the basis to waive the two-week delay in the negotiation for Other Rights.

While a production licensed by the CBC may use the aforementioned requirements to negotiate for Other Rights, discussions are ongoing with the CBC on the use of a revenue-sharing model. Accordingly, the treatment of negotiations for Other Rights in CBC-licensed productions is under review by the CTF and should be concluded by the end of May 2006.

### 2. Productions produced by, or co-produced with, a company based *in* the province of Quebec

For productions produced by, or co-produced with, a company based in the province of Quebec, the governance of negotiations for Other Rights differs from the foregoing.

The requirements that follow apply to all production companies based in the province of Quebec regardless of the language of production, the language of the producer, the province of the licensing broadcaster(s), and the stream of CTF funding (i.e. Broadcaster Performance Envelope or Special Initiative).

Licence agreements may not unreasonably restrict the producer's exploitation of "Other Rights-Traditional Distribution" defined as merchandising, home video, DVD, etc.

For Drama, the maximum allowable time restriction on exploitation of Other Rights-Traditional Distribution is two broadcasts or one year from delivery, whichever occurs first. In the case of a series, this refers to two broadcasts of the first episode or one year from delivery of the first episode, whichever occurs first. For all other genres, the maximum time restriction is three months after the first broadcast of the project or the first episode.

For "Other Rights-New Platform" defined as new media, on-line distribution, on-line broadcasting/streaming, any form of video on demand, etc., the following Guideline amendment will prevail:

- a producer may not assign or sell Other Rights-New Platform to a third party for the same territory and Term for which a broadcaster(s) has acquired the exclusive broadcast right (by providing a licence fee contributing to CTF threshold) without first having obtained the assent of the aforementioned broadcaster(s).

### 3. Compliance Process

If a producer is concerned that the safeguards are not being respected in its negotiations with a broadcaster, the producer may report this to the relevant producers association or, if the producer is not a member of such an association, the appropriate provincial industry association or agency. The CTF has asked the producers associations and the provincial industry associations or agencies to provide written summaries of these reports to the CTF President. The CTF will take these reports into account in its periodic evaluation of the Safeguards described above.

### 6.5.3 Licence Terms and Conditions

The CTF has a standard approach when assessing the maximum allowable time period of all broadcast windows (the "Term"). The start of the licence Term will be understood to begin at the contractually agreed upon term commencement date, as negotiated between the Applicant and the broadcaster. As generally understood in the industry, the Term is the period of time in which a broadcaster has the right to exploit a program. In the case of a series, the Term is measured from the commencement date of the first episode and not the commencement dates of each episode.

For clarity, the start of the Term and the first air date will not always coincide. By way of example, a broadcaster's Term may be from September 1, 2006 to September 1, 2010, but the broadcaster may choose to make the first broadcast date November 15, 2006. For eligibility purposes, the licence Term will be deemed to begin on September 1, 2006.

Applicants continue to have the flexibility to incorporate licences in excess of the Term within the financial structure. However, only that portion of the licences within the Term will be used for the purposes of all CTF calculations, including threshold assessment, allowable Broadcaster Performance Envelope contributions and the calculation of licence fees above historical access. Those licences that commence within the Term but extend beyond it will be pro-rated to match the maximum Term set for each genre.

Broadcasters may acquire, in addition to the Term, the right of first negotiation and last refusal for additional broadcast windows for the currently licenced project/cycle. The right of first negotiation may not be exercised prior to delivery of the first broadcast window. Broadcasters may not acquire the right of last refusal for any other rights, including broadcast windows for future cycles or versions of the project (including currently licensed projects/cycle).

For the purposes of series television, licences contributing to threshold may not contain co-terminus rights. Co-terminus clauses (i.e., clauses that extend the terms of existing licences to the end of the term of the renewal licence with no additional payment) are prohibited in eligible licences for renewed series, but these licences may include rights of first negotiation and/or last refusal for extension of licences for existing episodes of the series.

These maximum Terms do not apply to licences acquired by broadcasters for affiliated programming given the limited access to CTF funds by broadcaster-affiliated production companies. However, the maximum Terms do apply to projects produced by broadcaster-affiliated production companies that are licensed by unaffiliated broadcasters (where the financial structure does not contain a licence from an affiliated broadcaster).

Any licence used to draw a contribution from a Broadcaster Performance Envelope will be deemed to be contributing to threshold and must meet all licence eligibility criteria including the commitment to broadcast the production in peak viewing hours within 18 months of completion and delivery of the production. For second and subsequent window broadcasters, the commitment to air the production in peak viewing hours within 18 months will begin at the start of those broadcasters' licence periods.