

AUDIOVISUAL CO-PRODUCTION AGREEMENT

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF SOUTH AFRICA

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF SOUTH AFRICA (hereinafter referred to as the "Parties"),

CONSIDERING that it is desirable to establish a framework for audiovisual relations and particularly for film, television and video co-productions;

CONSCIOUS that quality co-productions can contribute to the further expansion of the film, television and video production and distribution industries of both countries as well as to the development of their cultural and economic exchanges;

CONVINCED that these exchanges will contribute to the enhancement of relations between the two countries;

HAVE AGREED as follows:

ARTICLE I

1. For the purpose of this Agreement, an "audio-visual co-production" is a project, irrespective of length, including animation and documentary productions, produced either on film, videotape or videodisc, or in any other format hitherto unknown, for exploitation in theatres, on television, videocassette, videodisc or by any other form of distribution. New forms of audiovisual production and distribution will be included in the present Agreement by exchange of notes.
2. Co-productions undertaken under the present Agreement must be approved by the following authorities, referred to hereinafter as the "competent authorities":

In Canada:

the Minister of Canadian Heritage; and

In South Africa:

the Minister of Arts, Culture, Science and
Technology

3. Every co-production proposed under this Agreement shall be produced and distributed in accordance with the national legislation and regulations currently in force in Canada and in South Africa or those that may hereafter be decreed in each country;
4. Every co-production produced under this Agreement shall be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production shall be fully entitled to take advantage of all benefits currently available to the film and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them.

ARTICLE II

1. The benefits of the provisions of this Agreement apply only to co-productions undertaken by producers who have good technical organization, sound financial backing for the co-production project in question and recognized professional standing.
2. The competent authorities of both countries shall nevertheless take into account the developmental nature of a producer and, providing that adequate financing has been arranged, look favourably upon co-productions involving such producers

ARTICLE III

1. The proportion of the respective contributions of the co-producers of the Parties may vary from twenty (20%) to eighty percent (80%) of the budget for each co-production.
2. Each co-producer shall be required to make an effective technical and creative contribution. In principle, this contribution shall be in proportion to his investment.

ARTICLE IV

1. The producers, writers and directors of co-productions, as well as the technicians, performers and other production personnel participating in such co-productions, must be citizens, or permanent residents of Canada or South Africa.

2. Should the co-production so require, the participation of performers other than those provided for in the first paragraph may be permitted, subject to approval by the competent authorities of both countries.

ARTICLE V

1. Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording must, in principle, be carried out either in Canada or in South Africa.
2. Location shooting, exterior or interior, in a country not participating in the co-production may, however, be authorized, if the script or the action so requires and if technicians from Canada and South Africa take part in the shooting.
3. The laboratory work shall be done in either Canada or South Africa, unless it is technically impossible to do so, in which case the laboratory work in a country not participating in the co-production may be authorized by the competent authorities of both countries.

ARTICLE VI

1. The competent authorities of both countries also look favourably upon co-productions undertaken by producers of Canada, South Africa and any country to which Canada or South Africa is linked by an Official Co-Production Agreement. In the event that a co-production is undertaken with a third party, then this will only be done after both competent authorities have given their express written consent.
2. The proportion of any minority contribution in any multi-party co-production shall be not less than twenty per cent (20%).
3. Each minority co-producer in such co-production shall be obliged to make an effective technical and creative contribution.

ARTICLE VII

1. The original sound track of each co-production shall be made in either English, French or any other official language of South Africa. Shooting in any two, or in all, of these languages is permitted. Dialogue in other languages may be included in the co-production as the script requires.
2. The dubbing or subtitling of each co-production into French and English, or into any other official language of South Africa, shall be carried out respectively in

Canada or in South Africa. Any departures from this principle must be approved by the competent authorities of both countries.

ARTICLE VIII

1. For the present purposes, productions produced under a twinning arrangement may be considered, with the approval of the competent authorities, as co-productions and receive the same benefits. Notwithstanding Article III, in the case of a twinning arrangement, the reciprocal participation of the producers of both countries may be limited to a financial contribution alone, without necessarily excluding any artistic or technical contribution.
2. To be approved by the competent authorities, these productions must meet the following conditions:
 - (a) there shall be respective reciprocal investment and an overall balance with respect to the conditions of sharing the receipts of co-producers in productions benefitting from twinning;
 - (b) the twinned productions must be distributed under comparable conditions in Canada and in South Africa;
 - (c) twinned productions may be produced either at the same time or consecutively, on the understanding that, in the latter case, the time between the completion for the first production and the start of the second does not exceed one (1) year.

ARTICLE IX

1. Except as provided in the following paragraph, no fewer than two copies of the final protection and reproduction materials used in the production shall be made for all co-productions. Each co-producer shall be the owner of one copy of the protection and reproduction materials and shall be entitled to use it, in accordance with the terms and conditions agreed upon by the co-producers, to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with those terms and conditions.
2. At the request of both co-producers and subject to the approval of the competent authorities in both countries, only one copy of the final protection and reproduction material need be made for those productions which are qualified as low budget productions by the competent authorities. In such cases, the material will be kept in the country of the majority co-producer. The minority co-producer will have access to the material at all times to make the necessary reproductions, in accordance with the terms and conditions agreed upon by the co-producers.

ARTICLE X

Subject to their legislation and regulations in force, the Parties shall:

- (a) facilitate the entry into and temporary residence in their respective territories of the creative and technical personnel and the performers engaged by the co-producer of the other country for the purpose of the co-production; and
- (b) similarly permit the temporary entry and re-export of any equipment necessary for the purpose of the co-production.

ARTICLE XI

1. The sharing of revenues by the co-producers should, in principle, be proportional to their respective contributions to the production financing and be subject to approval by the competent authorities of both countries.
2. To the extent that any revenue is expatriated from South Africa to Canada or to any other country participating in any co-production under this Agreement, the expatriation of any such revenue shall be done in accordance with the legislation then in force in South Africa in respect to the expatriation of revenues abroad. All participating co-producers agree to abide by the legislation in force in South Africa with respect to the expatriation of any such revenues.

ARTICLE XII

Approval of a co-production proposal by the competent authorities of both countries does not constitute a commitment to either or both of the co-producers that governmental authorities will grant a licence to show the co-production.

ARTICLE XIII

1. Where a co-production is exported to a country that has quota regulations, it shall be included either in the quota of the Party:
 - (a) of the majority co-producer;
 - (b) that has the best opportunity of arranging for its export, if the respective contributions of the co-producers are equal; or

- (c) of which the director is a national, if any difficulties arise with the application of sub-paragraphs (a) and (b) hereof.

2. Notwithstanding Paragraph 1, in the event that one of the co-producing countries enjoys unrestricted entry of its films into a country that has quota regulations, a co-production undertaken under this Agreement shall be as entitled as any other national production of that country to unrestricted entry into the importing country if that country so agrees.

ARTICLE XIV

1. A co-production shall, when shown, be identified as a "Canada-South Africa Co-production" or "South Africa-Canada Co-production" according to the origin of the majority co-producer, according to the nationality of the director or in accordance with an agreement between the co-producers.
2. Such identification shall appear in the credits, in all commercial advertising and promotional material and whenever this co-production is shown and shall be given equal treatment by each Party.

ARTICLE XV

In the event of presentation at international film festivals, and unless the co-producers agree otherwise, a co-production shall be entered by the country of the majority co-producer or, in the event of equal financial participation of the co-producers, by the country of which the director is a national.

ARTICLE XVI

The competent authorities of both countries have jointly established the rules of procedure for co-productions taking into account the legislation and regulations in force in Canada and South Africa. These rules of procedure are attached to the present Agreement.

ARTICLE XVII

No restrictions shall be placed on the import, distribution and exhibition of South African film, television and video productions in Canada or that of Canadian film, television and video productions in South Africa other than those contained in the legislation and regulations in force in each of the two countries.

ARTICLE XVIII

1. During the term of the present Agreement, an overall balance shall be aimed for with respect to financial participation as well as creative personnel, technicians, performers, and facilities (studio and laboratory), taking into account the respective characteristics of each country.
2. The competent authorities of both countries shall examine the terms of implementation of this Agreement as necessary in order to resolve any difficulties arising from its application. They shall, as needed, recommend possible amendments with a view to developing film and video co-operation in the best interests of both countries.
3. A Joint Commission is established to look after the implementation of this Agreement. The Joint Commission shall examine if this balance has been achieved and, in case of the contrary, shall determine the measures deemed necessary to establish such a balance. A meeting of the Joint Commission shall take place in principle once every two years, or as required, and it shall meet alternately in the two countries. However, it may be convened for extraordinary sessions at the request of one or both competent authorities, particularly in the case of major amendments to the legislation or the regulations governing the film, television and video industries in one country or the other, or where the application of this Agreement presents serious difficulties. The Joint Commission shall meet within six (6) months following its convocation by one of the Parties.

ARTICLE XIX

1. This Agreement shall enter into force on the date on which each Party has notified the other in writing through an exchange of diplomatic notes of its compliance with the constitutional requirements necessary for the implementation of this Agreement.
2. This Agreement shall remain in force for an initial period of five (5) years from the date referred to in sub-article (1) and shall thereafter remain in force unless it is terminated by the Parties as contemplated in sub-article (5).
3. Co-productions which have been approved by the competent authorities in keeping with the provisions of this Agreement and which are in progress at the time of notice of termination of this Agreement by either Party, shall continue to benefit fully until their completion from the provisions of this Agreement.

4. After the expiry or termination of this Agreement, its provisions shall continue to apply to the sharing of revenues of completed co-productions.

5. This Agreement may be terminated by either Party upon giving six (6) months' written notice through the appropriate diplomatic channels of its intention to terminate this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at _____, this _____ day of _____ 1997, in the English and French languages, each version being equally authentic.

**FOR THE GOVERNMENT
OF CANADA**

**FOR THE GOVERNMENT
OF SOUTH AFRICA**

ANNEX

RULES OF PROCEDURE

Application for benefits under this Agreement for any co-production must be made simultaneously to both administrations at least thirty (30) days before shooting begins. The administration of the country of which the majority co-producer is a national shall communicate its proposal to the other administration within twenty (20) days of the submission of the complete documentation as described below. The administration of the country of which the minority co-producer is a national shall thereupon communicate its decision within twenty (20) days.

Documentation submitted in support of an application shall consist of the following items, drafted in English or French in the case of Canada and in English or any other official language of South Africa in the case of South Africa:

- I. The final script;
- II. Documentary proof that the copyright for the co-production has been legally acquired;
- III. A copy of the co-production contract signed by the two co-producers;
The contract shall include:
 1. the title of the co-production;
 2. the name of the author of the script, or that of the adaptor if it is drawn from a literary source;
 3. the name of the director (a substitution clause is permitted to provide for his replacement if necessary);
 4. the budget;
 5. the financing plan;
 6. a clause establishing the sharing of revenues, markets, media or a combination of these;
 7. a clause detailing the respective shares of the co-producers in any over or underexpenditure, which shares shall in principle be

proportional to their respective contributions, although the minority co-producer's share in any overexpenditure may be limited to a lower percentage or to a fixed amount providing that the minimum proportion permitted under Article VI of the Agreement is respected;

8. a clause recognizing that admission to benefits under this Agreement does not constitute a commitment that governmental authorities in either country will grant a licence to permit public exhibition of the co-production;
 9. a clause prescribing the measures to be taken where:
 - (a) after full consideration of the case, the competent authorities in either country refuse to grant the benefits applied for;
 - (b) the competent authorities prohibit the exhibition of the co-production in either country or its export to a third country;
 - (c) either party fails to fulfill its commitments;
 10. the period when shooting is to begin;
 11. a clause stipulating that the majority co-producer shall take out an insurance policy covering at least "all production risks" and "all original material production risks";
 12. A clause providing for the sharing of the ownership of copyright on a basis which is proportionate to the respective contributions of the co-producers.
- IV. The distribution contract, where this has already been signed;
- V. A list of the creative and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;
- VI. The production schedule;
- VII. The detailed budget identifying the expenses to be incurred by each country; and
- VIII. The Synopsis.

The competent administration of the two countries can demand any further documents and all other additional information deemed necessary.

In principle, the final shooting script (including the dialogue) should be submitted to the competent administrations prior to the commencement of shooting.

Amendments, including the replacement of a co-producer, may be made in the original contract, but they must be submitted for approval by the competent administrations of both countries before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to both the competent administrations.

The competent administrations will keep each other informed of their decisions.