

How-to Co-Pro: Legal Essentials of Co-Productions

OIAF: The Animation Conference (TAC) 2025

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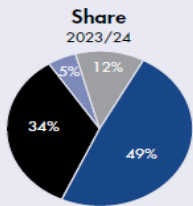
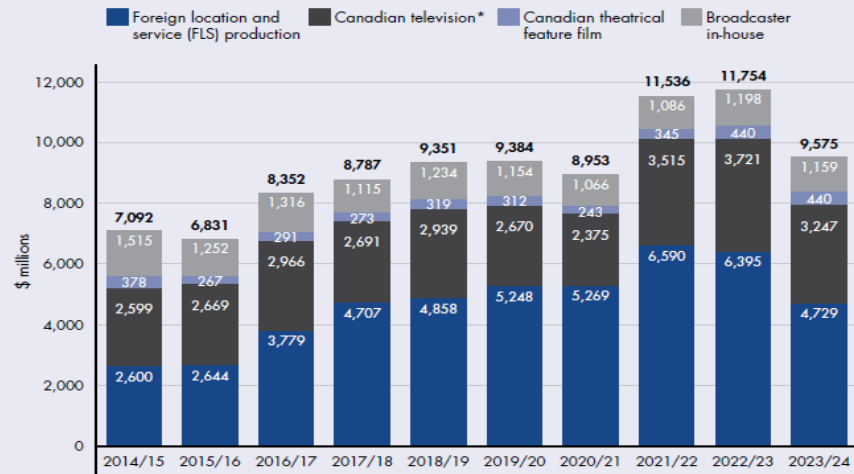


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Industry Overview

Exhibit 1-1a Total volume of film and television production in Canada



Annual average growth rate

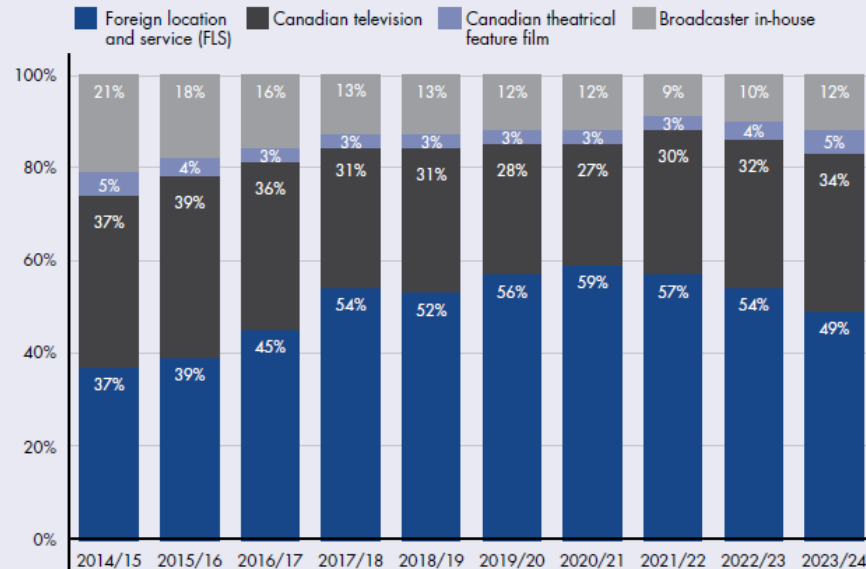
Sector	2023/24	2014/15-2023/24
Foreign location and service	(26.1%)	6.9%
Canadian television*	(12.7%)	2.5%
Canadian theatrical feature film	0.0%	1.7%
Broadcaster in-house	(3.3%)	(2.9%)
Average: all segments	(18.5%)	3.3%

Total Canadian Film and Television Production (2023/24) (source: CMPA Profile 2024)

- 18.5% decline (2023/24 versus 2022/23)
- 56% Foreign Location and Service (excluding Broadcaster In-House)
- 44% Canadian Content
- Total Foreign Investment - \$4.7B
- Drivers – government supports and USD/CAD FX rate

Industry Overview

Exhibit 1-2 Total volume of film and television production in Canada, share by segment



Sources: Estimates based on data collected from CAVCO, CRTIC, CBC/Radio-Canada and the Association of Provincial Television and Film Agencies.
Note: Some totals may not sum due to rounding.

Total Canadian Film and Television Production (2014 – 2023/24) (source: CMPA Profile 2024)

- Over 10 years
 - Foreign Location and Service increased by one third - from 37% to 49%
 - Canadian Content declined from 37% to 34%
 - Broadcaster inhouse declined from 21% to 12%



Production Funding – Sources

Sources of Production Funding for CanCon (2023/24) (source: CMPA Profile 2024)

Exhibit 2-12 Financing for Canadian content production

	2019/20		2020/21		2021/22		2022/23		2023/24	
	\$ millions	%	\$ millions	%	\$ millions	%	\$ millions	%	\$ millions	%
Private broadcaster licence fees	406	14%	293	11%	580	15%	582	14%	456	12%
Public broadcaster licence fees	313	10%	339	13%	407	11%	424	10%	454	12%
Federal tax credit ¹	295	10%	265	10%	388	10%	422	10%	378	10%
Provincial tax credits ¹	562	19%	487	19%	768	20%	824	20%	697	19%
Canadian distributors ²	287	10%	360	14%	363	9%	526	13%	360	10%
Foreign pre-sales and advances ³	463	16%	334	13%	508	13%	505	12%	497	13%
Canada Media Fund	276	9%	280	11%	288	7%	290	7%	303	8%
Telefilm Canada	70	2%	43	2%	84	2%	90	2%	83	2%
Other public ⁴	130	4%	116	4%	216	6%	224	5%	194	5%
Other private ⁵	176	6%	103	4%	258	7%	273	7%	265	7%
Total	2,982	100%	2,619	100%	3,860	100%	4,160	100%	3,687	100%

Sources: Estimates based on data obtained from CAVCO, CMF and Telefilm Canada.

Notes: Some totals may not sum due to rounding. Data includes an estimate of CRTC-certified television production.

1. Canadian production companies receive federal and provincial tax credits based on their eligible expenditures, and, in almost all cases, invest their tax credits directly into their film and television projects, in order to complete their project financing.
2. Canadian distributors' financing includes minimum guarantees and advances invested in television programs and theatrical feature films in exchange for rights to market, license and exhibit the audiovisual productions in Canada, unsold territories outside of Canada or on global distribution platforms.
3. Foreign pre-sales and advances include broadcast licence fees, minimum guarantees, advances and other forms of financing from non-Canadian broadcasters, distributors or other organizations based outside of Canada, including streaming services, other VOD services, TV networks and public broadcasters.
4. 'Other public' includes financing from provincial governments, and other federal government departments and agencies; excludes federal and provincial tax credits, Canadian public broadcasters' licence fees and funding from Telefilm Canada.
5. 'Other private' includes financing from production companies (excluding the tax credit contribution), independent production funds, broadcaster equity and other Canadian private investors.

Government – 44%

- Tax Credits - 29%
- CMF - 8%
- Telefilm – 2%
- Other public – 5%

Exploitation – “Asset Value” – 54%

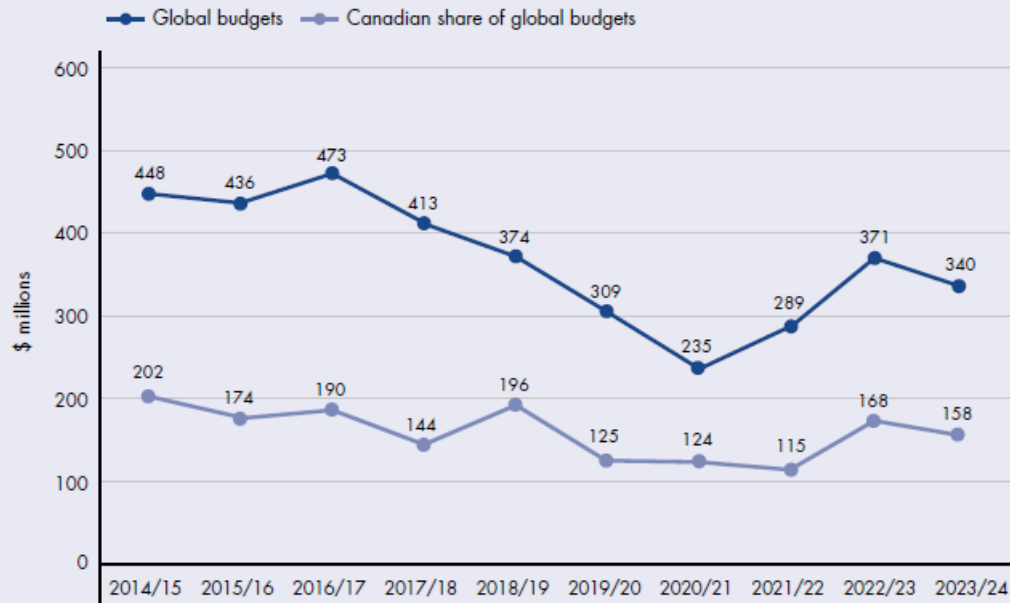
- Broadcaster Licence Fees – 24%
- Other Presales and Distribution – 23%
- Other “private” (includes CIPFs) – 7%



Co-Productions – International Treaty

Treaty Co-Productions (Global/Can. Budgets) (2014 – 2023/24) (source: CMPA Profile 2024)

Exhibit 5-1 Volume* of Canadian audiovisual treaty coproduction, all release windows



Source: Telefilm Canada.

Note: Statistics as of April 2024.

* Volume of coproduction refers to the value of total global budgets for coproduction projects and includes the financial participation of Canadian producers (i.e. Canadian share of budgets) and foreign producers (i.e. foreign share of budgets).

Treaty co-productions have declined and now represent less than 2% of total Canadian production.

- High (2013/14)
 - \$313 million (7.6%) of total Canadian budgets
- 2023/2024; 2024/2025
 - \$158 million (1.65%) total Canadian budgets
 - \$170 and \$123 million in 23/24 and 24/25 (source: Telefilm)
- Advantages:
 - Access to cast and key creatives, strong partners and properties, foreign sales, foreign production supports
 - CanCon at a fraction of full production cost

CO-PRODUCTIONS



The Basics

- Access to production expertise, relationships and funding = risk reduction
- Access to cast, key creatives and locations (specific “sensibilities”)
- Access to domestic exhibitors – broadcasters, theatrical
- Access to lower labour rates
- Bi-lateral or multi-lateral
- “National Treatment” (treaties and inter-provincial)
 - access to “domestic” production treatment and related benefits of each co-producer territory (international or inter-provincial)
- Benefits calculated on the “local” spend



CO-PRODUCTIONS



The Basics

- The Co-Production Split
 - Typically, determined by share of funding from each co-producer territory
 - Split:
 - Funding
 - Work
 - Key Creatives
 - Copyright
 - World-wide revenue (ex. Local territories)



CO-PRODUCTIONS



International Treaty

- 57 International Audio-Visual Production Treaties
- Administered in Canada by Telefilm, which makes certification recommendation to CAVCO
- Most treaties follow the “Co-Production Split” described above
- Minimum participation – varies from 15% to 30%
- Some of the newer treaties (since 2014) have relaxed the key creative split



CO-PRODUCTIONS



Inter-Provincial

- Each province has its own qualification criteria
- For example, Ontario
 - OFTTC – co-pro agreement; minimum 20% Ontario costs; 85% (shooting/key animation in Ontario) and 95% (post -production in Ontario) requirements are waived; individual Ontario producer; based on Ontario costs
 - OPSTC and OCASE - no specific requirements or waivers



CO-PRODUCTIONS



- A category of production defined by the CRTC
- A co-production with a non-treaty state (such as the US) or a non-compliant co-production with a treaty state
- Typically, though not always, a co-production with the US
- Does not entitle to federal or provincial CanCon tax credits but does qualify for Canadian Content status from the CRTC (SR number)
- May qualify for production services tax credits
- See:

<https://crtc.gc.ca/canrec/eng/guide1.htm#4.3.5>

CO-PRODUCTION AGREEMENT



The Basics

- Originating Rights
 - Is one of the co-producers bringing the originating rights – the concept, the script?
 - Do the rights include further productions, merchandising, publishing, music, other ancillary rights?
 - Does the owner of the originating rights get a grant back of the elements created by the co-production (story, designs, music, characters, etc.)?
 - Rights payment



CO-PRODUCTION AGREEMENT



The Basics

- Control – decisions and approvals
 - Who calls the shots?
 - Financial, creative, exploitation
 - Rights of meaningful consultation?



CO-PRODUCTION AGREEMENT



The Basics

- Budget, Sources of Funding, Financing
 - Setting the budget(s) (overall and individual)
 - Co-producer overheads, producer and other related party fees, reimbursements for facilities and equipment
- Sources of funding
 - domestic sales and supports
 - foreign sales,
 - investors
 - deferrals (no tax credits), reinvestment (tax credits)
- Production financing
- Over/under budget
 - proportional (minority may be limited to % or amount)



CO-PRODUCTION AGREEMENT



The Basics

- Production and post-production
 - Split (capacities, costs, incentives, Co-Production Split)
 - Choice of locations and key creative roles
 - Schedule
 - Reporting obligations (co-producers, third-parties)
- Financial controls
 - Approvals, co-signatures
 - Reporting obligations (co-producers, third parties)
 - Cash flows, Cost reports
 - Record keeping and access to records
- Insurance – CGL, production, exploitation (E&O)



CO-PRODUCTION AGREEMENT



The Basics

- Exploitation, Merchandise and Ancillary Rights
- Copyright shared in proportion to the Co-Production Split
- Joint control or majority co-producer?
- Merchandise and ancillary rights revenues
- Compensation for exploitation activities
- Residuals, royalties, investors and other back-end participants



CO-PRODUCTION AGREEMENT



The Basics

- Further Productions
 - Next season
 - Sequel, prequel, spin-off
 - A time-limited option to participate on the same terms as the original co-production agreement
- Credits
 - Each co-producer
 - Their key personnel
 - Cast, crew and production staff
 - Financiers
 - Prominence and placement



CO-PRODUCTION AGREEMENT



The Basics

- Dispute Resolution
 - Mediation
 - Arbitration
 - Court (equitable remedies – injunctions)
- Term / Termination
 - Open-ended (co-development from scratch)
 - Time and milestones (sources of funding, financing, principal photography, etc.)
 - Reversion
 - Development buy-out option



CO-PRODUCTION AGREEMENT

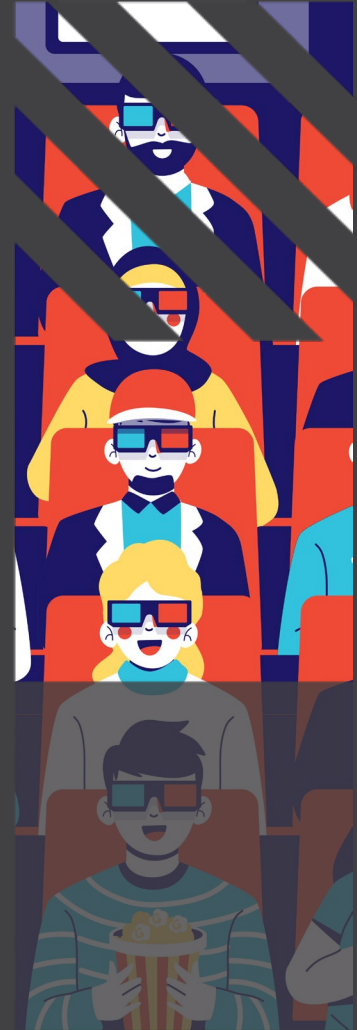


The Basics

- Everything else
 - Reps and warranties
 - Indemnity and limitations of liability
 - Choice of law



QUESTIONS?



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