

PRINCIPLES FOR LICENCING AND DISTRIBUTION RIGHTS FOR TELEVISION PROGRAMS AND INTERACTIVE CROSS-PLATFORM CONTENT

The Independent Production Fund, in co-operation with other independent Funds and provincial funding agencies, has developed principles to ensure that the programs it invests in meet the following criteria: have maximum exposure on a variety of platforms for the benefit of the audience; and to ensure that it can participate fairly in the revenues generated from the distribution of the programs and their ancillary rights on various platforms throughout the world.

DEFINITION OF BROADCAST RIGHT

For the purpose of investment by the Funds, the definition of a Canadian Broadcast Right shall be defined as follows:

Canadian Broadcast Right is defined as the telecast of the program on a CRTC regulated television system, whether on a traditional scheduled broadcaster or a VOD service.

All “Other Rights” must be defined separately and valued separately within the broadcast agreement.

PRINCIPLES FOR BROADCASTER RIGHTS AND OTHER RIGHTS

The Funds have agreed on the following fundamental principles for rights being acquired by Canadian broadcasters for television programs:

CANADIAN BROADCAST AGREEMENTS

1. Canadian broadcasters may only acquire Canadian rights.
2. The licence fee paid for the Canadian Broadcast Right must be clearly separate from any amounts paid for any Other Rights being acquired by the broadcaster, including the rights to the interactive content and distribution rights, if any.
3. If the broadcaster licences or acquires any of the Other Rights, the Funds expect to participate in the revenues for such Other Rights as outlined below. For greater clarity, the Funds do not expect to participate in advertising revenue for television programs.
4. If distribution rights are granted to the broadcaster, such rights will be subject to industry standard distribution fee and expense caps with the requirement of revenue reporting and revenue remittance to the producer as required by any other Canadian distributor.
5. The licence agreement cannot:
 - restrict the producers ability to exploit any non-Canadian rights;
 - restrict the producers ability to exploit the Other Rights in Canada that the broadcaster does not licence or acquire; nor
 - include co-terminous rights.

OTHER RIGHTS

1. Other Rights include but are not limited to:
 - a. Paid internet broadcast/distribution;
 - b. Paid mobile/wireless distribution (not through the internet); and
 - c. Electronic sell through and/or electronic rental (iTunes, broadcaster websites, etc.).
2. Broadcaster revenue participation in the Other Rights is limited to 50% of the gross revenues, in aggregate.
3. The revenue share will be calculated from revenues actually received by the broadcaster for the Other Rights (gross receipts less reasonable and verifiable third party deductions only, such as iTunes fees).
4. The amount paid by a broadcaster to licence the Other Rights may be considered an advance against future revenues for those rights. The broadcaster may recover this advance and then a revenue share with producer is expected.
5. Should the broadcaster acquire any Other Rights on an exclusive basis, such rights must be made available to the audience within twelve months following the first air date of the program (if a series then from the first air date of the first episode) or such rights will then become non-exclusive with producer.

DISTRIBUTION RIGHTS

1. Distribution Rights include but are not limited to:
 - a. Home entertainment distribution (DVD/Blu Ray or other compact video device);
 - b. Theatrical distribution of the television program;
 - c. Non-theatrical distribution (educational, airline); and
 - d. Subsidiary rights including, but not limited to, merchandising, derivative and format rights.
2. Should the broadcaster acquire Distribution Rights, the broadcaster will need to assume the role of a distributor with industry standard distribution fee and expense caps with no further revenue share, and have the requirement to report and remit revenue to the producer.
3. The amount paid to acquire the Distribution Rights will be considered a distribution advance as per industry standards.
4. Distribution Rights acquired by a broadcaster must be made available to the public within one year of delivery of the television program to the broadcaster, or such rights will revert back to the producer without restriction.

BROADCASTER REVENUE SHARING

1. In the event that a broadcaster receives a revenue share from rights that are not licenced by the broadcaster (i.e a percentage of Canadian merchandising revenue), such revenue share must be after recoupment by all parties and out of producer's share of the revenues.
2. Revenue share can be only from Canadian revenue and not international revenue.

DIGITAL/INTERACTIVE CROSS PLATFORM CONTENT

In respect to digital/interactive content based on a television program, the Funds will expect the following terms in the agreements with broadcasters for such content:

1. Broadcasters may negotiate non-exclusive or exclusive rights to the interactive property during the term of its television licence in Canada. A licence fee or 50:50 revenue share for these rights must be negotiated with the producer and agreed to by the respective Fund.
2. Upon the expiry of the term of the licence, and licence extensions if any, the producer shall have the right to exploit the interactive rights in Canada.
3. If exclusive rights to the interactive project are not exploited by the broadcaster within twelve months of the first air date of the program (if a series then from the first air date of the first episode), then the producer may subsequently exploit these rights on a non-exclusive basis.
4. If equity investment is provided by a Fund, an appropriate participation in the revenues generated from the digital/interactive content is expected, subject to the agreements made with other funders.

The Funds will consider reasonable variations to the above Television Program and Digital/Interactive Content terms with Canadian broadcasters if such arrangement enhances the exploitation of the program as well as the Funds' recoupment.

The Funds will review these principles from time to time and modify as required.