



# Hot Docs Guide to Co-Production

*“One of the most rewarding aspects of a co-production I’ve found is meeting people who have a fundamentally different way of making films.”* —Bob Moore, Producer

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## Part One: Introduction

*Though there are often financial advantages to co-production, the content below will re-enforce that co-production is first and foremost about relationships, and relationships are an art rather than a science. As such, this is not a step-by step guide, as each co-production relationship is unique and dependent on numerous variables.*

*Preparedness, logic, flexibility and creativity are the most vital tools when determining whether co-production is right for you.*

*“The true spirit of co-production is to collaborate creatively, to work with those who can bring truth, nuance and subtlety to a subject in ways you cannot do alone.”*

– Sarah Spring, Producer

In the broadest sense, a co-production is a collaborative relationship between two or more parties to produce a project that benefits from the involvement of both of those parties.

### Why demystifying co-production is important

- Every co-production relationship and the benefits it offers to each party will be unique.
- The benefits can vary widely based on the parties involved, their countries or regions of origin, and the treaty agreements between those countries.
- There is no one right way to successfully co-produce, and each project should evaluate the potential outcomes of an agreement on a project-by-project basis.

### What you will learn from this guide:

- The different kinds of co-production relationships, including national, international, treaty or non-treaty, two or multiple production partners, or broadcaster co-productions.
- The benefits that may be available to partners in a co-production.
- That co-production can also be fraught with disadvantages, and that navigating through added production logistics, adhering to strict funding guidelines and acknowledging the reality of creative compromises is critical in prepared for inevitable challenges along the way.
- The best practices of experienced international co-producers, from initial relationship building to post-production considerations.
- The logistics of applying for co-production status in Canada, the benefits available to Canadian producers, and why co-producing with the U.S. is so difficult.

### International Treaty Co-Productions

An official treaty co-production (also known as a bi-lateral agreement) is a partnership between two production partners that adheres to national or regional government funded co-production requirements in order to receive the benefits of national status in the countries of both producing partners. Applications to these funds are filed separately, by each producer, in their own country of origin. The requirements of the bodies that administer these benefits require strict adherence to their policies in order to receive funding, but their guidelines will vary widely depending on the country or region. In Canada, treaty co-productions are administered by Telefilm Canada and adherence to terms is assessed in two stages: a preliminary recommendation (which is required 30 days before principal photography) and a final recommendation (required after production).

Prospective co-producers may or may not wish to access the benefits of treaty status (which is only possible if there is a standing agreement between both countries) and it is strongly advised that production partners create detailed agreements with each other beyond what is covered in treaty agreement, as treaty agreements do not cover the basic responsibilities and the accountability to which each partner holds the other.

### Co-Production, a term used to denote different types of collaborations

**Two or more production companies:** To varying degrees, two or more companies produce, manage and own the rights of the film. The relationship is generally outlined in a co-production agreement which defines the creative and technical details of the production, the distribution of management and responsibilities, the exploitation of rights and share of income, and the territories where the co-producers will jointly or exclusively exploit the film.

**Broadcaster and producer:** This type of co-production may simply resemble a commission or pre-sale from a broadcast partner, but includes a great degree of involvement, both creatively and in all production aspects, from a broadcaster from an early stage. A sound contract should outline minimum terms for the broadcaster's involvement regarding script, production plan, budget and financing, terms and delivery regarding rough and final cuts, acceptance of changes in production, and the distribution of rights.<sup>1 (EDN Source)</sup>

**Film Fund / Other film group:** Certain film organizations (such as the National Film Board of Canada, and others internationally) will enter into relationships with independent producers which closely resemble international co-productions, and which provide for an allocation of responsibilities in production and distribution. Terms of the relationship are outlined in a detailed agreement and should specify precise production, creative, financial/budgetary allocations in production and through release/distribution.

### Possible Benefits of Co-Production

Co-production (both treaty and non-treaty) may trigger any number of benefits for a co-production partner, including tax credit schemes, various levels of national and regional funding, national content status for broadcast, access to skilled talent and labour. A project with a broadened scope can also pique the interest of institutional funders, sales agents and distributors in various ways. Benefits that can be accessed by a co-production partner can vary widely and depend on the funding and broadcast bodies that support co-production in those countries.

### Possible Evils of Co-Production

Co-production requires a huge amount of upkeep from both sides; attempting to access funding and additional broadcasters can slow the production process immensely. If a project idea originates with one party they may have to relinquish some level of creative control. Co-production is a partnership, which means no party is the sole decision maker. Be sure to research funder's rules for how and where their money can be spent, as funds raised in one country often must be spent in that country. It is strongly advised not to partner with a co-producer solely for access to additional funds: co-production partnerships need to make sense creatively and financially for both sides, and the project, to benefit.

If a co-production is also aiming to fall within the guidelines of a treaty co-production there is a great amount of administration necessary (usually involving a lawyer) to ensure adherence to treaty guidelines is maintained thorough the production of the project. If a project no longer adheres to treaty requirements at the end of production, it can lose the treaty-status benefits offered by both sides.



## Part Two: Producer's Tips and Tricks

### Does the project need a co-production? Can you justify it?

A co-production is a hugely involved and lengthy relationship and requires careful planning. If the budget is not large enough or timeline not long enough, it is likely not worth the effort to co-produce. A filmmaker might think they need a co-producer to be able to access commissioning editors or private foundations in other countries, but it may be that what they want is an Executive Producer, who doesn't necessarily have to be a co-producer.

- Co-productions should be carefully considered on a case-by-case basis and are inadvisable to pursue from strictly a financial standpoint. If entering into a co-production is for the purpose of accessing for one specific fund it is very likely not worth the effort, time, and relinquishing of creative control of the project.
- Co-productions are recommended for projects that will benefit from most or all of the following: creative expertise, cultural nuance, access to relevant funds as well as access to the broadcast platforms/audiences of both co-producing countries.
- Even if two co-producers have a good working relationship, the requirements of film agencies/funds of other countries are not always immediately compatible, so the decision to specifically enter an official treaty co-production should be carefully researched and considered.

### Vetting a Co-producer

Co-productions are often pursued by production companies that have grown to become very familiar with each other and have taken great steps to develop trust and transparency over time and in smaller ways, before activating such a deeply entrenched professional relationship.

- If you are hunting for a co-producer, go to festivals and markets to find out who the funders in that country know and trust, and who has a good work ethic.
- Look at a potential partner's work and team to consider if you can build a sustained relationship with them.
- Speak to other producers and collaborators who have worked with them, to gauge their individual approach to business relationships and creative work in general.
- Look at a potential partner's website, social media presence and marketing collaborators to determine marketing style.
- Study not just a collaborator's film partnerships, but their key collaborators in the field in which their films are about: are they willing and able to collaborate with different kinds of organizations who can help promote their film/cause?
- Interview new partners to learn who their key creatives are, what experiences they have, and if their directors are willing to be collaborative.
- Carefully dissect if your film will work for the producers, broadcasters and audiences in both countries before entering into an agreement. Don't force the partnership doesn't make sense.
- Team up with someone who believes in your project. Start working together from the very beginning through co-development in order to establish whether you indeed have a shared vision.
- Do a dry run on paper in which you map out what it would be like to work together simultaneously from co-development through to the very end of post-production.

The guidelines to assess and vet financial partners as defined by The Prenups Guide offers excellent takeaways which one can apply to vetting a potential co-production partner. [www.activevoice.net/wp-content/uploads/2014/05/ThePrenups\\_guide\\_final.pdf](http://www.activevoice.net/wp-content/uploads/2014/05/ThePrenups_guide_final.pdf)

### What you need to know about your partner/agreement to stay on track

- Eligibility requirements for official treaty status according to film agencies are bare bones compared to other critical elements both sides must negotiate. Before signing documents make sure everyone is on the same page by establishing what the deliverables are, who's in charge of delivering them, what the levels of accountability are, what the shooting plan and schedule is, and how the budget going to be managed day-to-day. Budgets should be shared between co-producers for the sake of transparency.
- To help avoid creative disputes outline who the key creative players are and the creative input they have from development to post-production. Have a chain of title in place – make sure it's clear who has worked on the concept and who has ownership of the content.
- Detail an exit strategy in case the partnership fails. Be transparent and clear about consequences and responsibilities.
- Have detailed provisions in your agreement for what happens if one side fails to deliver, beyond the copyright ownership details required by your treaty administrator. Discuss and map out a plan to dissolve the co-production if that should come to pass. Have a clear understanding of the terms and write those elements into the agreement.
- Have accountants keep an eye on the ratios of contribution when costs rise, budgets change and new funders are brought on board as this can affect your treaty status.
- Acknowledge that business practices (ways of communicating, negotiating tactics) as well as filmmaking practices (aesthetic choices and taste) in general differ internationally, as they do from company to company.
- A co-production relationship means being willing to contribute to the success of your partner's outcomes just as much as you plan for the success of your own.
- Trust and understand your co-production partner. You have to like each other to understand and sympathize with how the other thinks. This will allow for the possibility much needed flexibility, compromise and negotiation. If you don't work with partners you respect, both partners, and the potential of the film itself, will suffer.

### Remember to consider

- Common disadvantages associated with co-production are that it can slow the production process immensely; you relinquish some level of creative control; you are accountable to more people and cannot make choices as a sole decision maker. This increases as more co-producers join a production.
- Do not underestimate the effect time differences between partners can have on a production timeline.
- Extra costs incurred may include: audits, insurances, lawyer and accounting fees, etc. Disparities in cost also have to be considered in each budget: Errors and Omissions Insurance is required in the US/Canada but not in the rest of the world, an audit is usually a minimum of \$5K in Canada but might be different elsewhere. Bureaucratic loopholes result in stretched timelines, increased costs and cash flow delays.

- Acknowledge that you will constantly need to recalculate and reevaluate what is best for the film and the crew. As the project evolves there may be shifts in responsibility. Co-productions need to be fluid and flexible, but at the same time you need to be critically careful to continue to adhere to the requirements of a treaty or your funders. In a treaty co-production, most of the time money raised in a country has to be spent there (or on nationals of that country); do not put yourself in a position where you would be forced to dilute a project with talent that can't contribute creatively to the nuance of the story.
- Generally, each partner should be responsible for versioning, content and overall cultural appropriateness for television programming in their home region.

#### Practical Tip

- Treat local treaty co-production administrators as you would the business affairs office of your broadcaster: keep them in the loop from the out-set, run any major changes past them, and be communicative.
- When applying for a grant, have the creative producer provide the treatment and all other creative components of the application, regardless of which producer is applying, in order to strengthen the application.

#### Creative Tip

- When working in a different culture with characters who are complex and problematic, don't gloss over content just because you don't understand it, work with your co-producers to represent it in a useful way. Collaboration is to work with those who have a rooted understanding of the people you want to make your film about.



## Part Three: Co-production from a Canadian Point of View

Canada has Audiovisual Co-production Treaties and MOU's (Memorandums of Understand) with 54 countries. Each treaty is different, but typically each co-producing country's stake may be no less than 20% and no more than 80%.

In 2014, Telefilm administered treaty status to 67 two-partner and three-partner co-productions, with project budgets totalling \$526 882 164, of which \$249 271 364 was Canadian. Thirteen of these productions were in the French language.

### Getting the ball rolling:

Once you have your co-producer, agreements, and financial structure in place you can apply for treaty co-production. In Canadian, treaty co-productions are administered by Telefilm Canada, which reviews applications for the eligibility of co-production status and makes recommendations to the Minister of Canadian Heritage for either approval or denial. Applications must be submitted through the Telefilm's online submission system which can be found at [www.telefilm.ca/eTelefilm](http://www.telefilm.ca/eTelefilm)

Telefilms recommendation process comprises of two stages:

1. Preliminary Recommendation (**required 30 days before principal photography\***)
2. Final Recommendation (required after production)

**\*Identifying principal photography is one of the single most common issue facing co-productions. Unfortunately if a potential collaborator comes to you in a spirit of organic collaboration, but far too late into shooting, you will not get past the preliminary recommendation stage to be approved as a treaty co-production by Telefilm.**

In addition to applying to Telefilm for a recommendation, producers must apply to the Canadian Film or Video Production Tax Credit (CPTC) program, through the Canadian Audio-Visual Certification Office (CAVCO), to obtain a "Canadian Film or Video Production Certificate". This certificate gives the production national status (a separate application to the CRTC is not necessary) and can be used to obtain a federal tax credit. **Note:** A CPTC claim must be filed with a production company's year-end T2 Corporation Income Tax Returns.

**Treaty co-production allows projects to access the following Canadian production incentives while also having access to similar national production incentives in their partner country:**

- **Federal and Provincial Tax credits.** In Canada, federal tax credits are not issued automatically and are calculated solely on labour costs. **NOTE:** There is often a distinction between qualified labour spending under a co-production and what can be claimed on a tax credit refund.
- **Additional funding sources:** Canadian Media Fund (CMF) for television projects and Telefilm Canada's Canada Feature Film Fund (now integrated into the preliminary recommendation application to Telefilm).
- **CRTC's Canadian Content** quota for broadcasting, which allowed the opportunity for broadcast on Canadian networks during prime time (and the potential for obtaining higher license fees)



**According to Telefilm the essential elements of a co-production agreement are:**

- Reference to the International Coproduction Treaty and the project's eligibility in these guidelines
- Canadian and foreign producers' respective contributions to financing in Canadian dollars and as a percentage of the total budget, with the rate of exchange
- Canadian and foreign producers' copyright ownership including ownership of the original negative or digital master
- a provision specifying what will happen to copyright ownership should the coproduction fail
- distribution and exploitation rights of Canadian and foreign producers, and the sharing of worldwide revenues
- Due date for the long-form coproduction agreement

Canada's Common Treaty Co-production partners in 2014 were United Kingdom (20 co-productions), France (13), Australia (5), Germany (4), Brazil, Israel and South Africa (3 each)

**Digital Co-productions**

Treaty Co-production agreements are typically from the 1970's and 1980's and they don't come with dedicated sources of digital media funding and may not cover digital media rights. In October 2013, various Canadian funding agencies released a Working Framework for Digital Media Co-Production to make digital media co-productions eligible for their programs.

[www.cmf-fmc.ca/documents/files/programs/2015-16/apps/cnv/dm-int-co-pro-framework.pdf](http://www.cmf-fmc.ca/documents/files/programs/2015-16/apps/cnv/dm-int-co-pro-framework.pdf)

**Interprovincial Co-Productions - Canada**

Co-productions need not be international, and co-producers from different provinces can both take advantage of more than one provincial tax credit if their project falls within the requirements of their respective province's funds. Each province has rules for base eligibility, and may have additional or altered rules for inter-provincial eligibility. Filmmakers should be in touch with their provincial bodies for more information on regional tax credit regulations.

**SODEC (Quebec)** -The Quebec side would be able to claim full production tax credits on qualified labour.

**Ontario Film & Television Tax Credit (Ontario)** – a refundable tax credit based upon Ontario labour. Must meet all other OFTTC eligibility, but waive requirement that 85% of shooting and 95% of the cost of post-production must happen in Ontario.

**The US and Co-Ventures**

The US government does not offer film or television co-production treaty agreements. Co – Ventures, or co-financing, occur when both companies can jointly, but to varying degrees, produce, manage and own the rights of the film. These relationships are not protected by international co production treaties.

Co-financing can also be illustrated by 'twinning' in the factual series world. For example, this is where a portion of the episodes (usually half) are produced in Canada by a Canadian company, and the remainder can stay with the US production entity. A reassignment of rights is made to satisfy Canadian content, the series is packaged as a full series and if the guidelines are followed, Cancon status, and resulting tax credits, can be achieved for the entire series.

### Key requirements:

- Canadian producers must have equal measure of decision-making responsibility over all creative elements
- Canadian producers must retain 50% financial participation and a 50% share of profits
- Foreign co-producer is allowed to own 100% of copyright

These productions may also qualify for Film or Video Production Service Tax Credit (PSTC) which is .25 cents for every dollar spent in Canada, and production companies can seek to ensure that they are eligible by contacting their regional Film Services Unit of the CRA.

See more on twinning here: [www.documentarytelevision.com/operations-business-affairs/canada-u-s-coproductions-extending-the-tax-benefits-of-twinning/](http://www.documentarytelevision.com/operations-business-affairs/canada-u-s-coproductions-extending-the-tax-benefits-of-twinning/)

## More Resources

### For all

Introduction to Co-Productions from the Hot Docs Conference [vimeo.com/117423237](https://vimeo.com/117423237)

### Canadians

For treaty co-productions and the list of countries Canada has treaty co-productions with please visit: [telefilm.ca](http://telefilm.ca)

For more information on the Digital Media Co-Production Framework, incentives, and finding co-production partners visit: [cmf-fmc.ca](http://cmf-fmc.ca)

### Europeans

Documentary Campus: [documentary-campus.com](http://documentary-campus.com)

European Convention on Cinematographic Co-production: [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/147](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/147)

Creative Europe: [eacea.ec.europa.eu/creative-europe\\_en](http://eacea.ec.europa.eu/creative-europe_en)

Eurimages: [www.coe.int/t/dg4/eurimages/default\\_en.asp](http://www.coe.int/t/dg4/eurimages/default_en.asp)

### International

The IDFA Bertha Fund Europe stimulates collaboration between independent European producers and producers from developing countries by supporting production and distribution realized through co-productions.

[idfa.nl/industry/idfa-bertha-fund.aspx](http://idfa.nl/industry/idfa-bertha-fund.aspx)

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