



## **Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada**

### **PREPARED FOR**

Motion Picture Association - Canada

### **PREPARED BY**

Maria De Rosa  
Marilyn Burgess

Communications MDR

503 Victoria Avenue  
Westmount, Québec  
H3Y 2R3

[www.communicationsmdr.com](http://www.communicationsmdr.com)

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## Executive Summary

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### **Purpose and Methodology**

The purpose of this study was to examine approaches to selected jurisdictions' national content systems, with the aim of illustrating how a broader range of policy objectives can be achieved by taking a modern approach to defining a "Canadian production."

The findings of this report are based on a review of primary and secondary web-based literature, documents and information with respect to the national content systems as these pertain to production incentives, tax credits and automatic funding programs in the ten following foreign jurisdictions: the United Kingdom (UK), France, Germany, Italy, Spain, the Netherlands, Portugal, the Czech Republic, Australia, and New Zealand (NZ). Where needed, funders were contacted for clarifications.

### **Scope**

The study is focused on definitions of national content as evidenced by the national certification systems as applied to tax credit programs, production incentives and national funding programs. This focus is explained by the fact that in the jurisdictions examined, national content definitions exist in the certification systems associated with public support programs (i.e., tax credits, production incentives and direct funding programs). The legislative regimes governing the national broadcasting systems in the jurisdictions examined are, on the other hand, focused on supra-national objectives.<sup>1</sup>

### **Findings**

The national content systems in the jurisdictions examined recognize both the cultural and economic value of screen content.

Each jurisdiction's system for establishing the national character of a production involves a cultural test comprised of three types of criteria, relating to the cultural contribution of the production, the nationality of the cast and crew members, as well as the extent to which the production is produced or post-produced in the jurisdiction. In fact, the jurisdictions examined place a significant emphasis on the cultural character of the content, allocated from 20% to 70% of available points in points-based cultural tests to cultural criteria, while others require productions to meet cultural criteria as a condition of funding.

#### **1. Each jurisdiction's national content system affords producers with flexibility in satisfying requirements**

The jurisdictions examined provide producers with flexibility in satisfying requirements by including in their cultural tests a wide range of criteria, flexibility within individual criteria, a high number of available points, graduated points scales and partial points, and in some jurisdictions more subjective overall analysis. These approaches allow jurisdictions to balance the needs of productions against larger policy objectives.

Seven of the ten jurisdictions examined are members of the European Economic Area (EEA) trade bloc, which includes all 27 members of the European Union, as well as Iceland, Lichtenstein and Norway.

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<sup>1</sup> For example, the Audio Visual Media Services Directive (2018) of the European Union and the bilateral Closer Economic Relations (or CER) Trade Agreement between Australia and New Zealand.

These jurisdictions share a flexible approach to nationality, supporting the larger objective of encouraging trade and the mobility of labour across the trading bloc.

Half the jurisdictions examined afford producers the possibility of earning partial points. Australia weighs the degree to which productions help the country to achieve its cultural and industrial objectives in an overall assessment, while New Zealand reserves the right to waive some requirements when productions are meeting other policy objectives.

Significantly, most jurisdictions do not require the production company to own the copyright in the production beyond the production stage. Where ownership requirements exist, they are limited.

With the exception of New Zealand, all of the jurisdictions allow foreign companies with a locally registered office to have their productions recognized as national content and thereby participate in their national content system.

These approaches are discussed in detail in the report.

## **2. Flexible approaches in the cultural tests of the jurisdictions examined are aligned to global production trends**

By recognizing the cultural value of screen-based content, the jurisdictions examined may be better positioned to seize opportunities afforded by the growing trend in high budget production evidenced by the local production strategies of Netflix, HBO, Amazon, Disney, Paramount Plus, and others. Their flexible approaches are designed to support the mobility of labour. They are better aligned to the internationalization of production financing, through which productions are creating new opportunities for writers, cast and crews to work internationally.<sup>2</sup>

Large-scale investment in local content by global companies is contributing positively to local production ecosystems, increasing the capacity and sustainability of local production companies. The approaches taken in the jurisdictions examined are supporting their local production ecosystems by affording producers with the needed flexibility to work internationally, driving economic benefits and building the capacity of local production and post-production infrastructure.

The report provides examples of international productions that provide Canadian talent with high-profile work opportunities, contributing to wider industrial benefits for Canada, but that do not qualify as Canadian content under the current system.

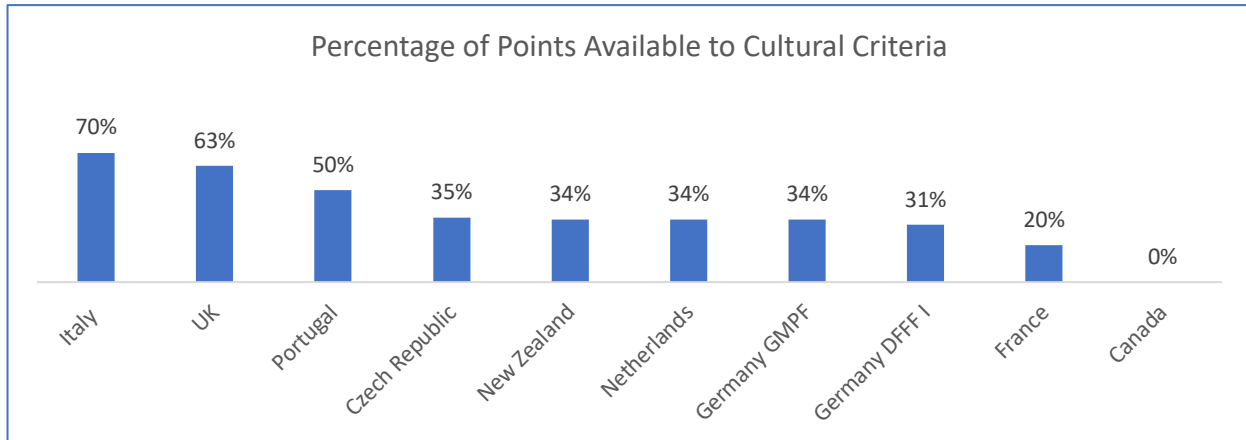
## **3. The Canadian content system does not reflect the maturity and world-class excellence of the Canadian production sector**

Created half a century ago to support a nascent production sector, the Canadian content system does not reflect the maturity of the industry and its competitiveness with other production industries around the world. The Canadian content system is poorly adapted to the realities of global production trends, difficult to reconcile with international models of high budget production that must be attractive to audiences in many markets, and not well suited to the increased production opportunities afforded by the global market. The national content system in Canada is based on a restrictive test based on a 10-point scale without consideration for cultural criteria. The Canadian points-based system also excludes the contributions of the majority of Canadian industry workers. This is completely out of step with jurisdictions examined, as shown in Figure 1, below.

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<sup>2</sup> Gilles Fontaine, Marta Jiménez Pumares, *European high-end fiction series: State of play and trends*, European Audiovisual Observatory, 2020.

Figure 1: Percentage of Points Available to Cultural Criteria, by Jurisdiction



The Canadian system imposes onerous ownership requirements: the producer must own 100% of the copyright in the production for a minimum of 25 years and be guaranteed at least 25% of net profits from the exploitation of the production in markets outside Canada. Expenditure requirements are also very high: at least 75% of the production budget and at least 75% of the post-production budget must be expended in Canada. By comparison, the jurisdictions examined required between 10% and 50% of the total production budget to be expended in their jurisdiction.

The current Canadian content system is out of step with how Canadian producers are working now. Canada has a mature production sector, home to sophisticated production companies that are experienced in working internationally. Many have strong partnerships with global players. In a mature industry, producers can decide with their financing partners how best to structure the best business deals for their respective companies. There is evidence of this in the fact that global studios and streamers are said to be the second largest source of financing for Canadian-owned content production.<sup>3</sup>

The current Canadian content system fails to encourage wider economic and cultural benefits. The report provides examples of recent productions featuring Canadian stories, characters and locations, made in Canada by Canadians, such as *The Lake* (Amazon Prime Video), *The Handmaid's Tale* (Hulu), *Turning Red* (Pixar/Disney) and *Jusqu'au Déclin* (Netflix). While these productions promote Canadian culture and identity to Canadians and the world, employing Canadians in high profile key creative positions and hundreds more as cast and crew, and raising the profile of the Canadian production and post-production infrastructure, they are not considered Canadian under the current terms of the Canadian content system.

#### 4. Modernizing the Canadian content system based on lessons learned in other jurisdictions

Government and regulatory reviews in the past decades have received repeated calls to modernize the Canadian content system.

Flexibility in the Canadian content system would support the evolution of business and financing models, in keeping with the maturity of the sector and would support Canadian storytelling, promote

<sup>3</sup> Canadian Media Producers Association, *Profile 2021: An Economic Report on the Screen-based Production Industry in Canada*, 2022, Exhibit 2-10, page 32.

Canadian culture and soft power, as well as the ongoing development of its world-class production sector.

The following measures, drawn from lessons learned in other jurisdictions, would align the Canadian content system to current global production models and enable Canadians to seize the never-before-seen opportunities to shine a light on Canadian culture and industry through high-budget, internationally competitive Canadian content for the enjoyment of Canadians and the world. Each of the following changes would better align the Canadian content system to the realities of global production and to the systems in other jurisdictions:

- expand the Canadian points-base system to include a significantly larger number of available points and graduated scales that are aligned to the realities of the global production environment;
- include recognition of cultural criteria in an expanded point system, with particular emphasis on meeting Canada's cultural objectives;
- recognize all Canadian cast and crew in an expanded Canadian points-based system;
- reduce the current thresholds of minimum production expenditures on par with international jurisdictions (i.e., between 10% and 50% of production budgets); and
- remove current copyright ownership requirement as a determinant factor, providing Canadian producers with the flexibility to decide with financing partners the best business deals for their respective companies.

## Introduction

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### 1. Overall Context

The screen production sector is increasingly regarded by governments as not only culturally important, but as a powerful driver for economic development and soft power. The Government of Canada has indicated its intention to modernize the *Broadcasting Act*. It is anticipated that a modernized act could require all audiovisual services operating in Canada to contribute to the production and distribution of Canadian content. The Government has also expressed its intention to review the definition of Canadian content. Within this context, Communications MDR was commissioned to undertake a study to examine how a broader range of policy objectives can be accelerated and achieved by taking a modern approach to defining what may qualify as a “Canadian production”.

#### 1.1 Objectives

The objectives of this study were threefold:

1. Document modern, flexible approaches to the definition of national film and audiovisual productions in selected jurisdictions’ national content systems, as evidenced by their national certification systems, tax incentive schemes, national funding programs and/or production incentives.
2. Provide an analysis of the expanded opportunities for national talent and creative ecosystems afforded by systems that allow a broad range of factors to be considered in their definitions.
3. Apply lessons learned to illustrate how a modern, more flexible approach to defining Canadian film and audiovisual content could accelerate the achievements of a broad range of policy objectives.

### 2. Approach and Methodology

Jurisdictions around the world have developed an array of incentives and programs to encourage the production of screen-based content within their borders, as a means to achieve cultural and economic policy objectives. Productions that qualify as “national” productions have access to these direct and indirect forms of support and can be used to satisfy broadcaster obligations. In some jurisdictions, the qualification requirements differ by type of program and for film and audiovisual productions. Ten foreign jurisdictions were included for analysis in this study: the United Kingdom (UK), France, Germany, Italy, Spain, the Netherlands, Portugal, the Czech Republic, Australia, and New Zealand (NZ).

The report is based on a review and analysis of primary and secondary web-based literature, documents and information on each jurisdiction’s national content systems as these pertain to production incentives, tax credits and national funding programs that provide automatic funding schemes.<sup>4</sup> Findings from the review of literature were in some cases clarified through consultation with representatives of the different funding organizations.

#### Considerations

The study is focused on definitions of national content as evidenced by the national certification systems as applied to tax credit programs, production incentives and national funding programs. This focus is

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<sup>4</sup> Automatic funding programs provide experienced producers with automatic access to funds based on their prior success in the market. These programs strive for an objective, predictable funding process, which is typically supported by a transparent cultural test or other test of nationality.



explained by the fact that in the jurisdictions examined, national content definitions exist in the certification systems associated with public support programs (i.e., tax credits, production incentives and direct funding programs). The legislative regimes governing the national broadcasting systems in the jurisdictions examined are, on the other hand, focused on supra-national objectives.<sup>5</sup>

In the European Union, broadcasting is governed first at the European level through the Audio Visual Media Services Directive (AVMSD), which governs the coordination of national legislation across the EU with regard to all audiovisual media. The European Union promotes European works on TV and VOD through quota and financing provisions contained in the AVMSD. Broadcasters and other audiovisual services based in the European Union are subject to investment obligations. The AVMSD is focused on supporting European works, which per definition originate in a Member State of the EU, or in States party to the Council of Europe's Convention on Transfrontier Television (ECTT), which includes the UK.<sup>6</sup>

Some EU member states have implemented the provisions of the AVMSD in their national law, with the aim of encouraging the production of "national" works, i.e., European works as defined by the AVMSD that are produced in a national language. For example, some jurisdictions have provided sub-quotas in their legislation to promote European films and audiovisual works, which must have as their original language of expression a language or dialect commonly spoken in the country.<sup>7</sup>

It is in the funding regimes of each member jurisdiction that definitions of national content come into play. National content definitions are the domain of national funding programs, which are supported by national content certification regimes that help to determine who may access these national funding programs. For example, the promotion of cinema works is achieved through individual nations' state aid for the production and distribution of national films. In addition, national funding programs may support the production of national audiovisual works.

The approach taken in Canada is different to these approaches, in that both the funding system and the broadcasting regulatory regime employ the same approach to defining national content. A single Canadian content certification system is used by both the federal public funding programs and the Canadian broadcasting system. A points-based cultural test, coupled with minimum expenditure and ownership requirements, are the foundation for defining and certifying Canadian content. To be certified as Canadian content, productions must obtain a minimum of 6 out of a possible 10 points, solely focused on key creative positions. Points are allocated only if all persons occupying a position are Canadian. To access the Canada Media Fund, productions must obtain ten out of ten available points. The threshold for accessing film funding through Telefilm Canada is eight points.<sup>8</sup>

Certification as a Canadian production grants access to federal tax credits through the Canadian Audio-Visual Certification Office (CAVCO) and to national production funding from the Canada Media Fund and Telefilm Canada.<sup>9</sup> Certification also allows broadcasters to meet regulatory obligations established

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<sup>5</sup> For example, the Audio Visual Media Services Directive (2018) of the European Union and the bilateral Closer Economic Relations (or CER) Trade Agreement between Australia and New Zealand.

<sup>6</sup> DAC Beachcroft, "UK Government publishes draft of post-Brexit Audiovisual Media Services Regulations," March 11, 2021, retrieved from <https://www.dacbeachcroft.com/es/gb/articles/2021/march/uk-government-publishes-draft-of-post-brexit-audiovisual-media-services-regulations/>.

<sup>7</sup> See page 67, and Chapter 3, IRIS Plus 2022-2 Investing in European works: the obligations on VOD providers European Audiovisual Observatory, Strasbourg, 2022.

<sup>8</sup> Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021; Canada Media Fund website: <https://cmf-fmc.ca/program/performance-envelope-program/>; Telefilm Canada, Canada Feature Film Fund Production Guidelines, November 4, 2021, retrieved from <https://telefilm.ca/wp-content/uploads/guidelinesproductionnov4.pdf>.

<sup>9</sup> Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021; Canada Media Fund website: <https://cmf-fmc.ca/program/performance-envelope-program/>; Telefilm Canada, *Canada Feature Film Fund Production Guidelines*, November 4, 2021, retrieved from <https://telefilm.ca/wp-content/uploads/guidelinesproductionnov4.pdf>.



by the Canadian Radio-Television and Telecommunications Commission (CRTC) as regards Canadian content.<sup>10</sup> (CRTC-licensed broadcasters must broadcast and finance a certain percentage of certified Canadian content).<sup>11</sup> Domestic productions certified as Canadian by CAVCO are automatically recognized as Canadian by the CRTC. For the purpose of this report, this is referred to as the Canadian content system.

### Programs Examined

In all, the study examined 19 programs originating from the 10 jurisdictions as follows:

#### **1. United Kingdom**

Film Tax Relief  
High-end TV Tax Reliefs  
British Film Institute (BFI) Production Fund

#### **2. France**

National Centre for Cinema and Animation (CNC) Automatic Film Production Fund  
CNC Automatic Audiovisual Production Fund  
Film and Audiovisual Tax Credit

#### **3. Germany**

German Federal Film Fund (DFFF I)  
German Motion Picture Fund (GMPF)  
German General Film Board (FFA) Reference Funding

#### **4. Italy**

Film and Audiovisual Tax Credit  
Ministry of Cultural Heritage and Activities (MiBAC) Production Subsidy

#### **5. Netherlands**

Netherlands Film Production Incentive

#### **6. Spain**

Film and Audiovisual Tax Credit  
Institute of Cinematography and Audiovisual Arts (ICAA) General Aid Program

#### **7. Portugal**

Portugal Production Incentive  
Institute of Cinema and Audiovisual (ICA) Automatic Production Funding

#### **8. Czech Republic**

Czech Republic Production Incentive

#### **9. Australia**

Australia Producer Offset

#### **10. New Zealand**

New Zealand Screen Production Grant

### *3. Structure of the Report*

This study is divided into the following sections:

- Section I presents the key findings of an international review of approaches to the definition of national film and audiovisual productions in ten jurisdictions;
- Section II examines the lessons learned for modernizing the Canadian content system; and
- Section III provides a concluding overview.

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<sup>10</sup> Canadian Radio Television and Telecommunications Commission (CRTC) website: [https://crtc.gc.ca/eng/can-con/c\\_cdn.htm](https://crtc.gc.ca/eng/can-con/c_cdn.htm).

<sup>11</sup> Canadian Radio Television and Telecommunications Commission (CRTC) website: <https://crtc.gc.ca/canrec/eng/guide1.htm#2.1>.

## I. Analysis of the Approaches Taken by Selected Jurisdictions in Defining National Content

### 1. Definitions of National Content Include Both Cultural and Industrial Criteria

The jurisdictions examined provide assistance to productions that qualify as national content in the form of production incentives, tax credits and/or automatic funding programs. Automatic funding programs provide experienced producers with automatic access to funds based on their prior success in the market. Similarly to how tax credits and production incentives are administered, automatic funding programs strive for an objective, predictable funding process, which is typically supported by a transparent cultural test or other test of nationality. As is shown in Figure 2, half of the jurisdictions examined – Germany, Netherlands, Czech Republic, Portugal and New Zealand, offer a production incentive in the form of cash rebate or grant to productions that qualify as national content, while the other five jurisdictions – the UK, France, Italy, Spain and Australia - offer a tax credit. Six jurisdictions provide automatic support to recognized national productions in the form of grants and contributions.

Figure 2: Overview of Programs Examined

	Production Incentives (Cash Rebates and Grants)		Tax Credits (Credits, Refundable Credits/Rebates)		Automatic Funding Programs (Grants, Contributions)	
	Film	Television/ Streaming Service	Film	Television/ Streaming Service	Film	Television/ Streaming Service
UK			✓	✓	✓	
France			✓	✓	✓	✓
Germany	✓	✓			✓	
Italy			✓	✓	✓	✓
Netherlands	✓	✓				
Czech Republic	✓	✓				
Spain			✓	✓	✓	✓
Portugal	✓	✓			✓	✓
Australia			✓	✓		
New Zealand	✓	✓				
Canada			✓	✓	✓	✓

Each of the jurisdictions examined require that a certain number of conditions be met in order for productions to qualify as national content. These requirements are both cultural and industrial and are contained in the eligibility requirements that productions must satisfy, including a cultural test.

### 2. Flexibility Is a Guiding Principle in the Design of the Cultural Tests

All of the tests examined are flexible and productions have many ways of satisfying the requirements to pass the tests. Cultural tests are generally organized around three categories: the cultural content of the production, the nationality or permanent residence of personnel and the proportion of the production budget spent locally, for example, on production and post-production facilities. (See Figure 3.)

Figure 3: Cultural Test Categories

Cultural Content Requirements	<ul style="list-style-type: none"> <li>•National or cultural content (characters, settings, stories, themes, etc.), language of production</li> </ul>
Nationality of Personnel	<ul style="list-style-type: none"> <li>•Expenditures on citizens or residents employed on the production: Key creatives, crew and cast</li> </ul>
Local Expenditures	<ul style="list-style-type: none"> <li>•Local expenditures on shoots and production or post-production facilities</li> </ul>

In the majority of cases the cultural tests are points-based. Overall, the many criteria, the high number of points available and low minimum thresholds required to pass these tests afford producers with flexibility. Numerous points-based tests employ sliding scales, allowing producers to earn partial points in relation to some criteria. Many tests also afford flexibility in the required nationality of personnel or location of production and post-production. These are explained below.

Australia’s cultural test is unique amongst those examined in that no single element of the test is determinant. In lieu of mandatory minimum thresholds, the test of Significant Australian Content examines all of the cultural and industrial elements of the production, weighing the extent to which productions involve Australian content, personnel and production activities, in what Screen Australia refers to as a “holistic” test.<sup>12</sup>

### **2.1 Cultural Tests Range From 18- to 210-Point Scales**

Points-based cultural tests are built on a wide range of scales, from 18 possible points for audiovisual productions in France, to 210 possible points for film production in the Netherlands. The majority of points-based tests require productions to meet half or fewer of available points to pass.

Figure 4: Analysis of Points-based Cultural Tests

	Available Points				Minimum Points Required
	Total Points	Content Requirement	Personnel Requirement	Production Requirement	
<b>Netherlands Film Production Incentive</b>	210	3 of 8 mandatory criteria	115/210	95/210	75 (42%)
<b>Germany Motion Picture Fund (GMPF)</b>	109	37/109	34/109	38/109	40 (42%)
<b>France CNC Automatic Film Production Fund</b>	100	20/100	60/100	20/100	25 excluding language (31%)
<b>France Film and Audiovisual Tax Credit</b>	100	20/100*	60/100	20/100	61 (51%)
<b>Italy Film and Audiovisual Tax Credit</b>	100	70/100	3/100	27/100	50 (50%)
<b>Italy MiBAC Production Subsidy</b>	100	0	74/100	26/100	70 (70%)
<b>Germany Federal Film Fund (DFFF I)</b>	96	30/96	35/96	31/96	48 (50%)
<b>Portugal Production Incentive</b>	60	30/60	20/60	10/60	15 (25%)

<sup>12</sup> Screen Australia website: <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/significant-australian-content>.

<b>Czech Republic Production Incentive</b>	46	16/46	18/46	12/46	23 (50%)
<b>UK Film Tax Relief</b>	35	22/35	8/35	5/35	18 (51%)
<b>UK BFI Production Fund</b>	35	22/35	8/35	5/35	18 (51%)
<b>UK High-end TV Tax Relief</b>	35	22/35	8/35	5/35	16 (46%)
<b>New Zealand Screen Production Grant</b>	32	11/32	13/32	8/32	20 (63%)
<b>France CNC Automatic Audiovisual Production Fund</b>	18	0	16/18	2/18	13 (72%)

## **2.2 Inclusion of Cultural Content Requirements**

The inclusion of cultural content requirements within the cultural tests both affords greater flexibility to obtain national certification, while also supporting the cultural policy objectives of the jurisdictions examined, in particular the promotion of national culture. Producers can pass their cultural tests by obtaining points based on a variety of cultural criteria. The most common cultural criteria include the setting, characters, language, contribution to culture or history, the underlying literary, artistic or historical material on which the production is based, and cultural content of a more general nature (i.e., about the arts or social issues).

Figures 5 and 6 illustrate the flexibility afforded by cultural content criteria in the points-based systems of the cultural tests applied to tax credits. Detailed cultural tests are provided in Annex II.

Figure 5 shows that 63% of points in the UK cultural test are available for cultural content criteria. Film producers can pass the cultural test by obtaining the minimum required 18 points entirely from the cultural content section of the test. These productions must also expend a minimum of 10% of their production budget in the UK to access the tax relief (tax credit).

**Figure 5: Distribution of Cultural Points in Cultural Tests of High-end TV and Film Tax Credits: UK**

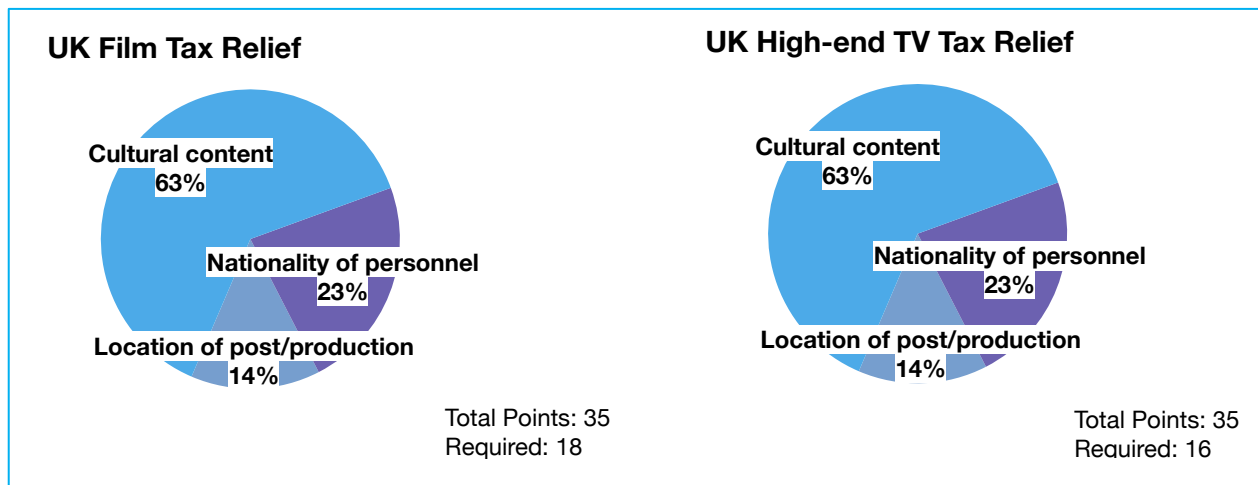
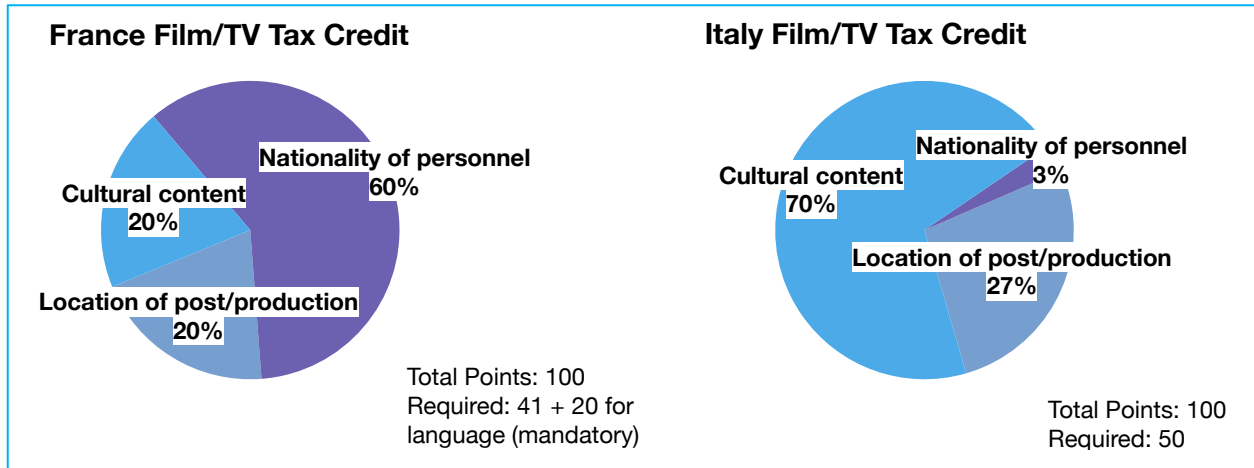


Figure 6 shows that France allocates 20% of points to cultural content (i.e., French language) for its cultural test. Producers need only obtain 41 of the remaining 80 points to obtain their national certification. Figure 6 also shows that in Italy, 70% of available points (70 points out of a possible 100) are allocated to cultural criteria. To access a tax credit, companies must obtain a minimum of 50 points, including 35 points from the cultural content section of the test.

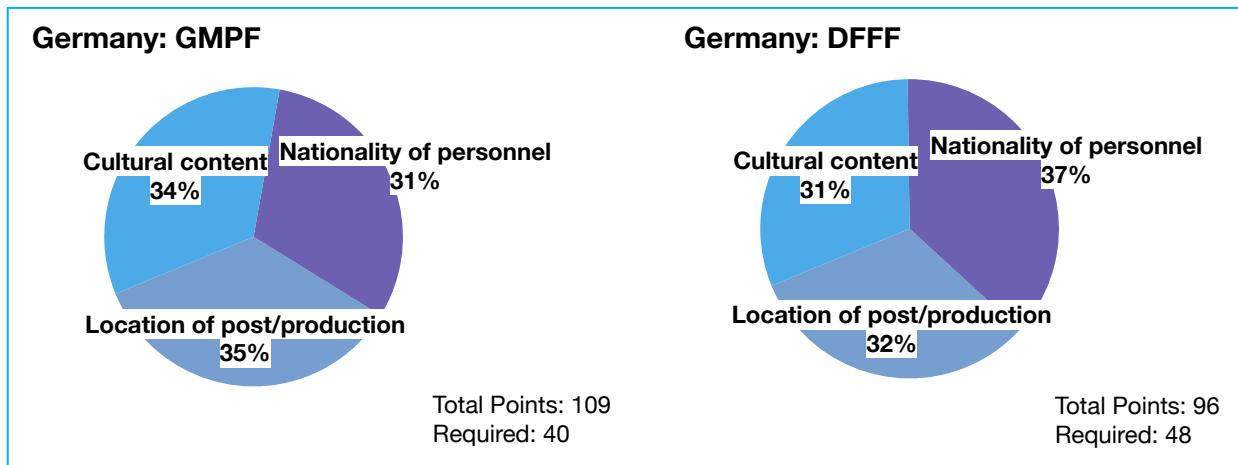
Figure 6: Distribution of Cultural Points in Cultural Tests of Film and TV Tax Credits: France and Italy



Figures 7 and 8 show that Germany, the Czech Republic and New Zealand allocate about a third of available points to cultural criteria in the cultural tests of their production incentives. Detailed cultural tests can be found in Annex II.

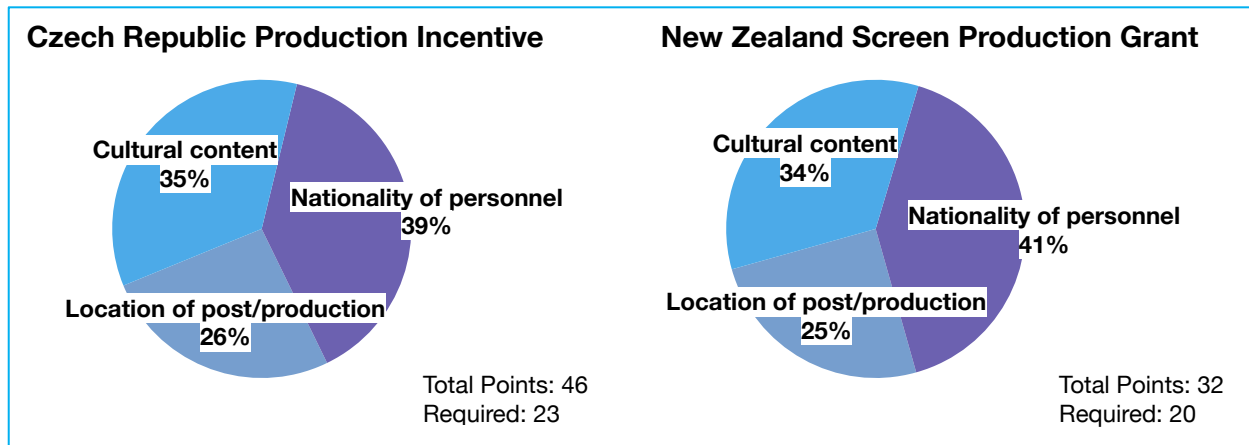
Germany’s two production incentives are shown in Figure 7. The GMPF allocates 34% of available points to cultural content, while the DFFF I allocates 31% of points to cultural content. The German Federal Film Fund (DFFF I) cultural test is based on a 96-point scale, of which productions must obtain at least 48 points, with minimum thresholds for each section of the test. In addition, productions must expend a minimum of 25% of their production budget in Germany (20% for projects with production budgets of €20 million (CAD \$26.8 million)). The German Motion Picture Fund requires productions to obtain only 40 points on a scale of 109 nine points.

Figure 7: Distribution of Cultural Points in Cultural Tests: Germany GMPF and DFFF I



The Czech Republic’s production incentive allocates 35% of points to cultural content, as shown in Figure 8. Figure 8 also shows that the New Zealand Production Incentive allocates 34% of available points to culture. Annex II provides more detailed information on their cultural tests.

Figure 8: Distribution of Cultural Points in Cultural Tests: Czech Republic and New Zealand



### **2.3 Some Countries Have Mandatory Cultural Requirements**

In some programs, productions must satisfy cultural requirements by meeting a minimum number of cultural criteria. These are shown in Figure 9. In some cases, language is a cultural criterion amongst others that can be used to satisfy cultural requirements. In other cases, language is a mandatory requirement. More detailed information is provided in Annex II.

Figure 9: Some Programs Have Mandatory Cultural Criteria

Program	Content Requirement	Language Requirement
<b>Spanish Film and Audiovisual Tax Credit</b>	Must meet at least 2 of 10 content criteria	Must be shot in a language of Spain
<b>Spanish ICAA General Aid Program</b>	Must meet at least 2 of 10 content criteria	Must be shot in a language of Spain
<b>Portuguese ICA Production Funding</b>	Must meet at least 3 of 9 content criteria	Must be shot in Portuguese
<b>German FFA Reference Funding</b>	Must meet at least 2 of 7 content criteria	
<b>Netherlands Film Production Incentive</b>	Must meet at least 3 of 8 cultural criteria	
<b>French Film and Audiovisual Tax Credit</b>	(See language requirement)	Must be shot in French or a language of France

In Spain, where a production is shot in a language other than a language of Spain, access to funding may still be available, but reduced by 10%.

### **2.4 Industrial Requirements Consist of Nationality of Personnel and Location and Use of Facilities**

Industrial requirements consist of the nationality of personnel and the location and use of industry facilities for the production and post-production of the project. Location of filming, location of post-production, including audio, visual and VFX post, are the most common criteria for the production category.

In the jurisdictions that are member states of the EEA, personnel from the host jurisdiction and those from any other member country of the EEA are treated interchangeably. This allows producers to staff their productions with skilled labour from across the EEA. Some extend the flexibility to non EEA states, such as Switzerland and the UK.

Points-based cultural tests allocate between 3% and 89% of available points for the nationality of the key personnel and crew (“nationality of personnel”). See Figure 10. Half of the jurisdictions examined, the UK, Germany, Czech Republic, Portugal and New Zealand, allow producers to earn partial points on some criteria based on sliding point scales. In Spain, productions not meeting the cultural or language, personnel or production criteria may still access funding at a reduced rate of 10% for each of the three criteria not met.

**Figure 10: Points-based Requirements for Nationality of Personnel**

Program	Total Available Points	Points Available for Personnel	Percentage Available Points
Netherlands Film Production Incentive	210	85	41%
Germany GMPF	109	34	31%
France CNC Automatic Film Production Funding	100	60	60%
France Film and Audiovisual Tax Credit	100	60	60%
Italy Film and Audiovisual Tax Credit	100	3	3%
Italy MiBAC Production Subsidy	100	74	74%
Germany DFFF I	96	35	36%
Portugal Production Incentive	60	20	33%
Czech Republic Production Incentive	46	18	39%
UK Film Tax Relief	35	8	23%
UK BFI Production Fund	35	8	23%
UK High-end TV Tax Relief	35	8	23%
New Zealand Screen Production Grant	32	13	41%
France CNC Automatic Audiovisual Production Fund	18	16	89%

The cultural tests examined allocate between 11% and 45% of available points for the proportion of the production budget expended on production and post-production facilities located in their jurisdiction. See Figure 11. The flexibility afforded to productions taking place in a member State of the EEA extend to these criteria.

**Figure 2: Points-based Requirements for Location of Production and Post-production Facilities**

Program	Total Points Available	Points Available for Facilities	Percentage Available Points
Netherlands Film Production Incentive	210	95	45%
Germany GMPF	109	38	35%
France CNC Automatic Film Production Fund	100	20	20%
France Film and Audiovisual Tax Credit	100	20	20%
Italy Film and Audiovisual Tax Credit	100	27	27%
Italy MiBAC Production Subsidy	100	26	26%
Germany DFFF I	96	31	32%
Portugal Production Incentive	60	10	17%
Czech Republic Production Incentive	46	12	26%
UK Film Tax Relief	35	5	14%
UK BFI Production Fund	35	5	14%
UK High-end TV Tax Relief	35	5	14%
New Zealand Screen Production Grant	32	8	25%
France CNC Automatic Audiovisual Production Fund	18	2	11%

As shown in Figure 12, some programs apply minimum thresholds to industrial criteria. Each of these jurisdictions is a member state of the EEA, with the flexibilities afforded to them as described above (i.e., nationality of personnel and location of facilities can be from any member state of the EEA). In Portugal, minimum thresholds may be waived, in consideration of other criteria met or exceeded by the production. In Spain, productions not achieving minimum requirements may access funding reduced by 10%.



**Figure 3: Minimum Thresholds for Industrial Requirements (non points-based systems)**

Program	Personnel Requirement	Production Requirement
<b>Spanish Film and Audiovisual Tax Credit</b>	75% EEA personnel	Primarily EEA
<b>Spanish ICAA General Aid Program</b>	75% EEA personnel	Primarily EEA
<b>Portuguese ICA Automatic Production Funding</b>	50% Authors EEA 75% personnel EEA	n/a
<b>German FFA Reference Funding</b>	Director, Writer, 2 lead actors EEA 100% personnel EEA	n/a

### *3. Few or No Ownership Requirements*

#### **3.1 Flexible Approach to Ownership of Copyright in the Production**

There is no expectation that the production company own the copyright in the production in order to access production incentives and tax credits in the UK, Germany, Spain, the Netherlands, Portugal and the Czech Republic.

Neither in its overall requirements nor in its cultural test does the UK consider the ownership in the copyright of the production.<sup>13</sup>

In Germany, there is no requirement that the producer own the copyright in the production. The DFFF I and the FFA require producers to make minimum financial contributions to their projects. This rule is intended to stimulate the local production sector and there is no requirement that the investment be made directly by the producer. It could be in the form of German broadcaster license fees.<sup>14</sup> The FFA also limits broadcast license periods to a maximum of seven years.

There is no copyright ownership requirement to access the German Motion Picture Fund. It is expected that productions undertaken with a global streamer will result in a total buyout once the project is delivered. Participation by a German broadcaster is limited to 60% of the project's total production budget.<sup>15</sup>

In New Zealand, the ownership of the copyright is not a requirement, but rather is integrated into the cultural test, for which a producer could earn one point, providing flexibility.

**Figure 4: Production Incentives, Tax Credits and Automatic Funds Without a Requirement of Producer Ownership of the Production**

Fund	Ownership Requirement
<b>UK Film and High-end Television Tax Relief (tax credit)</b>	n/a
<b>UK BFI Automatic Funding</b>	n/a
<b>Germany Automatic Funding</b>	n/a
<b>Germany GMPF</b>	n/a
<b>Germany DFFF I</b>	n/a
<b>Spain Film and Audiovisual Tax Credit</b>	n/a
<b>Netherlands Film Production Incentive</b>	n/a
<b>Portuguese Production Incentive</b>	n/a
<b>Czech Republic Production Incentive</b>	n/a
<b>New Zealand Screen Production Grant (incentive)</b>	n/a

<sup>13</sup> BFI staff.

<sup>14</sup> FFA staff.

<sup>15</sup> FFA staff.

A few jurisdictions require that the producer have an ownership stake in the production commensurate with their financial participation. The tax credit programs of France and Australia require that production companies own a stake in the copyright to their projects commensurate with their financial participation. Screen Australia also considers the extent to which there is recoupment and profit participation for Australian nationals or residents and the extent to which that is commensurate with ownership.<sup>16</sup> The same requirement for ownership commensurate with financial participation is true for the automatic production funds of France and Portugal, as shown in Figure 14.

Spain is unique in establishing a minimum threshold of producer ownership in the production. Spain's automatic production funding requires that producers own a minimum of 15% of the copyright in the project. Producers must also own the exploitation rights to the project for at least three years. Non-independent companies, (i.e., those that are not arm's length from a broadcaster) may not own more than 60% of the production.

It is worth noting that in Italy, an Italian production is one that is owned by an Italian producer, which can be any EEA-based company paying tax in Italy. There is no defined minimum period of ownership.

**Figure 5: Limited, Flexible Ownership Requirements of Production Incentives, Tax Credits and Automatic Production Funds**

<b>Fund</b>	<b>Details of Requirement</b>
<b>France Film or Audiovisual Tax Credit</b>	<ul style="list-style-type: none"> <li>Producers must own rights to the production commensurate with their financial participation in the project.</li> </ul>
<b>France CNC Automatic Production Fund</b>	<ul style="list-style-type: none"> <li>Producers must own rights to the production commensurate with their financial participation in the project.</li> </ul>
<b>Portuguese ICA Production Fund</b>	<ul style="list-style-type: none"> <li>Producers must own the rights to the work in proportion to their respective participation in the total production budget.</li> </ul>
<b>Australia Producer Offset</b>	<ul style="list-style-type: none"> <li>Ownership commensurate with Australian participation in the production budget.</li> </ul>
<b>Spanish ICAA General Aid</b>	<ul style="list-style-type: none"> <li>Producer must have an ownership stake in the production of at least 15% and retain the exploitation rights for at least three years (unless shared with co-producers)</li> <li>A non-independent company participating in the production may not own more than 60% of the work.</li> </ul>
<b>Italy Film or Television Tax Credit</b>	<ul style="list-style-type: none"> <li>Italian production company, or EEA production company with a registered office in Italy owns the copyright to the production (no minimum period of ownership is defined).</li> </ul>
<b>Italy MiBAC Automatic Funding</b>	<ul style="list-style-type: none"> <li>Italian production company, or EEA production company with a registered office in Italy owns the copyright to the production (with no minimum period of ownership is defined).</li> </ul>

#### *4. Jurisdictions Have Flexible Requirements Regarding the Location in Which Production Companies are Based*

With the exception of New Zealand, all of the jurisdictions have flexible requirements as regards the nationality (base of operations) of production companies seeking certification of their productions as national content. In each jurisdiction, irrespective of the type of program examined (tax credit, production incentive or national funder), foreign companies with a locally registered office or permanent establishment (i.e., where some of the company's business is carried on) may have their production certified as national content.

As noted above, within the EEA, rules are in place that allow companies from all Member States to compete without undue barriers. For this reason, EEA-based companies may have their productions

<sup>16</sup> Screen Australia, *Producer Offset Guidelines*, March, 2022.

certified as national content in all Member States in which they have a registered office. The UK, Czech Republic and Australia allow foreign companies with a registered office in their jurisdiction to have their productions certified as national content. We note that France requires that eligible production companies be controlled by French or European citizens or residents. New Zealand requires that production companies be both based in and controlled by New Zealand by residents.

**Figure 6: Requirements on Jurisdiction in Which the Production Company is Established**

<b>Jurisdiction*</b>	<b>Details of Requirement</b>
<b>UK</b>	Production company must have a permanent establishment (registered office where business is carried on) in the UK.
<b>Germany</b>	Production company must be based in EEA member state, with an office in Germany.
<b>France</b>	Production companies must be based in EEA member state and have a subsidiary based in France.
<b>Italy</b>	Production company must be based in EEA member state, with an office in Italy.
<b>Netherlands</b>	Producer must be based in EEA member state, or in Switzerland, with an office in Netherlands for at least two years.
<b>Czech Republic</b>	Production company must have a permanent establishment (carrying on some of its business) in Czech Republic.
<b>Spain</b>	Production company must be based in EEA member state, with an office in Spain.
<b>Portugal</b>	Production company must be based in EEA member state, with an office in Portugal.
<b>Australia</b>	Producer must have a registered office in Australia.
<b>New Zealand</b>	Production company must be based in New Zealand: a New Zealand company incorporated and carrying on business in New Zealand.

\*The requirement is the same for the production incentive or tax credit and the national production funding program.

## *5. Expenditure Requirements Range from Ten Percent to Fifty Percent of Production Budgets*

Typically, in the cultural tests examined, the amount expended by productions in a particular jurisdiction is a factor in the respective cultural tests. In particular, the cultural tests take into account the amount expended by productions on personnel and on production and post-production costs expended in the jurisdiction. In addition, there exist minimum expenditure requirements.

Minimum expenditure requirements vary by jurisdiction and by type of funding. Minimum expenditure requirements are most common for production incentives and tax credit programs, with the minimum expenditure thresholds ranging from 10% to 50% of total production costs. For example, the UK requires that 10% of the total production budget be expended in the UK. Spain's minimum expenditure threshold is 50% of the total production costs and will reduce the amount of funding where this percentage is lower.

In some cases, the minimum expenditure is expressed as a monetary amount. These range from approximately CAD \$200K to CAD \$2 million for a feature fiction film and about CAD \$400K to CAD 635K per hour of television drama.

Spain and Portugal require a portion or all of their production subsidy to be expended in their jurisdiction. Germany's automatic Reference Funding requires that projects be produced and post produced in a member state of the EEA.

**Figure 7: Expenditure Requirements by Production Incentive or Tax Credit**

Incentive	Details of Requirement
<b>UK Film and High-end TV Tax Relief</b>	10% of the production budget
<b>Netherlands Film Production Incentive</b>	15% of the total production budget for high-end series
<b>Germany DFFF I</b>	<ul style="list-style-type: none"> <li>• 25% of the production budget expended in Germany</li> <li>• 20% of the production budget expended in Germany for production budgets &gt; €20 million (CAD \$26.6 million)</li> </ul>
<b>Germany GMPF</b>	<ul style="list-style-type: none"> <li>• 40% of the production budget for production budgets &gt; €25 million (CAD \$33.3 million)</li> <li>• 20% of the production budget production budgets &gt; €35 million (CAD \$46.6 million), cap of €7 million (CAD \$9.3 million)</li> </ul>
<b>Spanish Film and Audiovisual Tax Credit</b>	50% of total production costs
<b>ICAA General Aid for Film</b>	50% of subsidy (penalty applied to funding if less)
<b>ICA Film Production Funding</b>	100% of subsidy
<b>Germany FFA Film Reference Funding</b>	Production and post-production facilities, studios and services in Germany or in an-other EEA member state or Switzerland

Six jurisdictions have programs that do not impose minimum expenditure requirements but rather include local expenditure as a factor in their cultural test. See Figure 17.

**Figure 8: Programs where Production Expenditure is Factored into Cultural Test**

Programs Where Production Expenditure is Factored into the Cultural Test
✓ UK BFI Production Fund
✓ France Film and Audiovisual Tax Credit
✓ France CNC Film and Audiovisual Automatic Production Fund
✓ Italy MiBAC Automatic Film Production Subsidy
✓ Italy Film and Audiovisual Tax Credit
✓ Australia Producer Offset

## 6. Concluding Summary

### **6.1 Jurisdictions Recognize the Cultural and Economic Value of Screen Content**

Each of the jurisdictions examined require productions to meet minimum eligibility criteria and to pass a cultural test in order to be certified as national content, which is required to access tax credits, production incentives and automatic national funding. Certification also supports national content obligations of broadcasters. The cultural tests are aimed at establishing the national character of the production, and its cultural and economic value. They include three categories of criteria: the cultural contribution of the production, and the economic contribution as measured by the nationality of key personnel and crew, and the degree to which the production is shot and/or post-produced in the jurisdiction. This approach supports enhancing the jurisdiction's image internationally, ensures the creation of highly skilled jobs and drives innovation.

The jurisdictions examined recognize that the screen sector generates significant cultural as well as economic benefits. Screen productions provide domestic and foreign audiences with opportunities to experience and share the stories and values that define the cultures of individual countries. These are among the benefits underpinning the policy orientation towards culture found in each jurisdiction's approach examined in this report.

## **6.2 International Models Provide Flexibility**

In all of the jurisdictions examined, cultural tests are flexible and afford producers multiple avenues by which to satisfy requirements. This flexibility is afforded through a wide range of criteria and availability of points as well as through criteria that are themselves flexible, as we have seen with respect to the nationality of personnel or location of production. Significantly, EEA member countries share in a flexible approach to nationality, where member states are treated interchangeably. This helps these countries to meet the broader policy objectives of the EEA, to encourage trade and the mobility of labour across the trade bloc and at the same time recognizes and supports cultural diversity within the EEA.

Some jurisdictions afford the possibility for productions that only partly satisfy criteria to earn partial points towards their certification. Half the jurisdictions examined use sliding scales in allocating to their industrial criteria. These provide a flexible solution that balances the needs of productions with the policy objectives of the jurisdiction.

The assessment of significant Australian content considers the production's contribution to Australian policy objectives as a whole, such that no single criterion is determinant.

New Zealand reserves the right to waive some requirements when productions are meeting other policy objectives. The guidelines and points framework for accessing the New Zealand Screen Production Grant are not fixed policy rules. The NZSPG may bring its judgment and discretion to bear in assessing a production's level of significant New Zealand Content.

## **6.3. Ownership is Not a Determinant Factor in Defining National Content**

Most jurisdictions do not require the production company to own the copyright in the production beyond the production stage. Where ownership requirements exist, they are limited.

With the exception of New Zealand, all of the jurisdictions allow foreign companies with a locally registered office to have their productions recognized as national content and thereby participate in the national content system. New Zealand may apply discretion on this point. In EEA member states examined for this report, the rule applying to foreign-based companies applies to companies based in other EEA member states.

## II. Lessons Learned for Modernizing the Canadian Content System

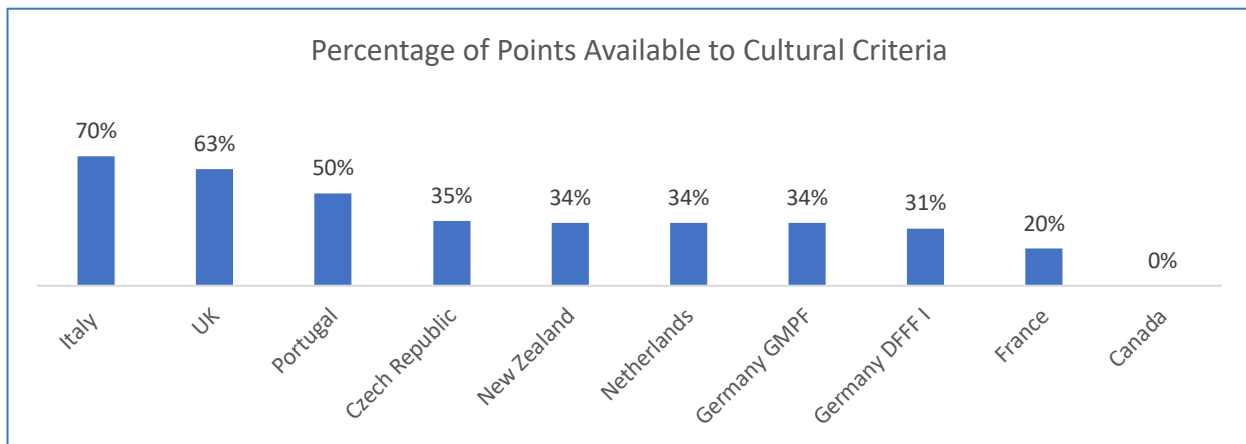
In the context of an upcoming review of the definition of Canadian content, it is timely to consider the opportunities that could accrue to Canada from a modernized approach that is adapted to the current production landscape.

### 1. Modern National Content Systems Recognize Cultural Contributions

#### 1.1 The Canadian System is Not in Step with International Jurisdictions

When international points-based systems are compared to Canada, we note that the Canadian point system is restricted to a 10-point scale without consideration for cultural criteria (0 points). Other jurisdictions place a significant emphasis on the cultural character of the content, as can be seen in Figure 18.

Figure 9: Percentage of Points Available to Cultural Criteria, by Jurisdiction



As one report notes, “culture is the heart of a nation.”<sup>17</sup> The jurisdictions examined recognize the many benefits of the cultural contributions made by films and series to their national cultures and economies. The contributions made by screen productions include their intrinsic cultural value, their ability to promote national branding, screen tourism and soft power. They connect global audiences to the stories, way of life, locations and language(s) of a jurisdiction. They provide spill-over effects in other sectors such as tourism, where globally popular screen productions strongly influence the destinations chosen by travellers. One example is the international success of UK films and series in stimulating screen tourism in England, which was estimated to be worth USD \$733.6 million in 2016, generating 13,550 FTEs.<sup>18</sup>

Beyond economic spin offs, the intrinsic cultural value of screen productions provide other benefits, such as allowing jurisdictions around the world seek ways to strongly assert their domestic cultures and cultural expression in the face of increasing global trade. By promoting shared stories and identification with characters, screen productions can contribute to the promotion of cultural diversity.

<sup>17</sup> Global Film Production Incentives, a White Paper, Olsberg SPI, June 4th, 2019, page 39.

<sup>18</sup> Global Film Production Incentives, a White Paper, Olsberg SPI, June 4th, 2019, page 59.

It has been noted in Canada that screen content allows Canadians to assert their cultural sovereignty and express their identity and culture, their ideas and values.<sup>19</sup>

Some Canadian stories about diversity are getting made with the involvement of foreign streaming services. The all-Black production *The Porter*, which tells the story of a group of African-Canadian railway workers in St. Antoine, Quebec (known, at the time, as the “Harlem of the North”) was made possible by the involvement of US streamer BET Plus.<sup>20</sup> Produced (and owned) by Winnipeg-based Inferno Pictures and Sienna Films, and originated by Canadian actors Arnold Pinnock and Bruce Ramsay, the all-Black creative team included showrunners Marsha Greene and Annmarie Morais.<sup>21</sup>

#### ***The Porter***

- ✓ Written, directed and produced by Black Canadians
- ✓ Canadian cast and crew
- ✓ Canadian story and setting
- ✓ Based on Canadian Black history featuring Black Canadian characters

Created by Canadian showrunner Julie Puckrin, the medical drama series *Sky Med* features nurses and pilots, many Indigenous, working for an air ambulance service in remote northern Manitoba, with the series partially filmed in Winnipeg. Developed with the CBC, the show was greenlit for production by Paramount Plus and became one of its top-streamed programs when it premiered on the platform. The show and its writer’s room reflect Canada’s diversity, with writers such as Meegwun Fairbrother and Jessica Meya, while the main cast includes Vancouver-based Jamaican and Ojibwe actor Aason “Ace” Nadjiwon, Calgary-born Praneet Akilla and Vancouver-based Jamaican actor Kheon Clarke.<sup>22</sup> As Julie Puckrin has observed, the Canadian TV industry has been a little slower than the U.S. in bringing in less established writers to lead their own original concepts. She notes, “I think when there are young voices that are coming out that have something to say, I think we have to trust them a little bit more.”<sup>23</sup>

#### ***Sky Med***

- ✓ Written, directed and produced by Canadians
- ✓ All-Canadian writer’s room
- ✓ Story is Canadian, based on Canadian history
- ✓ Shot and set in Canada
- ✓ Canadian characters
- ✓ Canadian cast and crew

## **1.2 Examples of Canadian Stories Not Officially Recognized as Canadian Content**

Investments in local content point to the high level of interest in, and value of local stories with audiences. Numerous recent examples exist of exemplary productions featuring Canadian stories,

<sup>19</sup> Janet Yale cited in, “Broadcasting & Telecommunications Panel releases Canada’s Communications Future: Time to Act,” New Release, Innovation, Science and Economic Development Canada, January 29, 2020, Ottawa, Ontario.

<sup>20</sup> Made Nous website: <https://made-nous.ca/made-recommends/the-porter/>; “CBC and BET Plus partner on ‘The Porter’ depicting 1920’s Little Burgundy in Montreal,” in *The Toronto Star*, December 10, 2020, retrieved from <https://www.thestar.com/entertainment/television/2020/12/10/cbc-and-bet-plus-partner-on-the-porter-depicting-1920s-little-burgundy-in-montreal.html>.

<sup>21</sup> Samantha Chizanga, “Black women are leading a new era in Canadian film and television,” in *Now Toronto*, August 14, 2022, retrieved from <https://nowtoronto.com/movies/black-women-are-leading-a-new-era-in-canadian-film-and-television>; CBC website: <https://www.cbc.ca/mediacentre/program/the-porter>.

<sup>22</sup> Kelly Townsend, “How SkyMed took flight as ‘top streamed’ Paramount+ original,” in *Playback*, July 26, 2022, retrieved from <https://playbackonline.ca/2022/07/26/how-skymed-took-flight-as-top-streamed-paramount-original/#ixzz7h59587DY>.

<sup>23</sup> Kelly Townsend, “How SkyMed took flight as ‘top streamed’ Paramount+ original,” in *Playback*, July 26, 2022, retrieved from <https://playbackonline.ca/2022/07/26/how-skymed-took-flight-as-top-streamed-paramount-original/#ixzz7h59587DY>.



characters and locations, made in Canada by Canadians. While they clearly promote Canadian culture and identity to Canadians and the world, they would not pass the current Canadian content test.

#### **The *Handmaid's Tale***

- ✓ Based on the novel by Canadian literary icon Margaret Atwood
- ✓ Story partially set in Canada
- ✓ Shot in Hamilton
- ✓ Canadian crew

*The Handmaid's Tale*, an Emmy Award-winning series produced in Ontario for Hulu, is based on the novel of the same name by Canadian literary icon Margaret Atwood and features Canada-centric plotlines, with Canada explicitly portrayed in the story as a nation that accepts refugees from the dystopian Gilead.

The award-winning *Turning Red* promotes cultural diversity from a Canadian perspective. Directed and co-written by Canadian animator Domee Shi, the film is set in Toronto and features Toronto as a character.<sup>24</sup> As the Academy Award-winning director has explained, “I’m so inspired by how diverse Toronto is. From Chinatown to Kensington Market to the Greater Toronto Area, I feel lucky that I grew up in this city, and I never felt othered in the way of being Chinese... I really just wanted to celebrate that on the big screen because you don’t see that very often, and you don’t see

#### **Turning Red**

- ✓ Co-written and directed by a Canadian
- ✓ Tells a Canadian story
- ✓ Set in Canada, featuring Canadian characters
- ✓ Lead character voiced by Canadian actor Sandra Oh

Toronto depicted very often in movies.”<sup>25</sup> The film was produced by Pixar Animation Studios and is distributed by Walt Disney Studios Motion Pictures.

#### **Barkskins**

- ✓ Shot and set in Quebec
- ✓ Features Canadian characters
- ✓ Based on Canadian history
- ✓ Canadian crew

The historical documentary series *Barkskins*, produced by National Geographic, follows two French families over a 300-year period, beginning with their arrival in “New France.” Quebec creatives from the production team built an entire 17th century village for the production, working closely with the Wendat Nation to ensure historical accuracy and respect.<sup>26</sup> Based on the Pulitzer Prize-winning author Annie Proulx's New York Times best seller, *Barkskins* promotes a unique Quebec story.

Created, written and produced by Canadian showrunner Julian Doucet, and executive produced by Canadian company Amaze Films, *The Lake* is Amazon Prime Video’s first scripted original Canadian series. The comedy, which premiered on the platform in June 2022, was renewed for a second season a month later. Shot in North Bay and set in Ontario’s cottage country, the show brings the unique Canadian cottage experience to the forefront. The majority of the ensemble cast is Canadian, including series star Jordan Gavaris, and cast members Terry Chen, Natalie Lysinska, Travis Nelson, John Dore, Lauren Holly and Jhaleil Swaby. The show features an all Canadian writer’s room and is directed by Canadians Jordan Canning and Paul Fox.<sup>27</sup>

#### **The Lake**

- ✓ Created and produced by Canadian showrunner Julian Doucet
- ✓ Canadian production company Amaze
- ✓ Shot and set in Ontario and featuring unique Canadian cottage experience
- ✓ Features Canadian characters
- ✓ Canadian cast, including series star Jordan Gavaris
- ✓ Canadian directors and writers

<sup>24</sup> Isabelle Docto, “‘Turning Red’ director Domee Shi on Toronto’s diversity, Honest Ed’s, and geese poop,” in *Daily Hive*, March 10, 2022, retrieved from <https://dailyhive.com/toronto/domee-shi-turning-red-toronto-director>.

<sup>25</sup> Isabelle Docto, “‘Turning Red’ director Domee Shi on Toronto’s diversity, Honest Ed’s, and geese poop,” in *Daily Hive*, March 10, 2022, retrieved from <https://dailyhive.com/toronto/domee-shi-turning-red-toronto-director>.

<sup>26</sup> “Small Quebec town goes back to the 17<sup>th</sup> century, thanks to an American film crew,” CBC News online, July 16, 2019, retrieved from <https://www.cbc.ca/news/canada/montreal/barkskins-filming-quebec-1.5225973>.

<sup>27</sup> Nellie Andreeva, “Amazon Orders *The Lake* Starring Jordan Gavaris, Julia Stiles & Madison Shamoun as First Scripted Canadian Series,” in *Deadline*, August 5, 2021, retrieved from <https://deadline.com/2021/08/amazon-orders-the-lake-starring-jordan-gavaris-julia-stiles-madison-shamoun-as-first-scripted-canadian-series-1234809508/>; Tom Tapp, “Prime Video Jumps Back Into ‘The Lake’ With Season 2 Order as Production Begins in Canada,” in *Deadline*,

Amazon Prime Video released its first scripted drama locally produced in Canada, *Three Pines*, in December 2022. The series is based on award-winning Canadian author Louise Penny's series of mystery novels featuring the fictional Sûreté du Québec Chief Inspector Armand Gamache. Like the novels on which it is based, the show is set in Quebec, where it was shot. Canadian company Muse Entertainment is one of the four production companies involved, along with Amazon Studios, Left Bank Pictures (producers of *The Crown*), and Sony Pictures Television.<sup>28</sup>

Two Canadians are amongst the series' directors: Tracey Deer, also serving as one of the program's Indigenous consultants, and Daniel Grou.

### *Three Pines*

- ✓ Shot and set in Quebec
- ✓ Features Canadian characters
- ✓ Canadian cast, including numerous Indigenous actors
- ✓ Canadian directors, including Indigenous director
- ✓ Based on award-winning novels by best-selling Canadian author Louise Penny

Starring Alfred Molina in the title role, the cast is largely comprised of Canadian actors, many Indigenous: Rossif Sutherland, Elle-Máijá Tailfeathers, Tantoo Cardinal, Clare Coulter, Sarah Booth, Julian Bailey, Frédéric-Antoine Guimond, Pierre Simpson, Tamara Brown, Marie-France Lambert, Frank Schorpion, Marcel Jeannin, Crystle Lightning, Isabel Deroy-Olson, and Anna Lambe.<sup>29</sup>

The series has an international reach, premiering on the Amazon Prime platform in Canada, U.S., UK, Ireland, Australia, New Zealand, Norway, Sweden, Denmark, Finland, and Greenland.<sup>30</sup>

### *Jusqu'au Déclin*

- ✓ Written, directed and produced by Québécois key creatives
- ✓ Based on a Québécois story with Québécois characters
- ✓ Shot and set in Quebec
- ✓ All Quebec cast and crew
- ✓ Produced in French language of Quebec

*Jusqu'au Déclin* is Netflix's first original feature in the province of Quebec. This all-Québécois production was written, directed and acted by Québécois talent, shot in Quebec, in French, and telling the story of a Montreal man who joins a survivalist training program in rural northern Quebec. The film was dubbed and subtitled into 31 different languages and has been watched by audiences around the world with 95% of viewers (subscribers) located outside Canada. The film was viewed by over 21 million subscribers in the first four weeks of its release to global audiences.<sup>31</sup>

## **1.3 Lost Opportunities to Promote Canadian Stories and Culture to the World**

While these productions' cultural contributions to Canada are not recognized in the Canadian content system, other jurisdictions do recognize the cultural contributions of screen productions through their cultural tests. As such, they may be better able to seize opportunities afforded by the growing trend in

July 13, 2022, retrieved from <https://deadline.com/2022/07/amazon-prime-video-the-lake-season-2-order-1235060171/>; *The Lake' Season 2 Officially Wraps Up Filming at Prime Video*, in Midgard Times, October 2, 2022, retrieved from <https://moviesr.net/p-the-lake-season-2-officially-wraps-up-filming-at-prime-video>; "Canadian cottage country the backdrop of new Amazon series *The Lake*," CBC News, April 15, 2022, retrieved from <https://www.cbc.ca/news/entertainment/amazon-cancon-the-lake-1.6420535>; IMDB Pro website: [https://pro.imdb.com/name/nm0134112/?ref=search\\_search\\_search\\_result\\_s\\_1](https://pro.imdb.com/name/nm0134112/?ref=search_search_search_result_s_1).

<sup>28</sup> Jenna Busch, "Three Pines: Everything we know so far about Amazon's new series starring Alfred Molina," in Film, October 17, 2022, retrieved from [https://www.slashfilm.com/1051647/three-pines-everything-we-know-so-far-about-amazons-new-series-starring-alfred-molina/?utm\\_campaign=clip](https://www.slashfilm.com/1051647/three-pines-everything-we-know-so-far-about-amazons-new-series-starring-alfred-molina/?utm_campaign=clip).

<sup>29</sup> Amazon Canada, "Amazon Prime Video and Left Bank Pictures begin production on the scripted Canadian Amazon original drama series *Three Pines*," Press Release, in *Cision*, September 2, 2021, retrieved from <https://www.news-wire.ca/news-releases/amazon-prime-video-and-left-bank-pictures-begin-production-on-the-scripted-canadian-ama-zon-original-drama-series-three-pines-804152475.html>.

<sup>30</sup> "Left Bank calls action on Amazon crime drama," in *Televsual*, September 2, 2021, retrieved from <https://www.televsual.com/news/left-bank-calls-action-on-amazon-crime-drama/>.

<sup>31</sup> "Analysis: How foreign streamers might come to pick, and own, our Cancon," in *Cartt.ca*, May 15, 2021, retrieved from <https://cartt.ca/analysis-how-foreign-streamers-might-come-to-pick-and-own-our-cancon/>.

high budget local production by international companies evidenced by the local production strategies of Netflix, HBO, Amazon, and others.

In the last five years, the global streaming services have invested in significantly in local content production in markets around the world.<sup>32</sup> In 2021, Netflix accounted for more than half of the global streamers' investments in European original content, down from 92% in 2019, as other streamers, notably Amazon Prime, were increasing their own investments.<sup>33</sup> The trend is ongoing. Walt Disney Company's plans to invest USD \$14 billion (CAD \$19.4 billion) to USD \$16 billion (CAD \$22.2 billion) per year in global VOD content by 2024; and ViacomCBS's plans to ramp up investment in VOD content to USD \$5 billion (CAD \$6.9 billion) in 2024.<sup>34</sup> For its part, Paramount Plus' plans to greenlight 150 international originals by 2025.<sup>35</sup>

With their global distribution reach, international streamers can promote Canada and Canadian productions to Canadians and to the world. A recent industry report has noted that, "the film sector has much to learn from the global streamers' deep understanding of their audiences, connecting niche content from around the world with global audiences."<sup>36</sup> French producer and Gaumont Vice CEO Christophe Riandée said of working with Netflix on their hit series *Lupin* that, "Wherever you are, whatever language you speak, you have access to a global audience and I think it's a great sign for all the creators and all the producers of the world that they can reach a fanbase audience...."<sup>37</sup>

The many cultural contributions made by the examples above would score significant points in the cultural tests of most jurisdictions examined. In spite of their strong emphasis on Canadian stories, they are not recognized as Canadian, with the exception of *The Porter*, which became a reality after twelve years in development thanks to the partnership of BET Plus.

## 2. Modern National Content Systems Are Guided by the Principle of Flexibility

### 2.1 Flexibility Supports Current Trends in the Mobility of Labour

The Canadian content system, based on a restrictive 10-point scale, is difficult to reconcile with international models of high budget production that must be attractive to audiences in many markets. With financing having become more internationalized, productions are opening up international opportunities for writers, cast and crews.<sup>38</sup> More productions are casting globally, such as *White Lines*, produced by Netflix and the UK company Left Bank Pictures, featuring Spanish showrunner Alex Pina (*Money Heist*) and starring actors from the UK, Spain and Portugal.<sup>39</sup>

Canadian producers have long sought ways to attract international marquee talent that will attract foreign investment and sales. The jurisdictions with more flexible content systems recognize the need

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<sup>32</sup> [https://www.europacreativamedia.cat/rcs\\_auth/convocatories/NostradamusRep22ES.pdf](https://www.europacreativamedia.cat/rcs_auth/convocatories/NostradamusRep22ES.pdf)

<sup>33</sup> Johanna Koljonen, *Nostradamus Report: Imagining a Sustainable Industry*, Goteborg Film Festival and Film i Vast, September 2022.

<sup>34</sup> Frontier Economics, *The Economic Impact of Video-On-Demand Services in Korea*, 2021.

<sup>35</sup> Nick Vivarelli, "Paramount+ launches in Italy with slate including Roberto Benigni, Carlo Verdone and Sylvester Stallone's 'Tulsa King,'" in *Variety*, September 14, 2022, retrieved from <https://variety.com/2022/digital/global/paramount-plus-italy-shows-1235372177/>.

<sup>36</sup> Johanna Koljonen, *Nostradamus Report: Imagining a Sustainable Industry*, Goteborg Film Festival and Film i Vast, September 2022.

<sup>37</sup> Nancy Tartaglione, "Lupin' producer on how to make a global hit as language barriers fall – Berlin," in *Deadline*, March 3, 2021, retrieved from <https://deadline.com/2021/03/lupin-netflix-omar-sy-gaumont-streaming-1234705813/>.

<sup>38</sup> Gilles Fontaine, Marta Jiménez Pumares, *European high-end fiction series: State of play and trends*, European Audiovisual Observatory, 2020.

<sup>39</sup> John Hazelton, "Left Bank, Alex Pina and Octavia Spencer set for Netflix series," in *Screen Daily*, July 30, 2018, retrieved from <https://www.screendaily.com/news/left-bank-alex-pina-and-octavia-spencer-set-for-netflix-series/5131315.article>; Justin Lawrence, "White Lines Cast: Who starts in Netflix's New drama," in *The Sun*, May 15, 2020, retrieved from <https://www.thesun.co.uk/tvandshowbiz/11518189/white-lines-netflix-cast/>.

for high budget productions to be competitive in multiple markets and afford greater opportunities for skilled talent to seize international work opportunities.

## **2.2 Canadian Cast and Crews Want More Opportunities to Work with Global Services**

Canadian key creatives are very interested in increased opportunities to work with the global studios and streamers. Global studios and streamers are said to now be the largest employers of Canadians working in film production, accounting for 60% of jobs for Canadians (129,180 jobs in total).<sup>40</sup>

The contributions of the majority of Canadian screen industry workers are not factored into the Canadian points system, nor are the contributions to world-class skills development afforded by international productions recognized or rewarded in the Canadian content system. Through their more flexible approaches to national content definitions, for example, by providing a greater number of points for the participation of local casts and crews, other jurisdictions recognize the opportunities afforded by international production models to advance the careers of talented individuals, increasing their jurisdiction's capacity for world-class local production, and positively enhancing their national branding.

## **2.3 Examples of Award-Winning Productions Made by Canadians Not Recognized as Canadian Content**

High profile, award-winning productions made in Canada by Canadians provide significant opportunities to enhance the careers of Canadian talent. *The Shape of Water*, directed by Guillermo Del Toro, and produced by Del Toro and Canadian producer J. Miles Dale, promoted Canada's skilled talent to the world. The film employed Canadian talent from top to bottom, including Canadians in the positions of costume designer, production designer, and sound department. In a 2017 ET Canada interview on *The Shape of Water*, del Toro enthused, "I wanted to show the world that the heads of departments in this movie were all Canadian, all in Toronto, and you can make an A-class film with a Canadian crew. And not just a Canadian crew, but with Canadian heads of departments."<sup>41</sup>

The film was nominated for 13 Oscars and won Best Picture and Best Production Design. According to the film's Toronto-based producer, J. Miles Dale, "this is a high-water mark for Toronto filmmaking. In 90 years of Academy Awards, not even close to this number of Canadians have ever been nominated for one movie."<sup>42</sup> "It's a huge win for Canada's film community, proving that as a nation, we can compete with the best in the world. ...And the Oscar wins are recognition that Canada's film culture has matured and has hit a point where we're really as good as anyone else in the world."<sup>43</sup>

### ***The Shape of Water***

- ✓ Produced by J. Miles Dale (Canadian) and Guillermo Del Toro
- ✓ Shot in Toronto and Hamilton
- ✓ Visual effects by Toronto company Mr. X
- ✓ Oscar-winning Canadian crew, including heads of departments:
  - ✓ costume designer
  - ✓ production designer and
  - ✓ sound department.

<sup>40</sup> John M. Lewis, "What does "Canadian" mean when we're talking film?, in *The Hill Times*, June 1, 2022, retrieved from <https://www.hilltimes.com/2022/06/01/what-does-canadian-mean-when-were-talking-film/364407>; Canadian Media Producers Association, *Profile 2021: An Economic Report on the Screen-based Production Industry in Canada*, 2022, Exhibit 2-10, page 4.

<sup>41</sup> "Del Toro Talks 'The Shape of Water', *ET Canada*, 2017, <https://etcanada.com/video/1102542915718/guillermo-del-toro-on-filming-in-toronto/>.

<sup>42</sup> Jordan Pinto, "How J. Miles Dale helped sculpt *The Shape of Water*, in *Playback*, January 28, 2018, retrieved from <https://playbackonline.ca/2018/01/26/how-j-miles-dale-helped-sculpt-the-shape-of-water/#ixzz7h4qa1eJr>.

<sup>43</sup> Canadian Media Producers Association website: <https://cmpa.ca/indiescreen/the-shape-of-canada/>.

*Jusqu'au Déclin's* Canadian film editor, Arthur Tarnowski, was recognized for his work on the production, with award nominations including a Gala Québec Cinéma Prix Iris Award for Best Editing as well as a Canadian Screen Award for Achievement in Editing.<sup>44</sup>

#### ***Umbrella Academy***

- ✓ Starring Canadian actors Colm Feore and Eliot Page
- ✓ Co-created by Canadian Steve Blackman
- ✓ Four Emmy Award nominations for Canadian special visual effects
- ✓ Three Emmy Award nominations for Canadian costume designers
- ✓ Shot in Toronto

The Ontario filmed series, the *Umbrella Academy* starring Canadians Colm Feore and Elliot Page and co-created by Canadian Steve Blackman, is another successful series promoting Canadian talent to the world.<sup>45</sup> Canadians Jesse Kawzenuk, Jeff Campbell, Laurent Spillemaecker and Ryan Freer were nominated for an Emmy Award for outstanding special visual effects for their work on the Netflix series, while Canadians Christopher Hargadon, Heather Crepp and William Ng received Emmy nominations for costume design.<sup>46</sup> The city of Toronto itself is once again featured in the show, from the Scarborough Bluffs to the historic Lakeview Restaurant built in 1932.

Canadians working on the *Handmaid's Tale*, earned Emmy Award nominations in categories for sound mixing, production design, contemporary makeup, single-camera picture editing and casting for a drama series.<sup>47</sup>

### ***3. Modern National Content Systems Support Local Production Ecosystems***

#### **3.1 Canadian System Could Better Support Local Production Ecosystem**

The jurisdictions examined support their local production ecosystems through flexible approaches that offer greater opportunities for producers to create high-budget productions, which drive economic benefits and build the capacity of local production and post-production infrastructure. Investments by screen productions are invaluable in growing local industries: procuring pre- and post-production services; investing in skills and talent development; and growing production capacity. All these activities significantly contribute to a healthy local content production ecosystem.

Industry players have pointed to the positive contributions of large-scale investment in local content by global companies, whose commissioning power is increasing the capacity and sustainability of local production companies. Screen productions create a host of benefits, including job creation and skills development.<sup>48</sup> In commenting on the French hit *Lupin*, producer Gaumont Vice CEO Christophe Riandée has said that, “As with Amazon and Netflix, they are commissioning a lot of local shows in all of their local branches. That has a huge impact on us, and on the industry, which is good.”<sup>49</sup>

Canada's minimum expenditure requirement - that 75% be spent in production and that 75% be spent in post-production - is more restrictive than any of the 10 jurisdictions examined. Figure 18 shows how

<sup>44</sup> Kelly Townsend, “How SkyMed took flight as ‘top streamed’ Paramount+ original,” in *Playback*, July 26, 2022, retrieved from <https://playbackonline.ca/2022/07/26/how-skymed-took-flight-as-top-streamed-paramount-original/#ixzz7h59587DY>.

<sup>45</sup> Made Nous website: <https://made-nous.ca/made-recommends/the-umbrella-academy/>.

<sup>46</sup> Nathan Sager, “Hamilton-shot *Umbrella Academy*, *The Handmaid's Tale* earn Emmy nominations, in *insauga*, July 13, 2021, retrieved from <https://www.insauga.com/hamilton-shot-umbrella-academy-the-handmaids-tale-earn-emmy-nominations>.

<sup>47</sup> Nathan Sager, “Hamilton-shot *Umbrella Academy*, *The Handmaid's Tale* earn Emmy nominations, in *insauga*, July 13, 2021, retrieved from <https://www.insauga.com/hamilton-shot-umbrella-academy-the-handmaids-tale-earn-emmy-nominations>.

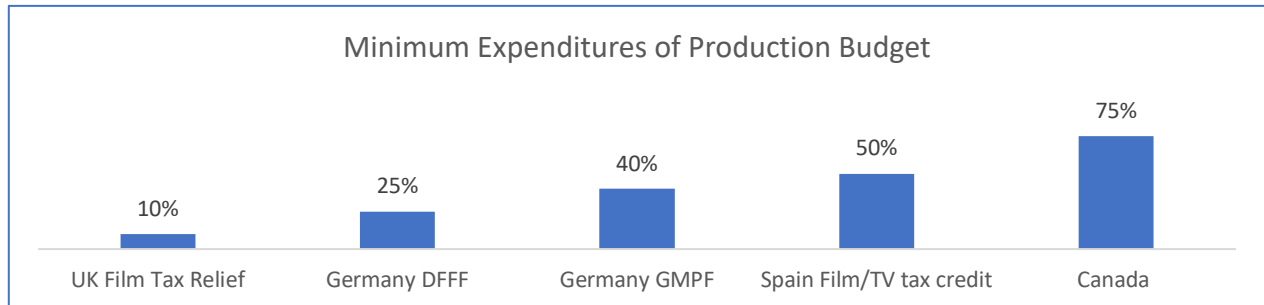
<sup>48</sup> Olsberg SPI, Global Film Production Incentives, a White Paper, June 4th, 2019, page 28.

<sup>49</sup> Nancy Tartaglione, “‘Lupin’ producer on how to make a global hit as language barriers fall – Berlin,” in *Deadline*, March 3, 2021, retrieved from <https://deadline.com/2021/03/lupin-netflix-omar-sy-gaumont-streaming-1234705813/>.



Canada compares to other jurisdictions examined that impose minimum expenditure requirements expressed as a percentage of the production budget.

**Figure 10: Minimum Expenditure Requirements as a Percentage of the Production Budget**



The constraints of this approach result in a Canadian system that is poorly adapted to the realities of global production trends. Where other jurisdictions provide producers with the flexibility needed to create globally competitive larger-scale productions, the Canadian content system with its high level of both production and post-production expenditures, is not well suited to these increased opportunities. France and Germany both have lower production expenditure requirements. In addition, both jurisdictions have adapted their cultural tests in recent year to add new special effects positions, providing added flexibility for producers.<sup>50</sup> By ignoring the local character of productions made by Canadians and how they strengthen local production ecosystems, the Canadian content point system falls short in an evolving industry where international productions are fueling sustainability and growth of production companies and sectors and promoting the world-class skills of local industries.

The shows described in this chapter were produced in Canada, creating jobs for Canadians. *The Umbrella Academy*, *The Shape of Water* and *Handmaid's Tale* were filmed in Ontario. For its part, *Barkskins* was shot in Quebec. Also shot in Quebec, *Jusqu'au Déclin* was filmed in the Laurentians with an all-Quebec cast and crew, resulting in \$5.8 million in direct investment in the province.<sup>51</sup> It's a huge success story in promoting Canada to the world. *The Willoughbys* is yet another example. An animated film written, directed, voiced and fully animated by Canadians, the film was produced in Canada, and distributed to the world by Netflix, where it found 97% of its audience.<sup>52</sup> The shows described above have employed hundreds of Canadians in highly skilled jobs, working alongside international talent.

#### ***The Willoughbys***

- ✓ Written and directed by Canadians
- ✓ Original novel adapted by Canadian writers
- ✓ Produced in Canada and fully animated by Canadians
- ✓ Key characters voiced by Canadians actors Alessia Cara and Martin Short

<sup>50</sup> CNC, "Réforme de l'agrément des films : une nouvelle pierre angulaire pour la politique cinématographique en France," December 5, 2017, retrieved from [https://www.cnc.fr/cinema/communiqués-de-presse/reforme-de-lagrement-des-films--une-nouvelle-pierre-angulaire-pour-la-politique-cinematographique-en-france\\_111668](https://www.cnc.fr/cinema/communiqués-de-presse/reforme-de-lagrement-des-films--une-nouvelle-pierre-angulaire-pour-la-politique-cinematographique-en-france_111668); Ed Meza, "Germany Expands Rebate System for VFX Sector" in *Variety*, October 18, 2018, retrieved from <https://variety.com/2018/film/news/germany-rebates-expanded-vfx-1202982921/>.

<sup>51</sup> "Analysis: How foreign streamers might come to pick, and own, our Cancon," in *Cartt.ca*, May 15, 2021, retrieved from <https://cartt.ca/analysis-how-foreign-streamers-might-come-to-pick-and-own-our-cancon/>.

<sup>52</sup> Marina Hanna, "Dark comedy 'The Willoughbys' a serious statement about the family we choose (and the family we're stuck with)," *Toronto Star*, April 16, 2020, <https://www.thestar.com/entertainment/movies/opinion/2020/04/16/dark-comedy-the-willoughbys-a-serious-statement-about-the-family-we-choose-and-the-family-were-stuck-with.html>.

## 4. Modern National Content Systems Align with Global Production Business Models

### **4.1 Canada is Out of Step with Evolving Financing Models**

For half a century, Canada has required Canadian production companies to own the copyright of productions where Canadian content recognition is sought, and for a period of not less than 25 years. This factor is determinant, meaning that, even where all other requirements are met, productions that do not satisfy this requirement cannot qualify as Canadian content. The current system was developed in an earlier analog environment when broadcasting was largely a closed system. But the broadcasting system is no longer closed. High-quality television programming has been available from the Internet for many years. As it has been noted:

“Canada came by the IP misunderstanding honestly. Historically, the policy requiring IP ownership by independent producers as a prerequisite for public financing was driven by the need to develop a nascent production industry. That goal has been spectacularly achieved. Not only does Canada now boast a world-class, in-demand TV workforce and infrastructure, a slew of Canadian production companies — Boat Rocker, eOne, Halfire, Nomadic, Thunderbird, and more — have been producing premium TV for the global market. Yet, they are not incentivized by policy to take on the role of studios. Other producers focus mostly on making a business of so-called service productions. Meanwhile producers who haven’t reached global scale have unrealistic expectations of how the industry works.”<sup>53</sup>

In its submission to the *Panel Review on the Broadcasting Act*, Canadian broadcaster Corus best described the implications of not having a modern approach to the definition of Canadian content:

“For too long, the Canadian broadcasting system has been filled with regulatory disincentives to investment in Canadian content...“The Canadian Radio-television and Telecommunications Commission (“Commission” or “CRTC”) has recognized this in recent years. To build a truly competitive Canadian media sector, all media companies must be permitted to fully monetize their investments in content.”<sup>54</sup>

By comparison, no other jurisdiction examined imposes such a restriction.

The majority of programs in jurisdictions examined have no ownership requirements at all, while others have limited and far more flexible requirements. The majority of the jurisdictions examined do not consider the ownership of the production in their national content systems. Those that do have limited requirements that balance the ownership of the production against other characteristics that can help jurisdictions achieve a wide range of policy objectives. Ownership in these jurisdictions is relativized, such as by requiring that ownership be proportional to investment, and balancing its weighting in the points system against other benefits brought by the production. These approaches are aligned to changes in the industry.

The market is increasingly seeing a new kind of “hybrid” production – fully financed by international streamers and produced locally, in local languages, to generate subscription sales in local markets. These productions tend to have cost and quality levels of much larger international productions.<sup>55</sup> In

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<sup>53</sup> Berkowitz, Irene S., *Mediaocracy: Why Canada hasn’t made global TV hits and how it can*, Pressbooks, 2021. BFI, *British Film Certification Schedule 1 to the Films Act 1985 Cultural Test Guidance Notes*, September 2022.

<sup>54</sup> Corus, *Broadcasting and Telecommunications Legislative Review: Call for Comments*, Comments of Corus Entertainment Inc., January 11, 2019.

<sup>55</sup> Elsa Keslassy, “Netflix, Amazon Must Invest 20-25% of French Revenues in Local Content, France Government Decrees,” in *Variety*, June 30, 2021, retrieved from <https://variety.com/2021/streaming/global/avms-france-netflix-new-rules-streamers-1235008364/>.



Europe, Netflix, Hulu, Disney, and others recognize the enormous potential reach of European-produced shows. Some of these have been major international successes as well.

*Lupin* (2021), produced by Gaumont Television France, is one such example. Based on the novels of French author Maurice Leblanc and set in Paris, the series was produced in France and in the French language, employing highly skilled French directors, cinematographers, composer, key cast, including Omar Sy in the lead role, and crew. Isabelle Degeorges, head of Gaumont Television France, has said that Netflix, which fully financed the series, “gave Gaumont the resources to make the ambitious series with the scope we had envisioned and give it a strong French DNA; it would have been a different series if we had had multiple partners involved.” The series quickly became the most popular French show on Netflix following its release on the platform, as well as one of Netflix’s top 10 shows in most countries around the world.<sup>56</sup>

*Money Heist* (2017) is another example, where the first season was produced by Spanish production company Vancouver Media, helmed by Alex Pina, the show’s creator and showrunner, for Spanish broadcaster Atres Media, before being sold to Netflix, which commissioned four more seasons. The series is produced in Spain, in Spanish, by a Spanish production company, with Spanish key creatives in the positions of directors, writer, cast and crew. By 2018, *Money Heist* had become the most watched program on the platform in a language other than English and was in the top five for most watched series overall.<sup>57</sup>

Under the current Canadian content system, productions like *Lupin* and *Money Heist*, which have made many cultural and economic contributions to their home jurisdictions, would not qualify for certification as Canadian productions as the copyright is owned by Netflix.

Most recently, Paramount Plus announced a new slate of original local productions at the launch of its Italian service. To attract Italian audiences, Paramount Plus is investing in local content and talent with Italian original productions such *Francesco Il Cantico* hosted by Roberto Benigni, and a new season of *Vita Da Carlo*, in which comedian and actor Carlo Verdone plays himself, revealing his difficult relationship with Italy’s capital Rome.<sup>58</sup> A new feature film, *Ti Mangio Il Cuore*, based on Carlo Bonini and Giuliano Foschini’s novel-investigation of the mafia in Foggia is also in the works. Starring Italian pop singer Elodie, the film is directed by Italian director Pippo Mezzapesa and produced by Italian production company Indigo Films.<sup>59</sup>

The COVID-19 pandemic has accelerated structural changes that were already underway throughout the industry. The impact of the ongoing pandemic on the film and television industry is expected to, “change production practices, re-shape the exhibitor sector, transform distribution and expand global opportunities for...producers over the next five years.”<sup>60</sup> These changes have profound implications for the financing and investment in independent productions.<sup>61</sup> Streaming is now firmly established in the

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<sup>56</sup> Sheen Scott, “Lupin’ is Netflix’s Most Popular French Series, in *Forbes*, January 14, 2021, retrieved from <https://www.forbes.com/sites/sheenascott/2021/01/14/lupin-is-netflixs-most-popular-french-series-ever/?sh=7b3f8e2b5de1>.

<sup>57</sup> Gabriella Paiella, “How Netflix’s ‘Money Heist’ became a worldwide phenomenon,” in *GQ*, September 7, 2021, retrieved from <https://www.gq.com/story/money-heist-netflix-profile>.

<sup>58</sup> Jesse Whittock, “Robert Benigni to host Paramount+ original ‘Francesco Il Cantico’ on eve of streamer’s Italian launch, in *Deadline*, September 14, 2022, retrieved from <https://deadline.com/2022/09/roberto-benigni-paramount-plus-francesco-il-cantico-streamer-launch-1235118629/>.

<sup>59</sup> Nick Vivarelli, “Paramount+ launches in Italy with slate including Roberto Benigni, Carlo Verdone and Sylvester Stallone’s ‘Tulsa King,’ in *Variety*, September 14, 2022, retrieved from <https://variety.com/2022/digital/global/paramount-plus-italy-shows-1235372177/>.

<sup>60</sup> Jennifer Wolfe, “Nostradamus Report Foresees a Transformed Landscape/Source: Variety,” in *NAB Amplify*, February 19, 2021, updated March 18, 2021.

<sup>61</sup> Johanna Koljonen, *Nostradamus Report: Imagining a Sustainable Industry*, Goteborg Film Festival and Film i Vast, September 2022.

screen ecosystem and may become the cornerstone of a new normal.<sup>62</sup> The very stringent and determinant ownership requirements in the Canadian content system do not reflect the reality of the current production landscape and how Canadian production companies actually work now.

#### **4.2 Examples of Canadian Producers Leveraging Opportunities with Global Partners**

Canada has a mature production sector, home to sophisticated production companies that are experienced in working internationally. Many have strong partnerships with global players, such as Toronto-based Take5 Productions, which together with Whizbang Productions, have produced *Star Trek: Discovery*, *Beauty and the Beast*, *Reign* and *American Gothic* for CBS alone in Toronto.<sup>63</sup> The two producers, John Weber (Take5) and Frank Siracusa (Whizbang), oversaw the development and management of a new 260,000 square foot facility in Mississauga, established to support CBS's growing slate of productions in Ontario.<sup>64</sup>

Ottawa-based animation studio Mercury Filmworks has worked on at least 10 Disney productions, while Vancouver-based Omnifilm Entertainment has worked on at least five live-action productions for the global company.<sup>65</sup> Thunderbird Entertainment, also based in Vancouver, has produced projects for Netflix, Amazon Prime Video, Hulu, Apple TV Plus, and HBO Max.<sup>66</sup> Its Ottawa-based subsidiary Atomic Cartoons has produced animated programs for Netflix and Universal Animation Studios.<sup>67</sup> For its part, Hamilton-based Pipeline Animation Studio has produced an impressive 1500 minutes of animation each year for companies like Disney, PBS Kids, Netflix and CBC Kids. Launching in 2007 with a staff of 15 people, the company had ballooned to a staff of 218 people in Canada by 2019.<sup>68</sup>

Global studios & streamers, like Warner Bros, CBS-Paramount Global and Netflix are said to be the second largest source of financing for Canadian-owned content production, with foreign pre-sales and advances accounting for 15% of total financing. By comparison, the Canada Media Fund accounts for 10%, and Telefilm accounts for 1%.<sup>69</sup> Following Netflix's pledge to spend at least \$500 million dollars over 5 five years to fund original Canadian production, CRTC Chair Ian Scott stated in January 2020 that Netflix was "probably the single largest contributor to the (Canadian) production sector." At the same time, Thunderbird CEO Jennifer Twiner McCarron noted that the company had "to say 'no' to more work than we'd like to, because we can't do it all."<sup>70</sup> In 2021, the value of foreign production activity reached USD \$1.91 billion (CAD \$2.65 billion) in Ontario alone, on shows like Guillermo de Toro's *Nightmare Alley*, Hulu's *The Handmaid's Tale* and Apple's *See*.<sup>71</sup>

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<sup>62</sup> Michael Gubbins, "Streaming giants and public film funding," *Analysis Report*, Film I Vast, 2022, retrieved from <https://analysis.filmivast.se/wp-content/uploads/2022/04/Streaming-Giants-and-Public-Film-Funding.pdf>.

<sup>63</sup> CMPA, Indiescreen website: <https://cmpa.ca/indiescreen/blueprint-studio-city/>.

<sup>64</sup> Tony Wong, "Why CBS set its sights on Toronto area for new TV production hub," in *The Toronto Star*, September 26, 2018, retrieved from <https://www.thestar.com/business/2018/09/26/cbs-plans-production-hub-in-canada-to-satisfy-demands-of-peak-tv.htm>.

<sup>65</sup> Victoria Ahearn, 'Kind of a scary time': Canadian creators face uncertainty in the streaming era," in *CBC News*, December 11, 2019, retrieved from <https://www.cbc.ca/news/canada/toronto/canadian-streaming-services-1.5392231>.

<sup>66</sup> Victoria Ahearn, 'Kind of a scary time': Canadian creators face uncertainty in the streaming era," in *CBC News*, December 11, 2019, retrieved from <https://www.cbc.ca/news/canada/toronto/canadian-streaming-services-1.5392231>.

<sup>67</sup> Lauren Malyk, "Atomic Cartoons moves into phase two of Ottawa expansion," in *Playback*, June 20, 2019, retrieved from <https://playbackonline.ca/2019/06/20/atomic-cartoons-moves-into-phase-two-of-ottawa-expansion/>.

<sup>68</sup> Adam Carter, "Hamilton animation studio producing some of the world's most popular cartoons," in *CBC News*, January 2, 2019, retrieved from <https://www.cbc.ca/news/canada/hamilton/pipeline-studios-1.4949542>.

<sup>69</sup> Canadian Media Producers Association, Profile 2021: An Economic Report on the Screen-based Production Industry in Canada, 2022, Exhibit 2-10, page 32.

<sup>70</sup> "Thunderbird sees marked 2020 growth," in *Cartt.ca*, October 15, 2020, retrieved from <https://cartt.ca/thunderbird-sees-marked-2020-growth/>

<sup>71</sup> Ontario Creates, "Ontario's Film and Television Production Soars with Record-Breaking Year," News Release, March 24, 2022, retrieved from <https://www.ontariocreates.ca/news-releases/ontarios-film-and-television-production-soars-with-record-breaking-year#:~:text=Ontario's%20film%20and%20TV%20industry,industry%20shut%20down%20in%202020>; Etan Vlessing, "How Hollywood's

Recent examples of hybrid local productions provide further evidence of how Canadians are leveraging new opportunities afforded by the global production environment. *Turning Red* (Disney), *The Lake* (Amazon Prime Video), *Three Pines* (Amazon Prime Video) and *Jusqu'au Déclin* (Netflix) are authentic local stories told by Canadians for Canadians and the world, leveraging Canada's world-class talent and production facilities, promoting Canadian ideas and values to the world. Ironically, these productions don't qualify as Canadian under the current rules.

Canada's approach to copyright ownership is highly restrictive as compared to other jurisdictions and does not reflect the sophistication of Canada's mature production sector. Rooted in another time the Canadian content system was designed to support a nascent industry in an industry affording far fewer possibilities. But while this system has remained relatively unchanged for decades, the film and television production and broadcast industries have grown and changed considerably.

The Canadian production system requires a more flexible national content system that reflects how Canadian companies and talent are actually working now, to ensure the sector can seize the multitude of opportunities created by the evolving global production landscape. There is no single model of production deals for creating local productions. With flexibility, production companies can leverage the benefits of global platforms, including access to global audiences and a variety of production models, including commissioned content and co-production partnerships.

### III. Conclusion

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#### 1. Modernizing the Definition of Canadian Content

As noted by Entertainment Partners, “there is a booming demand for new content...transformation in where and how we work...we are entering a new age of entertainment.”<sup>72</sup> International approaches to defining national content are modern, flexible and adapted to this changing global production landscape. They attach both cultural and economic value to screen-productions, apply flexible tests to achieve a wider array of policy objectives, and do not impose ownership restrictions that are not aligned to the changing screen-based production value chain.

Canada, by comparison, continues to use an antiquated definition of Canadian content and risks becoming uncompetitive at a time of increasing global demand for new content. Focused exclusively on industrial considerations, the Canadian content system continues to be based on a stringent and exacting definition of ownership, considering only a limited number of key creative positions, which must entirely be staffed by Canadians, and requiring a high level of Canadian expenditures. The requirements that the Canadian producer own the copyright for 25 years and that 75% of the production budget as well as 75% of the post-production be expended in Canada are more restrictive than any of the 10 jurisdictions examined. Unlike other jurisdictions, Canada also requires producers to have a guaranteed access to at least 25% of the net profits from the exploitation of the production in foreign markets.<sup>73</sup> No other jurisdiction establishes such a threshold.

The narrow 10-point scale is exclusionary. The contributions of the majority of Canadian industry workers are not factored into the test, nor are the wider economic benefits to the sector and the country. Investments in any production at any point in the production cycle, and regardless of the specific content, are also important contributions to strengthen the overall production industry. This is how the industry can grow the pool of talent, expertise, and capital available to produce more content.

Some government and regulatory reviews in the past decades have revealed the limitations of the definition of Canadian content. Through these reviews, observations have been put forward that a more flexible Canadian content system would allow the achievement of both cultural and economic goals, encouraging more large-scale productions that capture a larger share of international markets, promoting Canadian culture and supporting a more vibrant Canadian production sector. These observations are as valid today as they were years ago.

#### **1.1 Limitations of Current Canadian Content Definition Noted in Government and CRTC Reviews**

- Provide Flexibility and Support Cultural Goals on Par with International Community  
(*Government Task Force on the Review of Canadian Content*)

As far back as 20 years ago, a review of the definition of Canadian content found that the ten-point system was not responding to production realities in Canada and that Canada was not on par with the international community.<sup>74</sup> The study also noted that the current Canadian content definition confounds both cultural and economic goals: “There are three main tests under the current Canadian content definition (key creative talent, production expenditures and post-production expenditures). In our view, the three tests confound both cultural and economic goals. More

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<sup>72</sup> Entertainment Partners, “The future of film and television production,” corporate blog entry, Entertainment Partners, January 4, 2022, retrieved from <https://www.ep.com/blog/the-future-of-film-and-television-production/>.

<sup>73</sup> Canadian Film or Video Production Tax Credit (CTPC) Application Guidelines, Canadian Audio-Visual Certification Office (CAVCO), March 3, 2020.

<sup>74</sup> François Macerola, “Canadian Content in the 21<sup>st</sup> Century in Film and Television Productions: A Matter of Cultural Identity”, Canadian Heritage, June 2003.

specifically, they impart a certain degree of ambiguity to the main objectives the federal government is attempting to achieve.”

- Provide Flexibility to Support Large-Scale Production, Risk-Taking and Content Attractive in International Markets  
(CRTC Consultation *Let’s Talk TV: A Conversation with Canadians on the future evolution of the television system*)

In this 2015 public consultation, the CRTC noted that the future television environment may require new approaches to what constitutes Canadian programming and pointed out the flexibility that is available for the certification of international co-ventures:

“In the current system, programs are recognized as Canadian based on the various creative and other roles played by Canadians and Canadian companies in the production of a program. Productions are certified as Canadian by either the Commission or the Department of Canadian Heritage through the Canadian Audio-Visual Certification Office (CAVCO). CAVCO certification recognizes only treaty co-productions as Canadian, whereas the Commission also recognizes international co-ventures. In recent years, this flexibility has enabled large-scale productions such as “Beauty and the Beast” and “Reign.” Large pre-sales to foreign networks (generally U.S. networks) are the way in which some of these co-venture productions can be made.”<sup>75</sup>

For its part, Canadian distributor, eOne called for a more flexible point system, pointing out that this would act as an incentive to Canadian producers, broadcasters and distributors to take more creative and financial risk to create Canada content attractive to international audiences.

“While the government has a role to play in the Canadian content production, distribution and broadcast ecosystem, we no longer live in an analog three channel universe where the regulations and policies currently ruling the Canadian production and broadcasting sectors can have the same level of impact they once had. Unfortunately, the current Canadian content funding regime supports a one-off production infrastructure where copyright ownership is more important than distribution ownership.”<sup>76</sup>

- Include Cultural Elements in Definition of Canadian Content  
(Government Consultation on *Canadian Content in a Digital World*)

This 2016 federal government consultation found that “there was near unanimous agreement that Canada should revisit and update what qualifies as Canadian content and who qualifies as a Canadian creator.”

In its submission, the CMPA proposed expanding the definition of Canadian content to include Canadian cultural elements, such as awarding new points to encourage adaptations of bestselling Canadian-authored books and novels, or productions based on recognized Canadian figures or historical events. As the CMPA argued, “given the government’s overall goal of capturing a greater share of global markets, the participation of a minority of non-Canadians on a writing team that is

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<sup>75</sup> Canadian Radio-television and Telecommunications Commission (CRTC), *Broadcasting Regulatory Policy CRTC 2015-86*, March 12, 2015, retrieved from <https://crtc.gc.ca/eng/archive/2015/2015-86.htm>.

<sup>76</sup> Oral remarks by Entertainment One (eOne) delivered by John Morayniss, Broadcasting Notice of Consultation Hearing – CRTC 2014-190-4, *Let’s Talk TV*, September 19, 2014.

supervised by a Canadian lead writer or showrunner should not disqualify a production from earning a point for the writer.”<sup>77</sup>

- Definition Too Restrictive to Produce Content Attractive in International Markets  
(CRTC’s Consultation on a *New Policy Framework for Certified Independent Funds*)

The CRTC’s introduction of a new policy framework for certified independent production funds (CIPF) allowed CIPFs to extend their funding to productions obtaining six Canadian certification points instead of eight. As was pointed out: “the current criterion requiring eight out of ten Canadian content certification points to qualify for CIPF funding is restrictive and excludes many productions that could otherwise be of high quality and qualify as Canadian. Moreover, a reduced requirement could help smaller and perhaps more innovative projects to qualify for funding.” It was noted that requiring only six points could facilitate the hiring of non-Canadian actors or creators, who might increase a project’s attractiveness and visibility in international markets.

- Support a Vibrant Domestic Market by Reflecting New Realities of Digital Production  
(CRTC *Policy Review of the Future of Programming Distribution*)

This 2018 examination by the CRTC examined how the future distribution environment could support a vibrant, internationally competitive, domestic market. The Commission noted as one option updating current definitions of Canadian content to “reflect the new realities of digital production and ensuring that they provide the best combination of supports and incentives for the future environment.”<sup>78</sup>

## **1.2 A Modernized Approach to Defining Canadian Content**

International jurisdictions provide lessons learned for Canada when it comes to the need to modernize. Of critical importance is the need to add flexibility to the current system, in line with the approaches taken in other jurisdictions, to ensure that Canadians enjoy the full array of possible benefits flowing from screen-based production in Canada. Flexibility in the Canadian content system would support the evolution of business and financing models, in keeping with the maturity of the sector and at the level of its sophisticated production companies. A modernized definition of Canadian content would support Canadian storytelling, promoting Canadian culture and soft power and the ongoing development of its world-class production sector.

In its review of the definition of Canadian content, Canada could consider the following measures, which have been implemented in other jurisdictions

- Expand the Canadian points-base system to include a significantly larger number of available points and graduated scales that are aligned to the realities of the global production environment,
- Include recognition of cultural criteria in an expanded point system, with particular emphasis on meeting Canada’s cultural objectives,
- Recognize all Canadian cast and crew in an expanded Canadian points-based system,
- Reduce the current thresholds of minimum production expenditures on par with international (i.e., between 10% and 50% of production budgets), and

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<sup>77</sup> CMPA, *Submission to the Department of Canadian Heritage, Canadian Content in a Digital World*, November, 2016, retrieved from [https://cmpa.ca/wp-content/uploads/2018/04/CMPA\\_Submission-CanadianContentInADigitalWorld-ONLINE.pdf](https://cmpa.ca/wp-content/uploads/2018/04/CMPA_Submission-CanadianContentInADigitalWorld-ONLINE.pdf).

<sup>78</sup> CRTC, *Conclusions and potential Options, Harnessing Change: The Future of Programming Distribution in Canada*, retrieved from <https://crtc.gc.ca/eng/publications/s15/pol1.htm#c4>.



- Remove current copyright ownership requirement as a determinant factor, providing Canadian producers with the flexibility to decide with financing partners the best business deals for their respective companies.

Each of these changes would better align the Canadian content system to the realities of global production and to the systems in other jurisdictions.



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## Annex II: Background Information on the Jurisdictions Examined

### 1. The United Kingdom

The British Film Institute (BFI) Certification Unit is responsible for assessing applications for the certification of British television programs and feature films on behalf of the Secretary of State. Qualification for the UK's tax reliefs is based on the certification of a project through a sector-specific cultural test. The certification of a film or television program as "British" is also the gateway for accessing the national funding programs for film that are administered by the BFI. Production Fund awards are recoupable by the BFI. Some of these recouped funds are reserved for filmmakers through automatic access to a BFI Locked Box for use in future filmmaking activities by producers.<sup>79</sup>

#### 1. Requirements to Access UK Film and High-End Television Tax Credit<sup>80</sup>

Requirements to Access UK Film and High-End Tax Reliefs	
<b>Ownership Requirements</b>	No requirement for the rights to be owned by the production company applying for the tax credit.
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>Production company must be permanently established in the UK and pay corporation tax in the UK</li> <li>Production company must be actively involved in planning and decision-making of production, and responsible to delivery completed film, negotiations and contracts and expenditures.</li> </ul>
<b>Eligible Projects</b>	<ul style="list-style-type: none"> <li>Feature films must be intended for theatrical release</li> <li>High-end television productions must be intended for broadcast on television or the Internet.</li> </ul>
<b>Expenditure Requirements</b>	Minimum expenditure of 10% of the production budget in the UK
<b>Cultural Test</b>	Minimum of 18 out of 35 points Fiction Productions: <ul style="list-style-type: none"> <li>Cultural content (22 points)</li> <li>Nationality of personnel (8 points)</li> <li>Local of Production/Post-production (5 points)</li> </ul>

#### 1.1 UK Cultural Test for Accessing the BFI Production Funding and Tax Reliefs<sup>81</sup>

The following cultural test applies to all productions seeking direct funding from the BFI, as well as those seeking film or high-end television tax relief. Productions must achieve a minimum of 18 out of 35 points. High-end television productions must achieve 16 out of a possible 31 points.

Cultural Test to Access BFI Production Fund and Tax Reliefs	
<b>Cultural content: up to 18 points</b>	
Film set in the UK or EEA (up to 4 points) <ul style="list-style-type: none"> <li>4 points will be awarded if at least 75% of the film is set in the United Kingdom or another EEA state.</li> <li>3 points will be awarded if at least 66% of the film is set in the United Kingdom or another EEA state</li> <li>2 points will be awarded if at least 50% of the film is set in the United Kingdom or another EEA state.</li> <li>1 point will be awarded if at least 25% of the film is set in the United Kingdom or another EEA state.</li> </ul>	Up to 4 points
Lead characters British or EEA citizens or residents (up to 4 points) <ul style="list-style-type: none"> <li>4 points if two or more of the three lead characters/participants are British or EEA citizens or residents, or if there are only one or two characters/participants and all are British or EEA citizens or residents.</li> </ul>	Up to 4 points

<sup>79</sup> BFI, Making an application to the BFI Production Fund, December 2021.

<sup>80</sup> UK Trade and Investment, *Creative Sector Tax Reliefs*, April 2014; BFI, "About UK creative industry tax reliefs", BFI website: <https://www.bfi.org.uk/apply-british-certification-tax-relief/about-uk-creative-industry-tax-reliefs>; See also detailed guidance on film tax relief: <https://www.gov.uk/hmrc-internal-manuals/film-production-company-manual>, and detailed guidance on high-end television tax relief: <https://www.gov.uk/hmrc-internal-manuals/television-production-company-manual>.

<sup>81</sup> BFI, British Film Certification Schedule 1 to the Films Act 1985 Cultural Test Guidance Notes, September 2022.

<ul style="list-style-type: none"> <li>• 2 points if one of the two lead characters/participants is British or an EEA citizen or resident, or if only one of three lead characters/participants is British or an EEA citizen or resident and that character/participant is the first or second lead; and</li> <li>• 1 point if one of the three lead characters/participants is British or an EEA citizen or resident and that character/participant is the third lead.</li> </ul>	
Film based on British or EEA subject matter or underlying material	4 points
<ul style="list-style-type: none"> <li>• Original dialogue recorded mainly in English or UK indigenous language or EEA language (up to 6 points)</li> <li>• 6 points will be awarded if at least 75% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state.</li> <li>• 4 points will be awarded if at least 66% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state.</li> <li>• 2 points will be awarded if at least 50% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state.</li> <li>• 1 point will be awarded if at least 25% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state.</li> </ul>	Up to 6 points
<b>Cultural contribution: maximum of 4 points</b>	
The film demonstrates British creativity, British heritage and/or diversity: up to 4 points. <ul style="list-style-type: none"> <li>• 1 point will be awarded for a significant representation of British creativity, British heritage or diversity.</li> <li>• 2 points will be awarded for an outstanding representation of British creativity, British heritage or diversity.</li> </ul>	Up to 4 points
<b>Cultural hubs: up to 5 points out of 7 available points</b>	
<ul style="list-style-type: none"> <li>• At least 50% of the principal photography or SFX takes place in the UK</li> </ul>	2 points
<ul style="list-style-type: none"> <li>• At least 50% of the VFX takes place in the UK</li> </ul>	2 points
<ul style="list-style-type: none"> <li>• An extra 2 points can be awarded if at least 80% of principal photography or VFX or SFX takes place in the UK</li> </ul>	2 points
<ul style="list-style-type: none"> <li>• Music Recording/Audio Post-Production/Picture Post-Production</li> </ul>	1 point
<b>Cultural practitioners (UK or EEA citizens or residents): up to 8 points</b>	
Up to 8 points, with <ul style="list-style-type: none"> <li>• one point for key roles (director, scriptwriter, producer composer, etc.) and</li> <li>• one point for lead actors, majority of cast, key staff (1 of the following roles – lead cinematographer, lead production designer, lead costume designer, lead editor, etc.) and majority of crew.</li> </ul>	Up to 8 points
<b>Total Available Points</b>	
<b>35 points</b>	
<b>Minimum Points Required: 18 points</b>	

## 2. Requirements to Access BFI Direct Funding for Film (Production Fund - Locked Box)

<b>Requirements to Access BFI Direct Funding for Film</b>	
<b>Ownership Requirements</b>	No requirement for the rights to be owned by the production company applying for the Production Fund
<b>Eligible Production Companies</b>	Production company must be based in the UK, OR any foreign company with a production office in the UK
<b>Eligible Projects</b>	Films must be intended for theatrical release
<b>Expenditure Requirements</b>	No minimum expenditure
<b>Cultural Test</b>	Minimum of 18 out of 35 points <u>Fiction Productions:</u> <ul style="list-style-type: none"> <li>• Cultural content (22 points)</li> <li>• Nationality of personnel (8 points)</li> <li>• Location of Production/Post-production (5 points)</li> </ul>

### 2.1 Cultural Test for Accessing the BFI Production Funding

This is the same test as shown in 1.1, above. Films must score a minimum of 18 out of a possible 35 points. Receiving 100% of the points in the cultural content section (18 points in all) is enough to achieve certification.

## 2. France

The National Centre for Cinema and the Moving Image (CNC) is the principal funding body in France. The CNC administers an automatic funding envelope to producers of accredited French productions as well as the French film and audiovisual production tax credits.<sup>82</sup> To access a tax credit, productions must meet the requirements for national certification. In addition, they must be entirely or principally shot in French or in a regional language used in France (with appropriate exceptions for artistic reasons and for digital animation films). All film productions seeking direct financing from the CNC must be accredited as national films on the basis of points earned on a cultural test. To access direct funding from the CNC audiovisual productions must be accredited as “European” productions, based on points-based cultural test comprising artistic and technical elements.

### 1. Requirements for Accessing the Film or Audiovisual Tax Credit<sup>83</sup>

Requirements for Access to French Film or Audiovisual Tax Credit	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>• Corporate control of the production company must rest with French or European citizens or residents.</li> <li>• Producers must own rights to the production commensurate with their financial participation in the project.</li> <li>• Television production companies may not be in any way controlled or under the influence of a broadcaster.</li> </ul>
<b>Eligible Production Company</b>	<ul style="list-style-type: none"> <li>• Production companies must be based in France or Europe and have a subsidiary based in France.</li> <li>• Producers must be meaningfully involved in the financing, technical and artistic aspects of the production and guarantee its completion.</li> </ul>
<b>Eligible Production</b>	<ul style="list-style-type: none"> <li>• Films must be produced for theatrical release.</li> <li>• Television projects must have a French broadcaster or streaming service attached.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>• No minimum expenditure but a factor in the cultural test</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>• Minimum of 41 out of 100 points excluding any points for language of production (feature film and audiovisual fiction and documentary productions)</li> <li>• Minimum or 51 out of 100 points (animated feature films and audiovisual productions)</li> </ul> <p><u>Fiction Productions:</u></p> <ul style="list-style-type: none"> <li>• Cultural content (0 points)</li> <li>• Nationality of personnel (60 points)</li> <li>• Location of Production/Post-production (20 points)</li> </ul>

#### 1.1 Cultural Test for Accessing the French Film or Audiovisual Tax Credit

The allocation of the 100 points on the cultural test varies by type of production, whether fiction, documentary or animation. To access the tax credit, producers of feature films or audiovisual productions must obtain a minimum of 41 points, excluding any points for the language of production. Animation films

<sup>82</sup> CNC, “Agrément des films de long métrage,” CNC website: <https://www.cnc.fr/professionnels/vos-demarches/agrement-des-films-de-long-metrage>.

<sup>83</sup> The production company’s president, directors or managers must be French nationals or residents, or nationals of a member state of the European Union (EU), or a European signatory state - party to the EU convention on cinema coproduction, the Television Without Frontiers Directive of the Council of Europe, or a third party (non-European) nation having concluded audiovisual agreements with the European community. The production company may not be controlled by any individual or corporation of any nation other those mentioned here. Foreigners qualifying as resident in France are treated as French citizens. See also *Code du cinéma et de l’image animée* 2014, Articles 211-5 and 311-4, retrieved from [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000020908868/LEGISCTA000031348624/#LEGISCTA000031348624](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000020908868/LEGISCTA000031348624/#LEGISCTA000031348624); CNC, “Agrément des films de long métrage,” CNC website: <https://www.cnc.fr/professionnels/vos-demarches/agrement-des-films-de-long-metrage>; and CNC, “Crédit d’impôt cinéma,” CNC website : [https://www.cnc.fr/professionnels/aides-et-financements/cinema/production/credit-dimpot-cinema\\_132769](https://www.cnc.fr/professionnels/aides-et-financements/cinema/production/credit-dimpot-cinema_132769).



or audiovisual productions must obtain a minimum of 51 points on the national cultural test for animation films.<sup>84</sup> For fiction films, the 100-point scale is distributed as follows:

<b>Cultural Test for Accessing the French Film or Audiovisual Tax Credit</b>	
<b>Language of production</b> <ul style="list-style-type: none"> <li>• Majority of film shot in French – 20 points</li> <li>• At least one-third of film shot in French – 10 points</li> <li>• Less than one-third of film shot in French – 0 points</li> </ul>	20 points
<b>Production company and authors</b> <ul style="list-style-type: none"> <li>• Production company – 9 points</li> <li>• Authors – 11 points <ul style="list-style-type: none"> <li>○ Points are allocated to French or European authors</li> <li>○ Director – 5 points</li> <li>○ Authors of underlying IP, screenwriter, adaptation writer, dialogues – 5 points</li> <li>○ Composer – 5 points</li> </ul> </li> </ul>	20 points
<b>Performers</b> <ul style="list-style-type: none"> <li>• The category includes first and second principal performers as well all other performers who are paid professional fees for a minimum of three days</li> <li>• Allocation of points is proportional, based on the share of all days for which professional fees are paid that are paid to French or European performers<sup>85</sup></li> </ul>	20 points
<b>Heads of Departments</b> (“key creative collaborators”), Technicians and Skilled Workers <ul style="list-style-type: none"> <li>• Heads of Departments – 9 points <ul style="list-style-type: none"> <li>○ Production Manager – 1.5 points</li> <li>○ Director of Photography – 1.5 points</li> <li>○ Chief Sound Recordist/Engineer/Mixer – 1.5 points</li> <li>○ Costume Designer or costume supervisor – 1.5 points</li> <li>○ Set Designer, or Designer-decorator – 1.5 points</li> <li>○ Chief Picture Editor – 1.5 points</li> </ul> </li> <li>• Technicians and skilled workers - 11 points <ul style="list-style-type: none"> <li>○ Allocation of points is proportional, based on share of salaries paid to technicians and skilled workers who are French or European<sup>86</sup></li> </ul> </li> </ul>	20 points
<b>Production and Post-Production</b> (locations, technical materials and post-production) <ul style="list-style-type: none"> <li>• Production locations – 5 points</li> <li>• Technical materials and production – 4.5 points <ul style="list-style-type: none"> <li>○ Shooting – 2 points</li> <li>○ Lighting – 1.5 points</li> <li>○ Equipment and other materials – 1 point</li> </ul> </li> <li>• Post-production – 10.5 points <ul style="list-style-type: none"> <li>○ Image – 3.5 points</li> <li>○ Sound – 3.5 points</li> <li>○ Digital visual effects – 3.5 points</li> </ul> </li> </ul> <p>If a film has few digital visual effects, the points for these positions are allocated to matching points to those obtained in the categories of image and sound.</p>	20 points
<b>Total Available Points</b>	<b>100 points</b>
<b>Minimum Required: 41/80 points + mandatory language</b>	

## 2. Requirements to Direct Automatic Funding from the CNC<sup>87</sup>

<sup>84</sup> Bulletin Officiel des Finances Publiques – Impôts, IS - Réductions et crédits d'impôt - Crédit d'impôt pour dépenses de production cinématographique (Crédit d'impôt cinéma) - Champ d'application, retrieved from <https://bofip.impots.gouv.fr/bofip/5740-PGP.html/identifiant=BOI-IS-RICI-10-20-10-20220608>; Bulletin Officiel des Finances Publiques – Impôts, IS - Réductions et crédits d'impôt - Crédit d'impôt pour dépenses de production déléguée d'œuvres audiovisuelles (Crédit d'impôt audiovisuel) - Champ d'application, retrieved from <https://bofip.impots.gouv.fr/bofip/5833-PGP.html/identifiant=BOI-IS-RICI-10-30-10-20220608>.

<sup>85</sup> Sébastien Lachaussée and Elisa Martin-Winkel, “La réforme de l’agrément : synthèse,” in *L’actualité*, April 1, 2018, retrieved from <https://avocatl.com/news/la-reforme-de-lagrément-synthèse/>.

<sup>86</sup> Sébastien Lachaussée and Elisa Martin-Winkel, “La réforme de l’agrément : synthèse,” in *L’actualité*, April 1, 2018, retrieved from <https://avocatl.com/news/la-reforme-de-lagrément-synthèse/>.

<sup>87</sup> The production company’s president, directors or managers must be French nationals or residents, or nationals of a member state of the European Union (EU), or a European signatory state - party to the EU convention on cinema coproduction, the Television Without Frontiers Directive of the Council of Europe, or a third party (non-European) nation having concluded audiovisual agreements with the European community. The production company may not be controlled by any individual or corporation of any nation other those mentioned here. Foreigners qualifying as resident in France are treated as French citizens. See also *Code du cinéma et de l’image animée* 2014, Articles 211-5, Article 311-

Summary of Requirements Access Automatic Funding for Film and Audiovisual Productions from the CNC	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>• Corporate control of the production company must rest with French or European citizens or residents.</li> <li>• Producers must own rights to the production commensurate with their financial participation in the project.</li> <li>• Television production companies may not be in any way controlled or under the influence of a broadcaster.</li> </ul>
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>• Production companies must be based in France or Europe and have a subsidiary based in France.</li> <li>• Producers must be meaningfully involved in the financing, technical and artistic aspects of the production and guarantee its completion.</li> </ul>
<b>Eligible Projects</b>	<ul style="list-style-type: none"> <li>• Films must be produced for theatrical release.</li> <li>• Television projects must be intended for dissemination via television broadcast or streaming service.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>• No minimum expenditure but a factor in the cultural test</li> </ul>
<b>Cultural Test – Film Production</b>	<ul style="list-style-type: none"> <li>• Minimum of 25 out of 100 points (excluding any points for language of production)</li> <li>• Minimum or 20 out of 100 points for foreign productions</li> <li>• Minimum of 15 out of 100 points for international coproductions involving countries deemed to have a fragile film industry.</li> </ul> <p><u>Fiction Productions:</u></p> <ul style="list-style-type: none"> <li>• Cultural content (20 points)</li> <li>• Nationality of personnel (60 points)</li> <li>• Location of Production/Post-production (20 points)</li> </ul>
<b>Cultural Test – Audiovisual Production</b>	<ul style="list-style-type: none"> <li>• Minimum of 14 out of 18 points (fiction films intended for television)</li> <li>• Minimum or 13 out of 18 points (audiovisual fiction productions)</li> </ul> <p><u>Fiction Productions:</u></p> <ul style="list-style-type: none"> <li>• Cultural content (0 points)</li> <li>• Nationality of personnel (16 points)</li> <li>• Location of Production/Post-production (2 points)</li> </ul>

### 2.1 Cultural Test for Accessing Automatic Production Funding for Film from the CNC

The cultural test to access automatic film funding is the same as shown above, in 1.1. To be certified for the purpose of accessing automatic production funding, productions must earn a minimum of 25 points, excluding any points related to the language of production. Exceptionally, the 25-point threshold can be lowered to 20 points for foreign productions and to 15 points for international coproductions involving countries deemed to have a fragile film industry. There is no language requirement for films accessing financing from an automatic funding envelope.

### 2.2 Cultural Test to Access Automatic Funding for Audiovisual Productions from the CNC

The points-based scale of the cultural test for this European accreditation varies by platform and genre. Audiovisual fiction productions must achieve 13 of the 18 points. Documentaries must achieve at least 9 points on a 14-point scale, and animations must obtain 14 of 21 points. The points scale for the European accreditation does not factor in the language the production is shot in. The cultural test for accreditation as

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4 and Article 311-8, retrieved from [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000020908868/LEGISCTA000031348624/#LEGISCTA000031348624](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000020908868/LEGISCTA000031348624/#LEGISCTA000031348624); CNC, “Agrément des films de long métrage,” CNC website: <https://www.cnc.fr/professionnels/vos-demarches/agrement-des-films-de-long-metrage>; and CNC, “Crédit d’impôt cinéma,” CNC website : [https://www.cnc.fr/professionnels/aides-et-financements/cinema/production/credit-dimpot-cinema\\_132769](https://www.cnc.fr/professionnels/aides-et-financements/cinema/production/credit-dimpot-cinema_132769); *Fonds de soutien audiovisuel Plaque de présentation générale*, CNC, January 2022; European Audiovisual Observatory, Mapping of national rules for the promotion of European works in Europe, Strasbourg 2019, retrieved from <https://rm.coe.int/european-works-mapping/16809333a5>; CNC, *L’agrément des films de long métrage*, corporate website: [https://www.cnc.fr/professionnels/aides-et-financements/cinema/production/agrement-de-production-pour-les-films-dont-lagrement-des-investissements-a-ete-demande-a-compter-du-1er-janvier-2018-ou-pour-les-films-sans-agrement-des-investissements\\_190846](https://www.cnc.fr/professionnels/aides-et-financements/cinema/production/agrement-de-production-pour-les-films-dont-lagrement-des-investissements-a-ete-demande-a-compter-du-1er-janvier-2018-ou-pour-les-films-sans-agrement-des-investissements_190846).



a European fiction production to access the automatic funding from the CNC for audiovisual productions is as follows:

<b>Cultural Test for Accessing Automatic Audiovisual Production Funding from CNC</b>	
<b>Authors and directors - 6 points</b>	
Director	3 points
Screenwriter, dialogues writer	2 points
Other authors (original IP, adaptation writer, music)	1 point
<b>Performers - 6 points</b>	
First principal performer	3 points
Second principal performer	2 points
50% of all days for which performer fees are paid	1 point
<b>Heads of Departments - 4 points</b>	
Image	1 point
Sound (engineer, first assistant)	1 point
Editing (chief editor, first assistant)	1 point
Set Decorating (chief decorator, 1st assistant)	1 point
<b>Technical industries – 2 points</b>	
<ul style="list-style-type: none"> <li>• Laboratories (filming and finishing); Editing/Sound (editing room and auditorium); Shooting studio</li> <li>• For audiovisual productions: materials rentals; shooting studios; laboratories; video post-production, sound auditorium</li> </ul>	2 points
<b>Total Available Points</b>	
<b>18 points</b>	
<b>Minimum Required : 13/18 points</b>	

### 3. Germany

The Reference film funding program of the German Federal Film Board (FFA) provides automatic support to German films. Films must pass a cultural test in order to access automatic funding provided by the FFA. The FFA also administers two production rebates: the DFFF I for feature films (DFFF I) and the German Motion Picture Fund (GMPF), for high budget films and series with a high German spend.<sup>88</sup> To be eligible for the DFFF I or GMPF rebates, productions must satisfy the requirements of two respective points-based cultural tests.

#### 1. Requirements for Access to the German Federal Film Fund I (DFFF I)<sup>89</sup>

<b>Requirements to Access the DFFF I</b>	
<b>Ownership Requirements</b>	No ownership requirement
<b>Eligible Production Company</b>	<ul style="list-style-type: none"> <li>• Eligible producers must be based in Germany or in another EU or EEA member state, with an office in Germany.</li> <li>• The producer is the person responsible for production of the film up to delivery of the answer print or a coproducer actively involved in producing the film.</li> </ul>
<b>Eligible Production Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>• Films must be distributed theatrically in Germany.</li> <li>• 25% of the production budget</li> <li>• 20% of the production budget for projects with production budgets of €20 million (CAD \$26.8 million)</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>• Minimum of 48 out of 96 points excluding any points for language of production (fiction)</li> <li>• Minimum of 27 out of 52 points (documentary)</li> <li>• Minimum or 42 out of 84 points (animation)</li> <li>• <u>Fiction Productions:</u> <ul style="list-style-type: none"> <li>• Cultural content (30 points)</li> <li>• Nationality of personnel (35 points)</li> <li>• Location of Production/Post-production (31 points)</li> </ul> </li> </ul>

<sup>88</sup> Dentons, *Producing in Germany: A guide to German film, television and interactive digital media incentive pre-funding grants*, 2020; Martin Blaney, “German Motion Picture Fund increases budget by 50% to meet series demand, in *Screen Daily*, March 18, 2022, retrieved from <https://www.screendaily.com/news/german-motion-picture-fund-increases-budget-by-50-to-meet-series-demand/5168784.article>.

<sup>89</sup> Olswang Germany LLP, *The German Federal Film Fund*, January 2014.

### 1.1 Cultural Test to Access the DFFF I

Fiction films must achieve a minimum of 48 out of 96 points, animated films must obtain at least 42 points out of a possible 84, while documentaries must obtain 27 points out of a possible 52. Fiction features must satisfy at least four out of 10 cultural content criteria, while animated films and documentaries must satisfy at least 2 cultural content criteria.

The following cultural test is aimed at fiction films and is based on a total of 96 points.

<b>Cultural Test to Access the DFFF I</b>	
<b>Section A. Cultural Content - 30 points</b>	
Film (fictional content/underlying material) is set mainly in Germany or in the German cultural area or in a fictional place	2 points
Uses German motifs (i.e., motifs that can be attributed to Germany, e.g., German architecture or landscapes, such as “Black Forest cottage”) or fictional motifs	3 points
Uses German locations	3 points
Lead character(s) of the underlying material is/was German or is associated with the German-speaking or German cultural area	2 points
Story/material is German	2 points
Storyline/underlying material is based on literary material traditional fairy tales, myths or legends	2 points
Storyline/underlying material deals with artists or an art genre (e.g., composition, dance, performance, painting, architecture, Pop Art, comics)	2 points
A contemporary artist from a field other than filmmaking makes a significant contribution to the film	2 points
Storyline/underlying material is based on a historical figure (e.g., Gandhi) or a fictional figure familiar from cultural history (e.g., Hercules, Siegfried, Hansel and Gretel)	2 points
Storyline/underlying material refers to a historical event in world history or a similar fictional event (e.g., the conquest of Troy)	2 points
Storyline/underlying material deals with religious or philosophical beliefs or issues of current social or cultural relevance (e.g., Muslim headscarf, refugees, etc.), addresses different ways of life (e.g. nomads) or deals with scientific topics or natural phenomena	2 points
One final version is in German	3 points
Film is set mainly in another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	1 point
Film uses other European motifs (in the absence of German motifs or locations) or European motifs (in addition to German motifs or locations)	1 point
Lead character of the underlying material from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	1 point
<b>Sub-total of Available Points</b>	<b>30 points</b>
<b>Creative Talents – 35 points</b>	
Film artists of international standing from Germany in an important role – “German stars” (meaning the persons listed below who have participated in a film which was entered in a festival according to section 75 subsection 2 of the Film Promotion Act or won an award as defined in section 75 subsection 2 of the Film Promotion Act)	4 points
Film artists of international standing from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom – “European stars” (meaning the persons listed below who have participated in a film which was entered in a festival according to section 75 subsection 2 of the Film Promotion Act or won an award as defined in section 75 subsection 2 of the Film Promotion Act)	2 points
Actors from Germany, another EU Member State, another EEA contracting state, Switzerland or the United Kingdom (unless already covered under the “stars” definition)	
Leading actor	1 point
Leading actor	1 point
Two supporting actors	1 point
Creative talents from Germany, another EU Member State, another EEA contracting state, Switzerland or the United Kingdom:	
Director	3 points
Scriptwriter	3 points
(Co-)producer (natural person) or line producer	3 points
Composer	2 points

Director of Photography	2 points
Editor	2 points
Costume designer / lead animation artist	1 point
Make-up artist / lead FX artist	1 point
Sound / sound designer	1 point
Production designer / environment / digital matte painting artist	1 point
Art director / lead shading / texturing artist	1 point
Lead Compositing Artist	1 point
VFX producer	2 points
VFX supervisor	2 points
Post-production supervisor	1 point
<b>Sub-total of Available Points</b>	<b>35 points</b>
<b>Sub-total of Available Points in Block A</b>	<b>65 points</b>
<b>Section B. Production</b>	
Location shooting or studio shooting in Germany – 31 points in total	
<ul style="list-style-type: none"> <li>At least 50% of the total costs of shooting (studio and location) and at least 70% of the total costs of any studio shooting spent in Germany – 12 points</li> <li>At least 25% of the total costs of shooting (studio and location) and at least 70% of the total costs of any studio shooting spent in Germany – 6 points</li> </ul>	Up to 12 points
Points for VFX and SFX in Germany <ul style="list-style-type: none"> <li>If a real shoot is done in Germany for which points can be acquired based on the above requirements regarding location or studio shooting in Germany, the following applies: 25% of digital effects (VFX) in Germany, based on the overall cost of digital effects (VFX) - 1 point, maximum 4 points</li> <li>If no real shoot is done in Germany or a real shoot does not accrue points based on the above requirements regarding location or studio shooting in Germany, and either the VFX budget spent in Germany amounts to at least EUR 2 million and at least 20% of the total VFX budget, or 80% of the total VFX budget is spent in Germany – 8 points</li> <li>At least 25% of special effects (SFX) in Germany, based on the overall cost of special effects (SFX) – maximum 4 points</li> </ul>	Up to 8 points
80% of music recording in Germany	2 points
80% of sound editing and mixing in Germany	2 points
80% of laboratory work up to answer print in Germany	1 point
80% of post-production during shooting of the film in Germany	3 points
80% of final editing in Germany	3 points
<b>Total Available Points</b>	<b>31 points</b>
<b>Total Points</b>	<b>96 points</b>
<b>Minimum Points Required: 48/96 points</b>	

## 2. Requirements to access the GMPF<sup>90</sup>

Requirements to Access the GMPF	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>There are no ownership requirements to access the GMPF.</li> </ul>
<b>Eligible Production Company</b>	<ul style="list-style-type: none"> <li>Producers or co-producers must be based in or have a registered office or branch in Germany, another Member State of the European Union (EU), another contracting state of the Agreement on the European Economic Area (EEA) or Switzerland.</li> </ul>
<b>Eligible Production</b>	<ul style="list-style-type: none"> <li>The film or series must be released on German television or by video-on-demand services accessible in Germany.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>40% of the budget - film productions with budgets &gt; 25 million Euros</li> <li>20% of the budget, to a cap of 7 million Euros for production budgets &gt; 35 million Euros</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>Minimum of 48 out of 96 points excluding any points for language of production (fiction )</li> <li>Minimum of 27 out of 52 points (documentary)</li> <li>Minimum or 42 out of 84 points (animation)</li> </ul> <p>Fiction Productions:</p>

<sup>90</sup> “German Motion Picture Fund,” German Federal Film Board website: <https://www.ffa.de/german-motion-picture-fund-gmpf.html>

- Cultural content (37 points)
- Nationality of personnel (34 points)
- Location of Production/Post-production (38 points)

## 2.1 Cultural Test to Access the GMPF

The cultural test is adapted by genre for fiction, documentary and animation. Fiction projects must achieve a minimum of 40 points out of a total of 109. At least three cultural criteria must be met, and a minimum of 7 points must be obtained from each of the three categories: cultural content, creative talents, and production. Animation projects must achieve at least 28 points out of a possible total of 69, including at least two criteria met from the cultural content category and at least four from the creative talent and four from the production category. Documentary films or series must achieve at least 23 points out of a possible total of 52. At least two criteria must be met from the “cultural content” category, and at least one criterion each must be met from both the “creative talents” and “production” category.

In order to access the maximum grant of 10 million euros, fictional series must have German production costs of at least 24 million Euros and achieve 70 points in the cultural test.

In addition, all productions must meet the following language requirement: that at least one final version must be produced in the German language. This may be a sub-titled version.

<b>Cultural Test to Access the GMPF</b>	
<b>Cultural content – 37 points</b>	
The majority of scenes (fictional content/material) are set in Germany or in German-speaking areas	4 points
The majority of scenes (fictional content/material) are set in another EU another EEA Member State, Switzerland or the United Kingdom	3 points
The majority of scenes (fictional content/material) are set in a fictional place, not a real place	2 points
The project refers to subjects of current social or political relevance	3 points
The project refers to German/European history/politics	3 points
The project is especially oriented towards a young target group	3 points
The project uses German motifs or uses other European motifs (in the absence of German motifs)	3 points
A lead character in the underlying material on which the film or series is based is/was German or from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	3 points
German or European locations are used	2 points
The storyline/underlying material is based on a book, a computer game, a play, an opera, a comic	3 points
The final version is in German/has German subtitles	3 points
The storyline/underlying material is Germany or from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	2 points
<b>Sub-total of Available Points</b>	<b>37 points</b>
<b>Creative Talents – 34 points</b>	
One leading actor or actress - 2 points; or at least two leading actors or actresses	4 points
One supporting actor or actress - 1 point; or at least two supporting actors or actresses	2 points
Director - 2 points	2 points
Scriptwriter	2 points
Producer/co-producer (natural person)	2 points
Cameraman/-woman	1 point
Digital image technician (DIT)	1 point
Composer	1 point
Costume designer	1 point
Lead animation artist	1 point
Make-up artist	1 point
Lead FX artist	1 point
VFX supervisor/producer	2 points
Animation Supervisor	2 points
Post-production supervisor	2 points
Editor	1 point
Colour correction/colour grading	1 point

Sound editing/sound designer	1 point
Line producer	1 point
Set designer (analogue and digital)	1 point
Art director/lead shading artist/texturing artist	1 point
Dubbing artists (one point each for the first three lead roles)	Up to 3 points
<b>Sub-total of Available Points</b>	<b>34 points</b>
<b>Production – 38 points</b>	
Development and/or use of innovative technologies which have not/hardly been used before in the film industry	5 points
Studio shooting in Germany	3 points
Location filming in Germany	3 points
VFX modelling in Germany	2 points
VFX animation in Germany	4 points
VFX compositing in Germany	4 points
SFX costs spent in Germany	3 points
Music recording in Germany	2 points
Sound editing in Germany	3 points
Picture editing (without VFX) in Germany	2 points
Post-production during shooting in Germany	3 points
Final editing in Germany	2 points
Film processing work through to the answer print in Germany	2 points
<b>Sub-total of Available Points</b>	<b>38 points</b>
<b>Total Points Available</b>	<b>109 points</b>
<b>Minimum Points Required: 40/109 points</b>	

### 3. Requirements for Access to the FFA's Automatic Reference Film Fund<sup>91</sup>

Requirements to Access the FFA	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>Broadcast license periods may not exceed seven years.</li> </ul>
<b>Eligible Production Company</b>	<ul style="list-style-type: none"> <li>Producers must have a business established in Germany or have a branch in Germany</li> </ul>
<b>Eligible Production</b>	<ul style="list-style-type: none"> <li>Films must premiere at a film festival in Germany, in the German language, or at an internationally significant festival, for example, Cannes, Berlin, or Venice.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>There are no minimum spending requirements. However, production and post-production facilities, studios and services must be obtained in Germany or in another member state of the EU, EEA or in Switzerland.</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>Not points-based</li> </ul> <p><u>Fiction Productions:</u></p> <ul style="list-style-type: none"> <li>Cultural content (2 of seven criteria must be met)</li> <li>Nationality of personnel (at least the director, or writer, or up to 2 lead roles and all other personnel must be citizens or residents of EEA member state)</li> </ul>

#### 3.1 Cultural Test to Access Direct Funding from the FFA

The FFA does not use a points-based analysis, but rather makes a case-by-case decision. As a minimum requirement, productions must fill the positions of director, or writer, or up to 2 lead roles, as well as all other positions with citizens or residents of Germany or another member state of an EEA. In addition, the film must have a subject that is cultural, historical or about social issues and at least two of seven cultural content criteria must be met.<sup>92</sup>

<sup>91</sup> European Commission, State aid N 477/2008 – Germany German Film Support Scheme, Brussels, December 12, 2008.

<sup>92</sup> "Funding," German Federal Film Board website: <http://www.ffa.de/funding.html>.

<p><b>Cultural content</b></p> <p><b>Two of the following seven cultural content criteria must be met by the film:</b></p> <ul style="list-style-type: none"> <li>• the original screenplay on which the film is based primarily uses German film locations or film locations in another member state of the European Union, in another contracting state of the Agreement on the European Economic Area or in Switzerland;</li> <li>• the act or the original material is from Germany, from another member state of the European Union, from another contracting state of the Agreement on the European Economic Area or from Switzerland;</li> <li>• the film uses German motifs or motifs from another member state of the European Union, from another contracting state of the Agreement on the European Economic Area or from Switzerland;</li> <li>• the plot or the subject matter is based on a literary source or comes from traditional fairy tales or legends;</li> <li>• the plot or artwork deals with minority life forms, scientific subjects or natural phenomena;</li> <li>• the plot or the material deals with social, political or religious questions of social coexistence or the reality of children's lives;</li> <li>• the plot or the subject matter deals with artists or art genres.</li> </ul>
<p><b>Nationality of Personnel</b></p> <ul style="list-style-type: none"> <li>• Director or writer or up to 2 lead roles must be filled by citizens or residents of Germany or another Member State of EEA</li> <li>• All other positions must be filled by citizens or residents of Germany or another member state of an EEA</li> </ul>

#### 4. Italy

MiBAC is the National cultural agency responsible for administering Automatic production funding for films as well as the Italian film or television tax credit. Italian nationality is the fundamental requirement for the purposes of accessing funding from Italy. To access automatic funding, productions must pass a points-based test of Italian nationality. To access the tax credit, film and audiovisual productions must pass a points-based cultural test of Italian nationality. Certification of Italian nationality is undertaken by MiBAC.<sup>93</sup>

##### 1. Requirements to Access the Italian Tax Credit for Film and Audiovisual Productions<sup>94</sup>

<b>Requirements to Access the Italian Tax Credit for Film or Audiovisual Productions</b>	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>• Production is owned by an eligible Italian production company (see below).</li> <li>• There is no defined period for ownership.</li> </ul>
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>• Production companies with a registered office in Italy or registered in the European Economic Area (EEA) with an office (branch, agency, subsidiary) established in Italy.</li> <li>• The producer is responsible for overseeing the production of the audiovisual work.</li> </ul>
<b>Eligible Productions</b>	<ul style="list-style-type: none"> <li>• Italian films</li> <li>• Italian audiovisual productions</li> </ul>
<b>Expenditure Requirements</b>	There are no minimum expenditure requirements.
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>• Minimum of 50 out of 100 points (feature fiction film or audiovisual production)</li> </ul> <p><u>Fiction Productions:</u></p> <ul style="list-style-type: none"> <li>• Cultural content (70 points)</li> <li>• Nationality of personnel (3 points)</li> <li>• Location of Production/Post-production (27 points)</li> </ul>

<sup>93</sup> "Film Production," Italian Ministry of Culture, Directorate General Cinema and Audiovisual, website: <https://cinema.cultura.gov.it/cosa-facciamo/sostegni-economici/linee-di-sostegno/tax-credit/produzione-film/>; "TV and Web Production," Italian Ministry of Culture, Directorate General Cinema and Audiovisual, website: <https://cinema.cultura.gov.it/cosa-facciamo/sostegni-economici/linee-di-sostegno/tax-credit/produzione-tv-e-web/>.

<sup>94</sup> Susanne Nikotchev et al, *Mapping of national rules for the promotion of European works in Europe*, European Audiovisual Observatory, 2019, page 385; MiBAC staff member; Article 2.3, Italy, Ministerial Decree (DM) 31 July 2017, n. 342, Implementing provisions on automatic contributions pursuant to art. 23, 24 and 25 of Law no. 220 of 14 November 2016.

### 1.1. Cultural Test to Access Italian Film and Audiovisual Tax Credit<sup>95</sup>

The test is adapted to fiction, documentary and animation productions. To pass, productions must achieve a minimum of 50 out of a possible 100 points. All productions must obtain at least half of the available points for the content of the production.

<b>Cultural Test to Access Italian Film and Audiovisual Tax Credit</b>	
<b>A) Content – 70 points (minimum of 35 points must be obtained from this section)</b>	
A.1 Subject / script of the audiovisual work taken from a published Italian literary or theatrical work or European	5 points
A.2 Subject / script of the audiovisual work concerning historical, mythological and legendary, religious, social, fantastic, artistic or cultural (Themes)	30 points
A.3 Subject / script concerning a personality / character of historical, mythological e legendary, religious, social, fantastic, artistic or cultural (Character/Person)	25 points
A.4.1 Territorial setting of the subject of the audiovisual work in Italy or Europe (minimum 15 per one hundred of the scenes of the screenplay set in Italy or Europe) <sup>1</sup>	5 points
A.4.2 Outdoor shooting of the audiovisual work on the Italian territory (minimum 15 percent of the scenes in contained in the script) <sup>2</sup>	
A.5 Direct sound recording wholly or mainly in Italian or in Italian dialects: (minimum of 30 percent of the scenes contained in the script) <sup>3</sup> . As an alternative the production should be subtitled or dubbed in Italian.	5 points
<b>Subtotal of Available of Points</b>	
<b>70 points</b>	
<b>B) PRODUCTION – 30 points</b>	
B.1 Italian or EEA creative talent - production designer, set dresser, art director, key make-up artist, costume designer, director of photography, line producer, editor	3 points
B.2 Shooting on Stage/Studio in Italy (minimum 20% of interior scenes contained in the script shot in Italian stages/studios) <sup>4</sup>	5 points
B.3 Digital effects in Italy	4 points
B.4 Special effects in Italy	4 points
B.5 Music recording in Italy	3 points
B.6 Sound editing and mix in Italy	3 points
B.7 Post-production lab work in Italy	5 points
B.8 Final editing in Italy	3 points
<b>Subtotal of Available of Points</b>	
<b>30 points</b>	
<b>Total Available Points</b>	
<b>100 points</b>	
<b>Minimum Score : 50/100 points</b>	

### 2. Requirements to Access Automatic Production Subsidy<sup>96</sup>

<b>Requirements to Access the Automatic Production Subsidy of MiBAC</b>	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>Production is owned by an Italian production company, defined as a company based in Italy or an EEA based company with a branch established in Italy.</li> </ul>

<sup>95</sup> Italy, Application provisions on tax credit for film and audiovisual production companies referred to in Article 15 of Law no. 220, retrieved from [https://cinema.cultura.gov.it/wp-content/uploads/2021/06/di\\_70\\_4-febbraio\\_2021.pdf](https://cinema.cultura.gov.it/wp-content/uploads/2021/06/di_70_4-febbraio_2021.pdf)

<sup>96</sup> Article 2.3, Italy, Ministerial Decree (DM) 31 July 2017, n. 342, Implementing provisions on automatic contributions pursuant to art. 23, 24 and 25 of Law no. 220 of 14 November 2016; Susanne Nikotchev et al, *Mapping of national rules for the promotion of European works in Europe*, European Audiovisual Observatory, 2019, pages 374, 378 and 383. Italy, Law 14 November 2016, no. 220 – *Discipline of Cinema and Audiovisual (16G00233)*, Articles 5 and 6, retrieved from <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016;220~art39>; *Decree of the President of the Council of Ministers, July 11, 2017: Provisions for the recognition of the Italian nationality of cinematographic and audiovisual works. (17A05686) (OJ General Series No. 192 of 18-08-2017)*, retrieved from <https://www.gazzettaufficiale.it/eli/id/2017/08/18/17A05686/sg>.



	<ul style="list-style-type: none"> <li>• Exceptions may be made to grant Italian nationality to international projects with particular elements of artistic, cultural, industrial and commercial interest, where:</li> <li>• The share of ownership held by participating Italian producers must be equivalent to share of expenses incurred by these.</li> </ul>
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>• Production companies with a registered office in Italy or registered in the European Economic Area (EEA) with an office (branch, agency, subsidiary) established in Italy.</li> <li>• The producer is responsible for overseeing the production of the audiovisual work from start to finish</li> </ul>
<b>Eligible Productions</b>	<ul style="list-style-type: none"> <li>• Film and audiovisual productions</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>• There are no minimum expenditure requirements</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>• Minimum of 70 out of 100 points (feature fiction film or audiovisual production)</li> </ul> <p><u>Fiction Productions:</u></p> <ul style="list-style-type: none"> <li>• Cultural content (0 points)</li> <li>• Nationality of personnel (74 points)</li> <li>• Location of Production/Post-production (26 points)</li> </ul>

### 2.1 Cultural Test for Films and Audiovisual Productions Seeking Access to Automatic Funding

There are three tests, differentiated by genre: fiction, documentary and animation. All productions must earn a minimum of 70 points out of a possible 100. Fiction productions must achieve at least 18 points for key creative personnel (directors, authors, screenwriters and principal performers).

<b>Cultural Test for Films and Audiovisual Productions Seeking Access to Automatic Funding from MiBAC</b>	
a) Citizens or residents of Italy or of another country of the European Union:	
director or most of the co-directors	10 points
author of the subject or the majority of authors	8 points
screenwriter or the majority of screenwriters	10 points
the majority of main interpreters	8 points
three quarters of secondary interpreters	5 points
director of cinematography	7 points
editor	7 points
composer	7 points
set designer	6 points
costume designer	6 points
<b>Sub-total of Available Points</b>	<b>74 points</b>
b) Realization of the work on the Italian territory of at least 50% of the activities	10 points
c) Direct sound recording wholly or mainly in Italian language or in Italian dialects	5 points
d) At least 50% of the members of the troupe subject to taxation in Italy as a result of tax residence	5 points
e) Filming mainly in Italy	2 points
f) Use of soundstage located in Italy	2 points
g) Post-production mainly carried out in Italy	2 points
<b>Sub-total of Available Points</b>	<b>26 points</b>
<b>Total Available Points</b>	<b>100 points</b>
<b>Minimum Requirement: 70/100 points</b>	

## 5. Netherlands

The Netherlands Film Fund Foundation (provides a production incentive for film and high-end series in the genres of fiction, documentary and animation productions. To be eligible for the production incentive, projects must pass a points-based cultural test of Dutch nationality.

## 1. Requirements to Access the Netherlands Film Production Incentive<sup>97</sup>

Requirements to Access the Netherlands Film Production Incentive	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>No ownership requirements</li> </ul>
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>Independent production companies based in EEA or Switzerland for at least two years</li> </ul>
<b>Eligible Productions</b>	<ul style="list-style-type: none"> <li>Feature Films must have a 12-week theatrical release in the Netherlands</li> <li>High-end series in fiction, documentary and animation.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>Feature film - €150K (CAD \$203K)</li> <li>High-end series - at least 15% of the total production budget</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>3 of 8 cultural criteria, plus</li> <li>Cultural Test: 75 out of a possible maximum of 180 points (all projects)</li> </ul> <p><u>Fiction productions:</u></p> <ul style="list-style-type: none"> <li>Cultural content (00 points)</li> <li>Nationality of personnel (85 points)</li> <li>Location of Production/Post-production (95 points)</li> </ul>

### 1.1 Cultural Test to Access Netherlands Film Production Incentive

Productions must achieve a minimum of points on the test, the number of which is determined annually, to a maximum of 75 points out of a possible 210 points.

<b>Netherlands Cultural Test – Cultural Criteria</b>
<p>At least two positions functions amongst the director, screenwriter, first and second lead performer are required.</p> <ul style="list-style-type: none"> <li>In addition to the points system, films must satisfy a minimum of 3 out of a possible 8 criteria for cultural content:</li> <li>the screenplay on which the film production is based is mainly set in the Netherlands, or in another member state of the European Union, or in a state that is party to the Agreement on the European Economic Area, or in Switzerland;</li> <li>the director or screenwriter is based in the Netherlands, or in another member state of the European Union, or in a state that is party to the Agreement on the European Economic Area, or in Switzerland;</li> <li>at least one of the main characters or two of the supporting characters has a special bond with Dutch culture on the basis of the scenario;</li> <li>the original screenplay on which the film production is based is largely written in the Dutch language and the main characters express themselves largely in the Dutch language; the screenplay is based on an original literary work or is inspired by another copyrighted work;</li> <li>the main theme of the film production is art or one or more (performing) artists; the film production deals with historical persons or events;</li> <li>the film production deals with current social or cultural themes that are relevant to the Netherlands;</li> <li>the film production contributes to the cross-border promotion of Dutch landmarks;</li> <li>the film production contributes to the opening up and cross-border promotion of Dutch or European film culture and its diversity.</li> </ul>

<b>1. Creative talent and heads of departments (maximum of 75 points)</b>	
Points are awarded to personnel residing in the Netherlands and/or that have demonstrable strong ties to the Dutch film culture.	
Director	8 points
Screenwriter	Up to 6 points
3 points where a Dutch co-author is associated with the project from development	
6 points in case of full Dutch authorship	

<sup>97</sup> Switzerland has a series of bilateral agreements with the EU which allow it to participate in the internal market; “Netherlands Film Production Incentive reopens for high-end series,” July 6, 2022, Netherlands Film Fund website: <https://www.filmfonds.nl/page/11557/netherlands-film-production-incentive-reopens-for-high-end-series>.

Leading role by actor/actress 6 points if 2 leading roles with min. 10 days of shooting a person 3 points for 1 leading role	Up to 6 points
Supporting role actor/actress 4 points if 2 roles with min. 5 days of shooting a person 2 points for 1 role with min. 5 days of shooting	Up to 4 points
Director of Photography	4 points
Editor	4 points
Production Designer	4 points
Sound recordist/Production sound mixer (on set)	3 points
Sound Designer and/or Re-recording mixer	
sound designer	3 points
re-recording mixer	2 points
Visual Effects Supervisor and/or Colorist	
3 points for visual effects supervisor if budget item 5000 is at least 7.5% of the total budget	3 points
2 points for colorist for grading the film, not the dailies	2 points
Composer	3 points
Orchestra/musicians if majority of them applies to criteria	1 point
Costume Designer	3 points
Make Up & Hair Artist	3 points
First Assistant Director	3 points
Line Producer and/or Post-production Supervisor	
line producer	3 points
post-production supervisor	3 points
Other crew during the production and post-production max. 10	Up to 10 points
<b>Sub-total of available points</b>	<b>75 points</b>
<b>2. Production and Financing (maximum 30 points)</b>	
Points are awarded for post-production and production take place in the Netherlands.	
Image post-production 75% or more of the image post-production budget is spent in the Netherlands	15 points
Sound post-production 75% or more of the post-production budget for sound is spent in the Netherlands	15 points
<b>Sub-total of available points</b>	<b>30 points</b>
<b>3. International Standing (Maximum 10 points)</b>	
Director, screenwriter Award-winning director and/or screenwriter in the previous 10 years	5 points
Leading role of international standing If the leading actor / actress in the previous 10 years played a leading part in or was part of the principle cast of a film that has been selected by one of the internationally acclaimed film festivals or had received one of the international awards mentioned in the Financial & Productional Protocol Incentive	5 points
<b>Sub-total of available points</b>	<b>10 points</b>
<b>4. Impact (maximum 20 points)</b>	
The impact on the Dutch film industry (20 points)	
Cash rebate creates significant additional value for both technical and creative film professionals and film companies in the Netherlands	20 points
Diversity behind and in front of the camera is a crucial element and/or the independent film production received funding from a (inter)national film fund based on creative excellence	10 points
The transborder cultural and promotional impact through international coproduction and distribution (20 points)	
Theatrical and/or non-theatrical distribution is guaranteed in more than two countries through minimum guarantees or pre-sales.	10 points
Cross-border visibility of Dutch landmarks and/or creative talent and/or leading crew members (head of department)	10 points
<b>Sub-total of available points</b>	<b>40 points</b>
<b>Additional Points Available for International Coproductions</b>	<b>55 points</b>
<b>Total points available</b>	<b>210 points</b>
<b>Minimum Required Points: 75/210</b>	

## 6. Czech Republic

The Czech Film Fund administers the Czech Production Incentive for feature films and television fiction and animation productions. To access the production incentive, projects must pass a cultural test intended to establish the European character of production.

### 1. Requirements to Access the Production Incentive<sup>98</sup>

Requirements to Access the Czech Film Fund Production Incentive	
<b>Ownership Requirements</b>	n/a
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>Permanently established in the Czech Republic or be tax residents.</li> </ul>
<b>Eligible Productions</b>	<ul style="list-style-type: none"> <li>Feature films intended for theatrical release or broadcast,</li> <li>Fiction and animated series.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>Feature, animation and TV films - CZK 15 million (CAD \$824K )</li> <li>Fictional TV series - CZK 8 million (CAD \$439K) per episode</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>23 out of a possible 46 points (all projects)</li> </ul> <p><u>Fiction productions:</u></p> <ul style="list-style-type: none"> <li>Cultural content (16 points)</li> <li>Nationality of personnel (18 points)</li> <li>Location of Production/Post-production (12 points)</li> </ul>

#### 1.1 Cultural Test to Access the Czech Republic Production Incentive<sup>99</sup>

All productions must achieve a minimum of 23 out of 46 points on the test. Of these, at least 4 points must be achieved from amongst the cultural criteria of the test. The allocation of points for each production is reviewed by a Czech Film Fund.

A. Cultural criteria (maximum 16 points)	
• Story is based on events that are part of European culture	0 to 2 points
• Story is based on a personality from European culture	0 to 2 points
• Storyline is connected with a European setting points	0 to 2 points
• Film is based on a work of cultural importance	0 to 2 points
• Film focuses on current themes in European society	0 to 2 points
• Film reflects important European values	0 to 2 points
• Film focuses on European culture, customs or traditions	0 to 2 points
• Film is based on events affecting European society	0 to 2 points
B. Production criteria (maximum 30 points)	
• Film contributes to the development of its genre	0 to 3 points
• Filmmakers are Czech or citizens of EEA member states	0 to 7 points
• Final version of the film is in any language of the EEA	0 to 4 points
• At least 51% of the crew are citizens of EEA countries	0 or 4 points
• Shooting takes place in the Czech Republic	0 to 4 points
• Production uses Czech service providers in the Czech Republic	0 to 4 points
• Post-production takes place in the Czech Republic	0 to 4 points

## 7. Spain

The Institute of Cinematography and Audiovisual Arts (ICAA) in Spain provides direct funding to feature film productions and tax credits for film and audiovisual productions. Productions financed through the General Aid program must pass two cultural tests: a cultural test of Spanish nationality and a test of cultural relevance,

<sup>98</sup> Czech Film Commission, *Czech Republic Production Incentives*, retrieved from [https://filmcommission.cz/wp-content/uploads/2021/07/CZ\\_Production\\_Incentives\\_2021\\_st2.pdf](https://filmcommission.cz/wp-content/uploads/2021/07/CZ_Production_Incentives_2021_st2.pdf)

<sup>99</sup> Czech Film Commission, *Czech Republic Production Incentives*, retrieved from [https://filmcommission.cz/wp-content/uploads/2021/07/CZ\\_Production\\_Incentives\\_2021\\_st2.pdf](https://filmcommission.cz/wp-content/uploads/2021/07/CZ_Production_Incentives_2021_st2.pdf); Czech Film Fund, *Statute of the State Cinematography Fund*, retrieved from <https://fondkinematografie.cz/english/>.

for which a Cultural Certificate is issued.<sup>100</sup> The two tests are also required to obtain the film or audiovisual tax credit.

### 1. Requirements for Accessing the Tax Credit for Film and Audiovisual Productions<sup>101</sup>

Requirements to Access the Tax Credit for Film and Audiovisual Productions	
<b>Ownership Requirements</b>	n/a
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>Production companies with a registered office in Spain or the EEA, with a registered office in Spain</li> </ul>
<b>Eligible Projects</b>	<ul style="list-style-type: none"> <li>Feature films and audiovisual productions.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>At least 50% of total production costs expended in Spain.</li> </ul>
<b>Cultural Test</b>	<p><u>Cultural Test of Spanish Nationality</u></p> <ul style="list-style-type: none"> <li>75% of all personnel from Spain or EEA</li> <li>Production shot in any language of Spain</li> <li>Shooting and post-production do be undertaken in Spain or another EEA member state.</li> </ul> <p><u>Cultural Certificate Test</u></p> <ul style="list-style-type: none"> <li>Productions must meet a minimum of two out of 10 cultural criteria</li> <li>Funding reduced by 10% for shoots in a language other than a language of Spain</li> </ul>

#### Cultural Test of Spanish Nationality<sup>102</sup>

Productions must primarily employ citizens or residents of Spain or another EEA country, the original version of the film must be in a language of Spain, and the shooting and post-production must be primarily undertaken in Spain or another EEA member state.

<sup>100</sup> In accordance with Article 22 of the Spanish Royal Decree No. 1084/2015.

<sup>101</sup> “Tax Incentives,” Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/coproducir-espaa/incentivos-fiscales.html>; “Certificate of Spanish Nationality for Films,” Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/certificado-nacionalidad-espanola.html>; “Cultural Certificate,” Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/certificado-cultural.html>; Spain, State Agency Official State Gazette, *Law 27/2014, of November 27, on Corporation Tax*, retrieved from [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2014-12328](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-12328); Spain, Official State Newsletter, Number 180, *Section III. Other Dispositions, Ministry of Culture and Sport*, June 30, 2020, retrieved from <https://www.boe.es/boe/dias/2020/06/30/pdfs/BOE-A-2020-6921.pdf>; Spain, Ministry of Culture and Sport, *Provisional resolution: Proposal of the sub-directorate general for the promotion of the film and audiovisual industry, which corrects the provisional resolution proposal dated August 30, 2022 of the second selection procedure for the General Aid for the production of feature film projects of 2022*, retrieved from <https://www.culturaydeporte.gob.es/dam/jcr:13b8f602-c4b4-48e0-8598-92ab7a66c724/correccion-propuesta-resolucion-provisional-ayudas-generales-2022-segundo-procedimiento.pdf>; “Production Funding,” Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/ayudas/produccion.html>.

<sup>102</sup> Spain, *Law 55/2007, of 28 December, on Film*, retrieved from <https://www.global-regulation.com/translation/spain/1444897/law-55-2007%252c-of-28-december%252c-the-film.html>

### Test of Spanish Nationality

This test on Spanish nationality is not points-based. To obtain the certificate of Spanish nationality, the ICAA considers the extent to which productions meet the following criteria:

1. At least 75% of the personnel employed by the production must be either people of Spanish nationality or of a member state of the European Economic Area. This includes:
  - At least 75% of the key creative positions of director, screenwriter, cinematographer and music composer. At a minimum, the director is always required to comply with this requirement.
  - At least 75% of the principal and other actors.
  - At least 75% of the technical personnel, including creative technical positions
2. The production is produced in any of the official languages of Spain.
3. The shooting (with exceptions required by the script), the post-production and lab work are carried out in Spain or in other Member States of the European Union. In the case of animation works, the production processes must also be carried out in these territories.

Productions not meeting any of the above criteria may still access the tax credit at a reduced rate of 10% for each of the three criteria not met.

While there are no language requirements to access support through the General Aid program, projects that do not use any official language of Spain as per point a), above, will have their funding reduced by 10%.

## 1.2 Test of Cultural Relevance<sup>103</sup>

### Test of Cultural Relevance

To satisfy the requirements of the test of cultural relevance, productions must meet at least two of the following criteria:

- Its original version is in any of Spain's official languages. In the case of co-productions with foreign companies, the feature film may have as its original version any European Union official language.
- The setting is mainly in Spain.
- The content is directly related to literature, music, dance, architecture, painting, sculpture and, in general, creations of artistic expression.
- The script is an adaptation of a pre-existing literary work.
- The content is biographical or, in general, reflects historical events or characters, without prejudice to the free adaptation inherent to a cinematographic script.
- The content mainly includes mythological or legendary stories, events or characters that may be considered to belong to world heritage or cultural tradition.
- It provides further knowledge of cultural, social, religious, ethnic, philosophical or anthropological diversity.
- The content provides a better understanding of is related to matters or topics that belong to Spain's social, cultural or political reality, or has an incidence on them.
- One of the main characters or several of the secondary characters are directly linked to the Spanish social, cultural or political reality.
- It is specifically directed at children or young spectators and contains values in line with educational principles and purposes.

<sup>103</sup> Spain, State Agency Official State Gazette, Order CUD/582/2020, of June 26, Order CUD/582/2020, of June 26, which establishes the regulatory bases for state aid for the production of feature films and short films and regulates the structure of the Administrative Registry of Cinematographic and Audiovisual Companies, retrieved from [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-6921](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-6921); "Cultural Certificate," Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/certificado-cultural.html>; Spain, Law 55/2007, of 28 December, on Film, retrieved from <https://www.global-regulation.com/translation/spain/1444897/law-55-2007%252c-of-28-december%252c-the-film.html>.

## 2. Requirements for Accessing Financing from the General Aid Program<sup>104</sup>

<b>Requirements to Access the General Aid Program</b>	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>Producers must possess at least 15% of the ownership of the work and hold exploitation rights for at least three years, except where these are shared with coproducers.</li> <li>Non-independent production companies may not hold more than 60% of the ownership of the project.</li> </ul>
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>Production companies must be based in Spain or in the EEA with a registered office in Spain.</li> <li>Independent production companies</li> <li>Non-independent production companies coproducing with an independent company</li> </ul>
<b>Eligible Projects</b>	<ul style="list-style-type: none"> <li>Films must have theatrical release in Spain.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>At least 50% of the production budget should be expended in Spain.</li> <li>Penalty applied if less than 50%.</li> </ul>
<b>Cultural Test</b>	<p><u>Test of Spanish Nationality</u></p> <ul style="list-style-type: none"> <li>Productions must satisfy all requirements (or have funding reduced by 10% for each of the three criteria not met):</li> <li>75% of all personnel from Spain or EEA</li> <li>Original version of the production shot in a language of Spain</li> <li>Shooting and post-production do be undertaken in Spain or another EEA member state.</li> </ul> <p><u>Cultural Certificate Test</u></p> <ul style="list-style-type: none"> <li>Productions must meet a minimum of two out of 10 cultural criteria</li> <li>Funding reduced by 10% for shoots in a language other than a language of Spain and for each of the industrial requirements not met.</li> </ul>

### 2.1 Cultural Test to Access General Aid Program

There are the same tests as in 1.1, above.

## *8. Portugal*

In Portugal the Insitituto do Cinema et do Audiovisual (ICA) is the national agency mandated to support the development of the Portuguese film and audiovisual industry. The ICA provides direct funding in the form of non-repayable grants for feature film and audiovisual productions and administers the Portuguese Production Incentive, a cash rebate intended for productions shooting in Portugal.

To access the Portuguese Production Incentive, projects must pass a points-based cultural test. To access financing from the ICA through direct funding programs, productions must also pass a cultural test satisfy at least three of a possible nine cultural requirements. The ICA is responsible for the cultural test.<sup>105</sup>

<sup>104</sup> Spain, Official State Newsletter, Tuesday, June 30, 2020 Number 180. *Section III. Chapter I General Disposition*, retrieved from <https://www.boe.es/boe/dias/2020/06/30/pdfs/BOE-A-2020-6921.pdf>; Spain, Official State Newsletter, Tuesday, June 30, 2020 Number 180. *Section III, Article 19*, retrieved from <https://www.boe.es/boe/dias/2020/06/30/pdfs/BOE-A-2020-6921.pdf>.

<sup>105</sup> Portugal, *Law No. 55/2012 of September 6*, retrieved from <https://dre.pt/dre/detalhe/lei/55-2012-174871>.



## 1. Requirements to Access the Portuguese Production Incentive<sup>106 107</sup>

Requirements to Access the Portuguese Production Incentive	
<b>Ownership Requirements</b>	n//a
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>Production companies established in Portugal or another EEA member state and registered with the ICA in Portugal.</li> </ul>
<b>Eligible Projects</b>	<ul style="list-style-type: none"> <li>Feature film for theatrical release</li> <li>Audiovisual production for television or VOD</li> <li>Released in multiple territories, at least one which is non-Portuguese speaking</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>Fiction and animation: €500K (CAD \$675K)</li> <li>Documentary: € 250K (CAD \$338)</li> <li>Post-production: € 250K (CAD \$338)</li> </ul>
<b>Cultural Test</b>	<ul style="list-style-type: none"> <li>Cultural test (minimum of 15 out of 60 points)</li> </ul> <p><u>Fiction productions:</u></p> <ul style="list-style-type: none"> <li>Cultural content (30 points)</li> <li>Nationality of personnel (20 points)</li> <li>Location of Production/Post-production (10 points)</li> </ul>

### 1.1 Cultural Test to Access the Portuguese Production Incentive

Productions must obtain a minimum of 15 points out of a total of 60 points.<sup>108</sup> At least 10 points must be obtained in sections A1 and A2 on cultural content, with at least 5 points obtained in section A2. Alternatively, at least 3 points must be obtained in section A1, at least 4 points in section A2 and at least 4 points in sections B and C combined.

Projects whose activities in Portugal do not include shooting must achieve a minimum of 8 points in the cultural test, of which at least 4 points must be obtained in sections A1 and A2 combined.

Cultural Test to Access Portuguese Production Incentive	
<u>Content and cultural nature</u>	
<b>SECTION A – 30 points</b>	
<b>Section A1 (Maximum 12 points)</b>	
A1.1 The action takes place: <ul style="list-style-type: none"> <li>Partly in Portugal - 3 points</li> <li>Partly in a European or Portuguese-speaking country, or in official co-producing countries - 2 points</li> </ul>	2 to 3 points
A1.2 More than half of the original dialogues are in Portuguese or in Creole languages with a Portuguese base or in a language spoken in Europe	2 points
A1.3 At least one of the main characters is a national or resident in a Portuguese-speaking territory, or has a strong connection to the Portuguese culture or language, or to Portuguese, European or co-production cultures in the case of official co-productions under co-production treaties of which Portugal is a part	1 point
A1.4 The script is an adaptation of an original Portuguese, Portuguese language or European literary work or of a co-production country, in the case of official co-productions - 2 points or a relevant universal literature work - 1 point	1 to 2 points
A1.5 The project has as its main theme the arts or one or more artists, of any artistic area and of any period	1 point
A1.6 The project essentially involves characters or historical events or events of historical relevance, of any age, or relevant mythical or fictional characters in universal cultural history	1 point
A1.7 The project deals mainly with topics relevant to cultural or societal issues, such as current event, cultural, social or political issues	1 point
A1.8 Animation project or intended for children or teenagers or documentary	1 point

<sup>106</sup> Portugal, Ministerial Ordinance [establishing the rules for the application of the incentive regime for cinematographic and audiovisual production], retrieved from [https://www.ica-ip.pt/fotos/editor2/Ordinance\\_490\\_2018.pdf](https://www.ica-ip.pt/fotos/editor2/Ordinance_490_2018.pdf).

<sup>107</sup> Portugal, Ministerial Ordinance [establishing the rules for the application of the incentive regime for cinematographic and audiovisual production], retrieved from [https://www.ica-ip.pt/fotos/editor2/Ordinance\\_490\\_2018.pdf](https://www.ica-ip.pt/fotos/editor2/Ordinance_490_2018.pdf).

<sup>108</sup> Portugal, Ministerial Ordinance [establishing the rules for the application of the incentive regime for cinematographic and audiovisual production], retrieved from [https://www.ica-ip.pt/fotos/editor2/Ordinance\\_490\\_2018.pdf](https://www.ica-ip.pt/fotos/editor2/Ordinance_490_2018.pdf).

<b>Section A2 - Cultural and heritage promotion, artistic excellence and diversity (Maximum 18 points)</b>	
A2.1 Importance of sites, aspects and emblematic characters of the Portuguese territory and culture, identifiable as: - maximum 3 points <ul style="list-style-type: none"> <li>• Clear presence in at least 20% of the duration of the project (3 points)</li> <li>• Clear presence in at least 10% of the duration of the project (2 points)</li> <li>• Clear presence in at least 2% of the duration of the project (1 point)</li> </ul>	0 to 3 points
A2.2 International accolades of the director or scriptwriter (not cumulative): - Maximum of 3 points <ul style="list-style-type: none"> <li>• a) Awarded more than once with distinctions of best film, best director or best script, relating to feature films, in the Academy of Motion Arts and Sciences Awards, European Film Academy Awards, Golden Globes, Emmy Awards, Competitions of international film festivals - maximum of 3 points</li> <li>• b) Awarded once or nominated more than once - 2 points</li> <li>• c) Awarded at least once, for a feature film, for Best Film or Best Director or Best Script award, in an official competitive section of festival - 1 point</li> </ul> International accolades of producers (not cumulative with points obtained through the directors or scriptwriters): according to paragraph (a) above (2 points) / according to paragraph (b) above (1 point)	1 to 3 points
A2.3 Percentage of music (original, recorded or reinterpreted) sung in Portuguese, or Portuguese-speaking composers, of the film's soundtrack	1 point
A2.4 The project is headed by a woman, produced predominantly by women or its production includes more than 40% of women among the elements mentioned in sections B1.3, B1.4 and B1.5 of section B1	1 point
A2.5 International dissemination – maximum of 8 points <ul style="list-style-type: none"> <li>• Cinema premieres, television broadcasts or launch on on-demand audiovisual in national markets with: <ul style="list-style-type: none"> <li>○ More than 500 million inhabitants - 8 points</li> <li>○ More than 300 million inhabitants - 6 points</li> <li>○ More than 100 million inhabitants - 4 points</li> </ul> </li> </ul>	4 to 8 points
A2.6 Co-production (maximum 2 points) <ul style="list-style-type: none"> <li>• Co-production with official recognition under international co-production treaties - 2 points</li> <li>• Production of foreign initiative with a contractual co-production relationship with a Portuguese co-producer - 1 point</li> </ul>	1 to 2 points
<b>SECTION B Creative Cooperation – maximum 20 points</b>	
<b>Section B 1 - Key Persons (Creative and Technical) – maximum 15 points</b>	
• B1 Key creative and technical Portuguese staff or residents in Portugal or in an EEA Member State:	
○ B1.1 Director – 3 points	3 points
○ B1.2 Producer (or executive producer, only in the case of foreign productions)	3 points
○ B1.3 Scriptwriter, Adaptation Author, Dialogue Writer, Composer, Cinematographer, Animation Director	1 to 3 points
○ B1.4 Art Director, Production Director, Author of the Characters (in Animation)	1 to 2 points
○ B1.5 Costume Designer, Assembler, Head make-up artist, First Camera Operator, Sound Director, Head of Wardrobe, First Assistant Director, Head of Unit, Special Effects Supervisor, Author of Backgrounds (Animation), Lead Modeller, Director of research or expert/Principal consultant (for documentaries)	1 to 3 points
○ B1.6 Lead roles/voices – maximum 1 point <ul style="list-style-type: none"> <li>• At least 1 actor/actress in lead role (voice for animation)</li> <li>• At least 2 actors / actresses in secondary roles (voice for animation)</li> </ul>	1 point
<b>Section B 2 - Other Technical Personnel – maximum 5 points</b>	
• B2. Total number of artistic and technical personnel involved in production activities in Portugal, with the exception of those who generated points in section B1 and of the extras:	
○ B2.1 At least 50% or a minimum of 40 people	5 points
○ B2.2 From 20% to 49% or a minimum of 15 people	4 points
○ B2.3 From 10% to 19% or a minimum of 8 people	2 points
<b>SECTION C Promotion of Local Resources – maximum 10 points</b>	
<b>Section C1 – Filming in Portugal</b>	
• C.1 Filming in locations or studios in Portugal <ul style="list-style-type: none"> <li>○ Percentage of days of filming in Portugal relative to the total number of days of filming:</li> <li>○ The number of minutes of the finished animation produced in Portuguese studios.</li> </ul>	
• C1.2 At least 50% or a minimum of 20 days	5 points
• C1.3 From 20% to 49%	4 points
• C1.4 From 10% to 19%	3 points

## 2. Requirements to Access the Direct Funding Programs of the ICA<sup>109</sup>

Requirements to Access the Direct Funding Programs of the ICA	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>Producers must own the rights to the work in proportion to the respective participation in the total production budget.</li> <li>Producers of audiovisual works must not be owned or controlled by one or more broadcasters.</li> </ul>
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>Company have its activity in Portugal or other member state of the EEA</li> </ul>
<b>Eligible Projects</b>	<ul style="list-style-type: none"> <li>Audiovisual productions must have a Portuguese broadcaster attached and have secured 20% of the budget.</li> </ul>
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>Support obtained from ICA must be expended in Portugal.</li> </ul>
<b>Cultural Test</b>	<p><u>Cultural test</u></p> <ul style="list-style-type: none"> <li>At least 50% of authors, 75% of technical teams and 75% of actors must be from Portugal or EEA member state</li> <li>Original language of production is Portuguese</li> <li>Animation - all production must take place in Portugal</li> </ul> <p><u>Additional cultural criteria</u></p> <ul style="list-style-type: none"> <li>Productions must meet 3 of a possible 9 requirements</li> </ul>

### 2.2 Cultural Test to Access Direct Funding from ICA

At least half of key author positions and at least 75% of performer and technical positions must be filled by Portuguese or European nationals (EEA). Shooting must take place in Portugal. There is no similar requirement for post-production.

<p><b>Cultural Test to Access Direct Funding from ICA</b></p> <p>Films and audiovisual productions must meet all the following requirements:</p> <ul style="list-style-type: none"> <li>At least 50% of the authors, namely the director, the author of the script, the author of the dialogues and the composer must have Portuguese nationality or nationality of any Member State of the European Economic Area (EEA);</li> <li>Productions must be Portuguese productions or official co-productions;</li> <li>At least 75% of the technical teams must be of Portuguese nationality or of any Member State of the EEA;</li> <li>At least 75% of the protagonists and the main and secondary roles must be played by Portuguese actors or nationals of any Member State of the EEA, except where the script does not allow it majority international co-productions;</li> <li>The original version of the production is in Portuguese, with appropriate exceptions imposed by the script;</li> <li>In the case of animation works, the production processes must be carried out in full in national territory, except for co-production or script requirements, even if post-production is carried out in any Member State of the EEA;</li> </ul> <p>Productions seeking access to automatic aid must meet additional cultural requirements.</p> <p><b>Additional Cultural Criteria</b></p> <p>To access support through the Automatic program, film productions must meet at least three of the following requirements:</p> <ul style="list-style-type: none"> <li>The action is set essentially in Portugal, or in another member state of the European Union or the European Economic Area;</li> <li>More than two-thirds of the dialogues are in Portuguese or basic Creole languages;</li> <li>At least one of the protagonists has a strong connection with Portuguese culture or language;</li> <li>The original script is in Portuguese;</li> <li>The script is an adaptation of an original Portuguese literary work;</li> <li>The main theme of the work is the arts or one or more artists of any artistic discipline;</li> <li>The work is essentially about characters or historical events or events;</li> <li>The work deals mainly with themes relevant in cultural or societal terms, including current issues, or cultural, social or political aspects;</li> <li>The work contributes to enhancing the Portuguese or European audiovisual heritage.</li> <li>These requirements are waived in the case of films having received selective financing from the ICA for development or production, from Creative Europe or other comparable European or international programs, or if the production is a treaty co-production.</li> </ul>
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<sup>109</sup> Portugal, *Law No. 55/2012 of September 6*, Article 2 Definitions, retrieved from <https://dre.pt/dre/detalhe/lei/55-2012-174871>.

## 9. Australia

The Producer Offset is Australia's domestic film and television production incentive. To access the Producer Offset projects must pass a test of significant Australian content, or SAC test, administered by national funding body Screen Australia.

### 1. Requirements to Access Producer Offset (Refundable Tax Rebate) for Film and Television<sup>110</sup>

Requirements to Access the Producer Offset	
<b>Ownership Requirements</b>	n/a
<b>Eligible Production Companies</b>	Production companies based in Australia or with a registered office in Australia
<b>Eligible Projects</b>	Feature film intended for theatrical release in Australia Audiovisual production for television or subscription streaming service available to Australians in Australia
<b>Expenditure Requirements</b>	<ul style="list-style-type: none"> <li>• Feature films (fiction, documentary and animation): AUD \$500K (CAD \$430K).</li> <li>• Television series (of at least two episodes): AUD \$1 million (CAD \$861K) total and AUD \$500K (CAD \$430K) per hour.</li> </ul>
<b>Cultural Test</b>	<u>Holistic (not points-based) test of Significant Australian Content:</u> <ul style="list-style-type: none"> <li>• Cultural content</li> <li>• Nationality of personnel</li> <li>• Location of Production/Post-production</li> </ul>

#### 1.1 Cultural Test of Significant Australian Content<sup>111</sup>

##### **Cultural Test to Access Production Offset**

The Significant Australian Content (SAC) test involves an overall analysis of the extent to which productions involve any of the five following elements:

- subject matter of the production (including origination of the project in Australia by Australians, and creative control over the project exercised by Australians, and whether the story reflects, is about or is set in Australia)
- nationalities and places of residence of personnel. Particularly important are the executive producer, producer, writer and director, lead cast members and heads of department; proportion of cast and crew also considered. Exceptions on residency may be made for residents who are not permanent residents.
- extent of production and post-production in Australia
- the details of the production expenditure incurred and its contribution to the Australian film industry
- any other matters that Screen Australia considers to be relevant.

The SAC test is not points-based. No single factor is determinant, particularly if other factors such as the subject matter of the project, the place where the project was made, nationalities of personnel and location of production and post-production, are strongly "Australian".

## 10. New Zealand

The New Zealand Film Commission administers the New Zealand Screen Production Grant (NZSPG) for New Zealand Productions on behalf of the Ministry for Culture and Heritage. To access the

<sup>110</sup> Government of Australia, *Modernising Australian screen content settings*, 2021, retrieved from <https://www.infrastructure.gov.au/media-technology-communications/television/modernising-australian-screen-content-settings>. Screen Australia, *Producer Offset Guidelines*, March, 2022.

<sup>111</sup> Screen Australia, *National Cultural Policy submission*, August, 2022, retrieved from <https://www.screenaustralia.gov.au/getmedia/105b3683-56ef-46f2-81b1-695c8505994b/Screen-Australia-Submission-National-Cultural-Policy.pdf>; *Producer Offset Guidelines*, Screen Australia, Australian Government.

production incentive, productions must have significant New Zealand content as determined by a points-based cultural test.<sup>112</sup>

### 1. Requirements for Accessing the New Zealand Screen Production Grant for New Zealand Productions<sup>113</sup>

Requirements to Access the NZ Production Incentive	
<b>Ownership Requirements</b>	NZ producer must have equity share in production similar to that of other investors
<b>Eligible Production Companies</b>	Producer must be a New Zealand company incorporated in New Zealand and carrying on business in New Zealand. The central management and control of the company must be by New Zealand residents.
<b>Eligible Projects</b>	Feature films intended for theatrical release. Television and other formats intended for public dissemination.
<b>Expenditure Requirements</b>	Feature films - NZ\$ 2.5 million (CAD \$1.9 million). Scripted television series - NZ\$ 500K (CAD \$387K) per hour and NZ\$1 (CAD \$773K) in total.
<b>Cultural Test</b>	Minimum of 20 out of 32 points for feature film. <u>Cultural content (11 points)</u> <ul style="list-style-type: none"> <li>• Nationality of personnel (13 points)</li> <li>• Location of Production/Post-production (6 points)</li> <li>• Ownership and financing (2 points)</li> </ul>

#### 1.1. Cultural Test of Significant New Zealand Content to Access the NZ Screen Production Grant

Productions must achieve 20 out of a possible 32 points. In addition, film productions are generally expected to obtain a minimum of 3 points related to the New Zealand cultural content of the project and at least 3 out of a total of 6 points for New Zealanders in the positions of director, producer and scriptwriter. Television projects must achieve 15 out of 32 points. In addition, television productions must obtain a minimum of 2 points related to New Zealand cultural content of the production and to receive at least 3 out of the total of 6 points available for the positions of director, producer and scriptwriter. The guidelines and points framework are not fixed policy rules and the NZSPG will in all cases bring to bear its judgment and discretion in assessing a production's level of significant New Zealand content.

Significant New Zealand Content Test	
<b>A. New Zealand Subject Matter (maximum of 11 points)</b>	
A1 – Setting	0 to 3 points
A2 – Lead Characters <i>Documentaries, reality, lifestyle etc.</i> : presenter, narrator, subject	0 – 3 points
A3 – Creative Material	0 – 3 points
A4 – Contribution to New Zealand Culture/History:	0 to 2 points
<b>B. New Zealand Production Activity (maximum 6 points)</b>	
B1 – Shooting – Location/Studio (50% for 1 point, 75% for 2 points)	0 to 2 points
B2 – Visual Post-Production, Digital or Visual Effects (50% for 1 point, 75% for 2 points)	0 to 2 points
B3 – Music Recording, Voice Recording, Audio Post-Production (50% plus)	1 point
B4 – If applicable, Concept Design & Physical Effects (Period/Genre) (50% plus)	1 point
<b>C. New Zealand Personnel (maximum 13 points)</b>	
New Zealand Citizen or New Zealand Permanent (a Qualifying Person).	
C1 – Director - 2 points if the director is a Qualifying Person / 1 point if more than 33% of directors / 2 points if more than 66% of directors or majority of episodes	0 to 2 points
C2 – Producer (2 points if at least one of the producers is a Qualifying Person or if there are more than three, one of the three lead producers is a Qualifying Person)	0 or 2 points

<sup>112</sup> New Zealand Screen Production Grant Criteria for New Zealand Productions, New Zealand Film Commission, July 1, 2017.

<sup>113</sup> “The New Zealand Screen Production Grant for New Zealand Productions”, New Zealand Film Commission website: <https://www.nzfilm.co.nz/incentives-co-productions/nzspg-nz>.

C3 – Scriptwriter (2 points if the writer is a Qualifying Person or where there are multiple writers, 1 point if more than 33% and 2 points if more than 66% or majority of episodes written by a Qualifying Person)	0 to 2 points
C4 - Music Composer/Source Music (1 point if the composer is a Qualifying Person or if more than 50% of the source music is by Qualifying Persons)	1 point
C5 – Lead Actors (1 point if one of the lead actors is a Qualifying Person, 2 points if 2 of the lead actors are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> actors only (if significant dramatic recreations) <i>Animation:</i> voice actors	0 to 2 points
C6 – Majority of Cast (50% plus) (1 point if 50% of the cast are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> presenters, narrators actors (if there are significant dramatic recreations)	1 point
C7 – Key Production Roles (1 point if 2 of the key production roles are Qualifying Persons, 2 points if 3 of the key production roles are Qualifying Persons) <i>Drama:</i> lead cinematographer, lead production designer or art director, lead editor, lead digital/visual/special effects supervisor <i>Documentaries, reality, lifestyle etc.:</i> lead camera, lead editor, lead researcher and one of lead/field sound recordist or sound designer or sound mixer or sound editor <i>Animation:</i> animation director, lead layout supervisor, lead production designer, lead character designer, lead editor, lead sound designer, lead visual effects supervisor, lead modelling supervisor	0 to 2 points
C8 - Majority of Crew (50% plus)	1 point
<b>D – New Zealand Businesses (maximum of 2 points)</b>	
D1 – Ownership of Intellectual Property	1 point
D2 – Business development outcomes including ownership of applicant company, rights of recoupment and sources of financing.	1 point
<b>Total Points Available</b>	<b>32 points</b>
<b>Minimum Required (Film): 20/32 points</b>	

## 11. Canada

The Canadian Audio-Visual Certification Office (CAVCO) is responsible for certifying film and television productions as Canadian for the purpose of accessing the Canadian Film or Video Production Tax Credit (CPTC) and national funding through the Canada Media Fund (CMF) and Telefilm Canada. The Performance Envelope Program of the CMF provides automatic funding to Canadian broadcasters. Funds are paid directly to producers.<sup>114</sup> Telefilm Canada provides development and production financing to Canadian feature films, including automatic funding to “pre-qualified” production companies who meet performance-based criteria.

To be certified as Canadian, productions must meet a number of mandatory requirements described above and achieve a minimum number of points on a ten-point scale, solely focused on key creative positions.<sup>115</sup>

The points-based test and mandatory requirements are also used by the Canadian Radio Television and Telecommunications Commission (CRTC) to certify Canadian productions used by broadcasters to satisfy their Canadian content regulatory obligations.<sup>116</sup>

<sup>114</sup> Canada Media Fund website: <https://cmf-fmc.ca/program/performance-envelope-program/>.

<sup>115</sup> Canadian Audio Visual Certification Office (CAVCO), *Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC)*, October 27, 2021.

<sup>116</sup> Canadian Radio Television and Telecommunications Commission (CRTC) website: [https://crtc.gc.ca/eng/can-con/c\\_cdn.htm](https://crtc.gc.ca/eng/can-con/c_cdn.htm).

## 1. Requirements to Access Canadian Film or Video Production Tax Credit, the Canada Media Fund and Telefilm Canada<sup>117</sup>

<b>Requirements to Access Canadian Tax Credit, Canada Media Fund and Telefilm Canada</b>	
<b>Ownership Requirements</b>	<ul style="list-style-type: none"> <li>• Copyright in the production must be owned by the Canadian production company and held for a minimum of 25 years following the completion of the production.</li> <li>• The Canadian production company must retain at least 25% of the net profits earned from the exploitation of the production in foreign markets.</li> </ul>
<b>Eligible Production Companies</b>	<ul style="list-style-type: none"> <li>• Prescribed taxable Canadian corporation that is controlled by Canadian citizens or permanent residents</li> <li>• Canadian production company must have and maintain full control over the development and full responsibility and control over all creative aspects, expenditures and financing of the production, as well as control over the negotiation of initial exploitation agreements.</li> </ul>
<b>Eligible Projects</b>	<ul style="list-style-type: none"> <li>• Feature films must be intended for theatrical release in Canada.</li> <li>• Convergent television productions intended for broadcast on Canadian television and a digital platform (interactive or streamed content).</li> </ul>
<b>Expenditure Requirements</b>	Minimum expenditure of: <ul style="list-style-type: none"> <li>• 75% of the production budget in Canada, and</li> <li>• 75% of the post-production budget in Canada</li> </ul>
<b>Cultural Test</b>	Minimum of 6 out of 10 points (8 points for Telefilm, 10 points for Canada Media Fund) <u>Fiction Productions:</u> <ul style="list-style-type: none"> <li>• Cultural content (0 points)</li> <li>• Nationality of personnel (10 points)</li> <li>• Local of Production/Post-production (0 points)</li> </ul>

### 1.1 Canadian Content Test for Accessing the Canadian Film or Video Production Tax Credit, and National Funding Program (Canada Media Fund, Telefilm Canada and Canadian Certified Independent Funds)<sup>118</sup>

In addition to mandatory ownership and expenditure requirements, productions seeking certification as a Canadian production must pass a points-based test, which varies slightly for live action (fiction), documentaries and animation. There are a total of 10 points in the test, available only for key creative positions. Points are allotted only if all individuals occupying the position are Canadian.<sup>119</sup>

To be certified as Canadian for the purpose of accessing the CPTC, live action productions must achieve a minimum number of six points. Either the director or the screenwriter must be Canadian, and at least one of the two highest paid lead performers must be Canadian.

To access funding from Telefilm Canada, productions must achieve a minimum of 8 out of 10 possible points. Projects must be solely written and directed by Canadian citizens or permanent residents of Canada.<sup>120</sup>

To access funding from the Canada Media Fund, productions must achieve all 10 points on the 10-point scale. Television projects must also be shot and set in Canada.<sup>121</sup>

<sup>117</sup> Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021.

<sup>118</sup> Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021.

<sup>119</sup> Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021.

<sup>120</sup> Telefilm Canada, *Canada Feature Film Fund Production Guidelines*, November 4, 2021, retrieved from <https://telefilm.ca/wp-content/uploads/guidelinesproductionnov4.pdf>, and *Canada Feature Film Fund Production Development Guidelines*, June 23, 2022, retrieved from <https://telefilm.ca/wp-content/uploads/guidelines-development-program-august2022.pdf>.

<sup>121</sup> Canada Media Fund, *Performance Envelope Program Guidelines 2022-2023*, retrieved from <https://cmf-fmc.ca/document/performance-envelope-guidelines/>.



<b>Canadian Content Points-based Test</b>	
<b>Key creative position</b>	
Director	2 points
Screenwriter	2 points
<b>At least two points must be obtained from Director and Screenwriter categories</b>	
Lead performer for whose services the highest remuneration was payable	1 point
Lead performer for whose services the second highest remuneration was payable	1 point
<b>At least one point must be obtained from Lead performer categories</b>	
Director of photography	1 point
Art Director	1 point
Music Composer	1 point
Picture Editor	1 point
<b>Total Available Points</b>	<b>10 points</b>
<b>Minimum Points Required: 6 points</b>	