



Public Notice CAVCO 2006-03

Ottawa, December 17, 2006

Policy on the exploitation of videograms in Canada

The Canadian Audio-Visual Certification Office (CAVCO) has adopted a policy on the exploitation of videograms in Canada by a non-Canadian service agent of productions certified under the Canadian Film or Video Production Tax Credit (CPTC) program.

Preamble

1. In January 2004, CAVCO solicited comments from industry stakeholders with respect to issues surrounding the distribution in Canada of home videos and DVDs (“videograms”) of CAVCO-certified productions by non-Canadian service agents. After consulting with the industry, CAVCO issues its policy in this public notice.

Background

2. A production may become an “excluded production” if it is distributed in Canada by a non-Canadian entity within two years of its completion. Specifically, subsection 1106(1) of the Income Tax Regulations, under the definition of “excluded production,” states that the production is ineligible for the CPTC if a “...distribution is made in Canada within the 2-year period that begins at the earliest time after the production was completed that it is commercially exploitable by a person that is not a Canadian.”
3. CAVCO has determined that the use of non-Canadian service agents for the exploitation of videograms in Canada, for productions certified under the CPTC program, is permitted in limited circumstances.
4. For the purposes of this policy, the term “videograms” refer only to VHS cassettes and DVDs. The exploitation of videograms by a non-Canadian service agent excludes any other type of exploitation of the production such as theatrical distribution or broadcast on television.
5. The provision of services provided by non-Canadian service agents acting under the control of a Canadian-owned and -controlled distribution corporation may include, but is not limited to:
 - a. The procurement and manufacturing of videograms and their packaging;
 - b. Storage of the videograms;
 - c. Order entry and order processing through computer and inventory control systems;
 - d. Shipping of the videograms to customary sales and retail outlets;
 - e. Accounting to distributor with respect to all videogram sales to customers.

The policy

6. For the purpose of the application of the definition of “excluded production” in subparagraph 1106(1) of the Regulations of the *Income Tax Act*, a Canadian-owned and -controlled distribution corporation is permitted to enter into an agreement with a non-Canadian service agent for the provision of services in Canada with respect to the exploitation of videograms of certified productions, provided that, within the two-year period following completion of the production:
 - a. There is a contract between a Canadian producer and a Canadian distributor to distribute the production in Canada;
 - b. Canadian distribution rights are retained at all times by a Canadian-owned and -controlled corporation;
 - c. The Canadian distributor remains at all times responsible for performing the customary functions of a distributor, including for each production:
 - i. Preparing the marketing plan;
 - ii. Setting the release date;
 - iii. Approving the wholesale and/or retail selling price;
 - iv. Setting the promotion and marketing budget;
 - v. Approving the packaging artwork and all promotional material;
 - vi. Maintaining approval rights over all aspects of the exploitation of each release.
7. The agreement between the Canadian distributor and the non-Canadian service agent is limited, in Canada, to the provision of services with respect to videograms.
8. The agreement must be concluded for a standard service fee.
9. If the Canadian distributor intends to use the services of a non-Canadian service agent for the exploitation of videograms in Canada, there must be evidence in the agreement between the production corporation and the Canadian distributor that the distributor adheres to sections 6, 7 and 8, above. If this is not evidenced in the aforementioned agreement, the producer or distributor must submit the agreement between the Canadian distributor and the non-Canadian service agent to CAVCO.
10. This policy is in effect as of December 17, 2006.

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