

**(3) The definition “Canadian film or video production certificate” in subsection 125.4(1) of the Act is replaced by the following:**

“Canadian film or video production certificate”  
« *certificat de production cinématographique ou magnétoscopique canadienne* »

“Canadian film or video production certificate” means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(a) except where the production is a treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(i) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production,

(ii) a prescribed taxable Canadian corporation related to the qualified corporation, or

(iii) any combination of corporations described in subparagraph (i) or (ii); and

(b) the making, distribution or public exhibition of the production would not constitute

(i) an offence under the *Criminal Code*, in particular, but without limiting the generality of the foregoing, the provisions dealing with child pornography and hate propaganda, and

(ii) pornography as provided for in section 1106 of the *Income Tax Regulations*.”;

**(12) Section 125.4 of the Act is amended by adding the following after subsection (6):**

Guidelines

(7) The Minister of Canadian Heritage shall issue guidelines respecting the circumstances **under which the conditions in paragraph (a) of the definition of “Canadian film or video production certificate” in subsection (1) are satisfied.**

(8) **The Minister of Canadian Heritage shall not determine that a Canadian film or video production does not satisfy the conditions in**

paragraph (b) of the definition of “Canadian film or video production certificate” in subsection (1) except after consultation with the Minister of Justice.

(9) If, pursuant to paragraph (b) of the definition of “Canadian film or video production certificate” in subsection (1), the Minister of Canadian Heritage declines to issue a Canadian film or video production certificate, or if the Minister does not issue a certificate in a timely manner, the producer of the proposed film or video production may apply to the Federal Court, pursuant to Part 5 of the *Federal Courts Rules*, for a declaration that the making, distribution or public exhibition of the production does not contravene any provisions of the *Criminal Code* or is not pornography as provided for in section 1106 of the *Income Tax Regulations*.”; and

**(16) Subsection (3) applies in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that, in respect of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the definition “Canadian film or video production certificate” in subsection 125.4(1) of the Act, as enacted by subsection (3), is to be read as follows:**

“Canadian film or video production certificate” means a certificate issued in respect of a production by the Minister of Canadian Heritage

(a) certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that

(i) except where the production is a treaty co-production (as defined by regulation), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(A) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production,

(B) a prescribed taxable Canadian corporation related to the qualified corporation, or

(C) any combination of corporations described in clause (A) or (B), and

“(ii) the making, distribution or public exhibition of the production would not constitute

(A) an offence under the *Criminal Code*, in particular, but without limiting the generality of the foregoing, the provisions dealing with child pornography and hate propaganda, and

(B) pornography as provided for in section 1106 of the *Income Tax Regulations*,” and

(b) estimating amounts relevant for the purpose of determining the amount deemed under subsection (3) to have been paid in respect of the production.

**(18) Subsection (12) applies in respect of film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage after December 20, 2002, except that, in respect of those film or video productions in respect of which certificates are issued by the Minister of Canadian Heritage before 2004, the reference to “paragraph (a)” in subsection 125.4(7) of the Act, as enacted by subsection (12), is to be read as a reference to “subparagraph (a)(i)” and the reference to “paragraph (b)” in subsections 125.4(8) and (9) of the Act, as enacted by subsection (12), is to be read as a reference to “subparagraph (a)(ii)”.**