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CREATIVE INDUSTRIES

Brazil

**FILM AND TELEVISION
MARKET REPORT**

**MARKET GUIDANCE
FOR CANADA'S CREATIVE EXPORTERS**

Outline

- ✓ Opening remarks

- ✓ Overview of the Brazilian AV commercial environment

- ✓ Specifics on the Film, Television and VOD Sectors

- ✓ General Information on main tax incentives

- ✓ Opportunities/ challenges for Canadian companies in Brazil

- ✓ Q& A and final remarks

Overview of the Brazilian Audiovisual Commercial Environment

- Huge domestic market
- Portuguese speaking nation
- AV is a significant engine of economic growth in Brazil
- Favorable industry forecasts
- Time of political transition



The Film and Television Market in Brazil

Key Decision-makers, Market agents and Stakeholders

A Webinar organized by the Canadian Trade Commissioner Service
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ANCINE – National Film Agency

- Operates the main financial resources for production and distribution in the country.
- Supervises the use of tax incentive mechanisms.
- Responsible for the Audiovisual Sectoral Fund – FSA
- Supervises international co-pro treaties.

New Record level of government Funds for 2018 Ancine Audiovisual Sectoral Fund (FSA)

On May 14th, 2018 the FSA managed by Ancine approved an additional R\$705 million (U\$188 million), which, added to R\$551MM (U\$147MM) already announced, provides for a record R\$1.256Billion (U\$335MM) for 2018.

Ancine (FSA) Federal Funding Allocations – 2018

R\$ 465MM (U\$124MM) for film production and project development

R\$ 424MM (U\$113MM) for production, development and promotion of TV content

LINHAS	INVESTIMENTO (R\$) EM MILHÕES
Produção Cinema	442,325
Distribuição Cinema	98,500
Desenvolvimento Cinema	22,625
Produção TV	404,800
Desenvolvimento TV	15,975
Promoção TV	3,525
Infraestrutura	100,000
Exibição	6,525
Mostras e Festivais	26,575
Capacitação	17,625
Preservação	23,375
Coinvestimento Regional	56,400
Games	37,750
TOTAL	1256,00

Municipal and State AV Agencies Offering Funding

- Tied to Cultural Secretariats
- Municipal and State Funding legislation
- Municipal service tax incentive
- State turnover (ICMS) tax incentive
- São Paulo: Spcine
- Rio de Janeiro: RioFilme

For international companies, the key operative strategy for participation in the Brazilian film and television markets is **partnership.**



In Brazil, in order to produce content or undertake a co-production and access local government financial incentives, whether they are of federal, state or municipal level, the foreign producer must contract or partner with a local Brazilian production company.

Key Decision Makers, Market Agents and Stakeholders (Theatrical)

- Brazilian independent **film producers** who may enter into co-production agreements, with or without an international treaty.
- Brazilian independent **film distributors** who may acquire an international film for distribution in Brazil such as H2O, Esfera, Arthouse, Vitrine;
- Local branch offices or subsidiaries of **major studios and independents** which distribute US major and independent films, and Brazilian films in the Brazilian market: Fox, Warner, Universal, Sony, Paramount, Diamond, Paris, Disney;
- **Municipal government entities** such as RioFilme and SPcine which can invest in, or distribute selected Brazilian titles.

Key Decision Makers, Market Agents and Stakeholders (Television)

- Private **free-to-air networks**: Globo, Record TV, SBT, Band e Rede TV.
- **National Pay-TV main programmers** include Globosat (a division of Grupo Globo), Band, Fundação Padre Anchieta (from the State of São Paulo).
- Principal **international Pay-TV programmers**: Fox, Sony, Turner, Discovery, NBCUniversal, Viacom, Disney, A&E and HBO.
- **82 “Qualified-Space Channels”**, which must comply with minimum quota of 3h30min of Brazilian content per week.
- **15 such “Brazilian Qualified-Space Channels”** which must broadcast qualified Brazilian audiovisual content during prime-time.
- **Four “Super Brazilian Channels”**, which must broadcast at least 12 hours of Brazilian independently-produced productions daily.

Key Decision Makers, Market Agents and Stakeholders (VOD)

- Current heated debate regarding **regulation and taxation** of streaming services;
- Leading services:
 - International television programmers' VoD platforms: HBO Go, Fox Play, Turner's TNT Go and Space Go, Sony's Crackle, Esporte Interativo Plus, Watch ESPN;
 - Relevant Brazilian television networks and programmers VoD platforms: NET NOW, Globo Play, Globosat Play, Telecine On;
 - Stand-alone international services: Netflix, Amazon, Itunes
 - User-generated content platforms: YouTube, Vimeo

Access Opportunities in the Brazilian Film and TV Markets - 1

- Attend Brazilian **market events**;
- Join the events and business meetings organized by Brazilian Film and Television **trade associations** at their booths in both local and international the audiovisual markets;
- Contact the sectoral **associations** (BRAVI, APRO, SICAV, SIAESP).
- Contact Brazilian television **networks and Pay-TV channel executives**;
- In the case of co-productions, research ways to **combine Brazilian and Canadian incentives**, such as those offered by the OMDC in Ontario and those offered by the Audiovisual Sectoral Fund (FSA) in Brazil.

Access Opportunities in the Brazilian Film and TV Markets - 2

To **license content in Brazil**, Canadian producers and distributors should:

- Attend Brazilian **market events**;
- Meet **Brazilian distributors** at film festivals and markets;
- Contact Brazilian television **networks and Pay-TV acquisition executives** in the international audiovisual markets.

Access Opportunities in the Brazilian Film and TV Markets - 3

Canadian service providers interested in taking part on Brazilian market should:

- Attend Brazilian **market events** and promote their services to local producers;
- Contact the sectoral **associations** (BRAVI, APRO, SICAV, SIAESP) to reach their producers associates;
- Reach out to **Brazilian service providers** in the audiovisual supply chain.

Due to the dynamism and complexity of the Brazilian audiovisual sector, before undertaking contractual commitments, Canadian producers and service providers are urged to **seek both professional legal and business consultancy** to align their individual needs with the current regulatory framework, government funding mechanisms and market agents.



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General information on regulatory environment, main tax incentives, and CAN-BRA co-production treaty

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Regulatory environment

- Brazilian audiovisual market dependent on local incentives
- Brazilian federal government plays a preponderant role on audiovisual content funding
- ANCINE is the governmental agency responsible for approving audiovisual projects financed by public funds, and the issuance of the CPB, CRT and CONDECINE invoice

Certificate of Brazilian Product (CPB): certificate of registration of Brazilian audiovisual work

Certificate of Registered Title (CRT): certificate of registration of audiovisual works to be commercially released in Brazil, regardless of nationality, type, length or purpose

CONDECINE - Contribution for the Development of the National Cinematographic Industry: tax due on the exploitation of audiovisual works in Brazil, as well as by telecommunications services providers

Regulatory environment

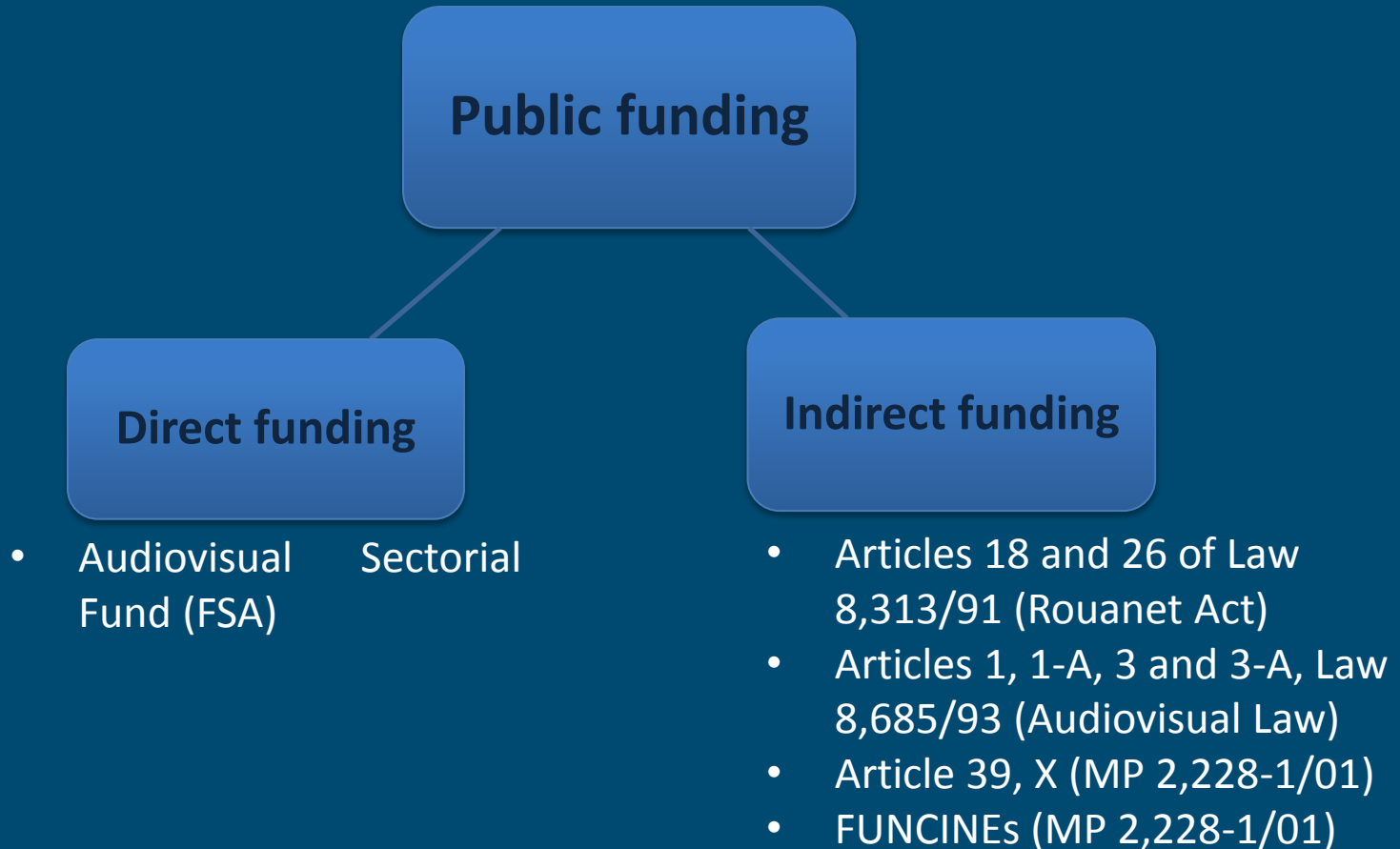
- Independent Brazilian companies may apply for development, co-production and distribution public funding
- Projects financed (or co-financed) with public resources must abide by ANCINE's regulations
- International companies must partner with or contract a Brazilian production company to enter into co-production or production service contracts in Brazil
- International co-productions can access local public incentives
- Accounting for audiovisual projects financed by public incentives: Brazilian producer is accountable to ANCINE regarding the production of the film and the use of public funding. Administrative, civil and criminal liability is applicable for violations of regulations and/or laws

Regulatory environment

- Brazilian audiovisual work:
 - (a) Produced by Brazilian company; directed by Brazilian citizen or foreigner living in Brazil for more than 3 years; and at least 2/3 of the artists and technicians are Brazilians or have been residing in Brazil for more than 5 years; or
 - (b) Produced by Brazilian company in association with producers of other countries that have co-production treaties with Brazil, according to the terms of such treaties; or
 - (c) Co-produced by Brazilian company in association with companies from other countries that do not have co-production treaties with Brazil, as long as the Brazilian producer is the owner of, at least, 40% of the copyrights over the work, and, at least, 2/3 of the artists and technicians are Brazilians or reside in Brazil for more than 3 years
- Brazilian independently-produced audiovisual work:

When the majority of the copyrights is owned by independent Brazilian producer that has no direct or indirect relationship with broadcast, Pay-TV, or telecommunication companies. (In international co-productions, majority of copyrights is assessed only in the “Brazilian share”)

Federal mechanisms of project funding



Direct funding



- Key federal mechanism of direct funding for audiovisual content, for audiovisual infrastructure, festivals, preservation of audiovisual heritage, etc.
- Lines of investments available for development and production of audiovisual works, such as long feature films, TV movies, documentaries and TV series; distribution of long feature films; and development of electronic games
- 2018 FSA's overall budget is of approximately R\$ 1.2 billion Reais (USD 350 million)
- Limit of R\$ 6 million per long feature film or animation film/TV movie and TV series; R\$ 2 million for documentary film/TV movie

Indirect funding - Law 8,313/91 (“Rouanet Act”)

- Not limited to the audiovisual sector; includes cultural activities such as music, stage plays, dance, visual arts, book publishing, etc
- Article 18 - Allows taxpayers to deduct 100% from the income tax owed amounts given as sponsorship for or donation to the production of Brazilian independently-produced **short or medium length films**
- Article 26 - Allows taxpayers to deduct from the income tax owed amounts given as sponsorship for or as donation to the production of the Brazilian independently-produced **TV documentaries, educative and cultural TV programs**

Indirect funding – Art. 1 of Audiovisual Act (Law 8,685/93)

- Companies and individuals may deduct the investments made in Brazilian independent audiovisual content from the income tax owed, and receive a share on the project's net revenue
- Producer determines the revenue share, which are subject to regulation of the Brazilian Securities and Exchange Commission
- Investment limited to R\$ 4 million per project (separated or jointly with Art. 1-A)
- Funds production and distribution of audiovisual content
- Audiovisual content covered: Short, medium and long feature length films; TV series; TV movies and TV Shows

Indirect funding – Art. 1-A of Audiovisual Act (Law No. 8,685/93)

- Companies and individuals may deduct the amounts invested in Brazilian independent audiovisual content from the income tax owed
- No equity share granted to investor
- Investment limited to R\$ 4 million per project (separated or jointly with Art. 1)
- Funds production and distribution of audiovisual content
- Audiovisual content allowed: Short, medium and feature length films; TV series; TV movies, TV shows and documentaries

Indirect funding – Art. 3 of Audiovisual Act (Law 8,685/93)

- Foreign producers, distributors or intermediaries may invest up to 70% of the withholding income tax related to the amounts remitted abroad to exploit foreign audiovisual works in Brazil
- Exempts taxpayer from CONDECINE (11% over the amounts remitted abroad)
- Grants up to 49% of copyrights
- Investment limited to R\$ 3 million per project
- Audiovisual content allowed: Short, medium and feature length films; TV series; TV movies, TV Shows and documentaries

Indirect funding – Art. 3-A of the Audiovisual Act (Law No. 8,685/93)

- Income taxpayers, beneficiaries of royalties related to the transmission through broadcasting of any audiovisual work or event to invest up to 70% of the withholding income tax derived from the amounts remitted abroad (to exploit foreign audiovisual works in Brazil, including transmissions, by radio, TV or any other mean, of any movie or event, including sports competitions on which Brazilian representation takes part)
- Similar to Art. 3 - Investment limited to R\$ 3 million per project (including Art. 3, and grants up to 49% of copyrights)
- Audiovisual content allowed: Short, medium and long feature length films; TV series; TV movies; TV Shows and documentaries

Indirect funding – Art. 39, X Provisional Measure 2,228-1/2001

- Article 39, X exempts international TV programmers from the payment of the 11% of CONDECINE, provided that they invest up to 3% of the amounts paid, credited, used or remitted to producers, distributors or intermediaries abroad, derived from the exploit of audiovisual works in Brazil
- Investment with no limit. Ancine will decide case by case
- Grants up to 49% of copyrights
- Can be exercised in connection with the tax incentives provided by Audiovisual Act (Law 8,685/93)
- Audiovisual content allowed: co-production of short, medium and feature length films; TV series; TV movies, TV Shows and documentaries

Indirect funding – FUNCINE

MP 2,228-1/2001

- Investment funds administered by financial institutions registered with the Central Bank of Brazil and the Securities and Exchange Commission
- Taxpayers may deduct 100% of the amount invested in a FUNCINE fund, provided that it does not exceed 3% of the overall income tax owed for companies, and 6% for individuals
- Investment fund receives an equity share on the project to be negotiated with producer
- Eligible projects:
 - (i) production of Brazilian independent audiovisual works
 - (ii) construction, renovation and restoration of movie theaters owned by Brazilian companies
 - (iii) acquisition of Brazilian companies shares for production, commercialization, distribution and exhibition of Brazilian independent audiovisual works, and for the provision of cinematographic and audiovisual infrastructure
 - (iv) Commercialization/distribution of Brazilian independent content by Brazilian companies
 - (v) Infrastructure works carried by Brazilian companies

Co-productions under the CAN/BRA Treaty

- Signed in 1995, and renewed every 5 years
- Allows producers to benefit from incentives in both countries, and to produce bi-national audiovisual works. Other countries may join subject to approval
- Encompasses audiovisual projects of any kind
- Copyrights and revenue shares proportional to the respective financial contributions to the production, and subject to approval by the authorities of both countries
- Minimum participation of 20% and maximum of 80%, subject to exceptions
- Producers, writers and directors of co-productions, as well as technicians must be Brazilian or Canadian citizens or permanent residents in Brazil or Canada. Exceptions must be subject to approval by the authorities of both countries

Thank you

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murta
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advogados

2018 – 2019: fast-changing public policy

FSA Annual Investment > R\$ 1 bn

Film/TV production for VoD segment: not included yet

VoD: ongoing discussions

taxation ---> funding

quotas and/or prominence for Brazilian independent productions

Brazilian TV content funded by FSA

[NEW]

Can be pre-licensed to TV channels only available abroad

Local producer must hold the Brazilian rights

Up to R\$ 6 million (fic) or R\$ 2 million (doc)

“First come first served” programs

New criteria: based on participants' (previously measured) scores

Federal support for regional development

2018: R\$ 90 million for municipal and state programs

Quotas for “non-Rio-SP” companies in every call for projects

Discount on minimum pre-license (TV) for “non-Rio-SP” companies

Choose the right partner to your project!

Seek business consultancy in Brazil!

- To identify the opportunities that suit your needs best;
- To keep updated with regulation and new funding mechanisms;
- To find and deal with a Brazilian partner.

Seek legal advice before signing any term!

Thanks!

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