



New CAVCO Policy re Proof of Canadian Citizenship

September 10, 2010 by Bob Tarantino

The Canadian Audio-visual Certification Office (CAVCO) has announced a new policy (CAVCO Public Notice 2010-01) relating to the submission and retention of documentation required to prove that an individual is Canadian for purposes of obtaining "Canadian content" tax credits. Instead of producers being required to collect and retain copies of documents (such as passports or birth certificates), CAVCO will be maintaining a central database of documents submitted directly to CAVCO by individuals.

From the text of the CAVCO public notice:

1. To be eligible to receive a tax credit under the CPTC program, production companies must, among other things, staff "Canadians" as producers and in a minimum number of key creative positions. "Canadian" is defined in subsection 1106(1) of the *Income Tax Regulations* (Regulations) to include Canadian citizens and permanent residents.
2. In her report tabled to the House of Commons on November 22, 2005 (Chapter 5 - Support to Cultural Industries), the Auditor General of Canada concluded that CAVCO's former practice of having producers and key creative personnel sign a "Declaration of Citizenship or Permanent Residency" form was not rigorous enough to ensure that Canadian content requirements were being met under the CPTC.
3. In response, CAVCO implemented its "Policy on Documentation Demonstrating that Certain Individuals are Canadian" (Public Notice 2009-01). The policy, effective June 1, 2009, made the applicant responsible and accountable for ensuring that the producers and key creative positions identified for Canadian content points were Canadian by retaining a copy of documentation, e.g. valid passport or permanent resident card, sufficient to demonstrate that each individual satisfied the Regulations' definition of Canadian. Documents were subject to audit by CAVCO on a random basis.
4. Because of concerns raised by the industry regarding the security of personal information that was being retained by production companies, CAVCO is amending its citizenship policy.

The Policy

5. The CPTC applicant (the producer) is no longer required to retain a copy of an individual's Canadian citizenship or permanent residency documentation. Under the amended policy, individual producers and key creative personnel eligible for Canadian content points under the CPTC must send a copy of their proof of Canadian citizenship or permanent residency, e.g. valid passport, birth certificate or permanent resident card, directly to CAVCO using the secure CAVCO Online application system or by mail. Further details on the process are attached in the annex.



6. Each person confirmed by CAVCO as a Canadian citizen or permanent resident will be assigned a unique CAVCO personnel number. Canadian citizens do not need to resubmit proof of citizenship for future productions. Permanent residents will need to resubmit proof of permanent residency status only when their permanent resident card expires.

Privacy concerns, which appear to have informed the new CAVCO policy, and particularly federal and provincial statutory obligations, are an area of law which could use more attention from independent producers and their counsel. I provided some additional background on this in a paper I wrote a few years back entitled *We Know Where You Live – BC Privacy Commissioner Provides Guidance to Producers on How to Collect Residency Information from Cast and Crew* [originally published in Ontario Bar Association *Entertainment, Media and Communications Section Newsletter*, Vol. 16, No. 2, November 2006].

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