



CO-PRODUCTION

# Co-Production: A Cautionary Tale

While the original On-Screen Protocols & Pathways document describes some emerging and best practices around ensuring successful collaborations, recent experiences of Indigenous filmmakers raise concerns with co-production agreements and models.

In a number of recent co-productions (51/49% Indigenous ownership), Indigenous producers and creatives struggled to fulfil their visions. Even in instances where co-production agreements are meant to empower the Indigenous producer(s), Indigenous creators were limited to managing Indigenous, culturally specific content. This is not only seen as an act of racism, but also a breach of contract. This issue is not necessarily around the 51/49% ownership structure, rather, around the robust nature of clauses expressing decision-making or protecting Indigenous creatives.

In fact, these experiences have at times jeopardized the Indigenous creator's relationship with community, and in one instance, all Indigenous people left the project. Some instances led to traumatization of Indigenous filmmakers, cast, and crew. Several filmmakers had to renegotiate the terms in their partnership agreements. Some experiences were so negative that it was suggested the ISO create a Protocols Liaison position; so, in the event that decisions are being thwarted by non-Indigenous producers, there is a contact point for issues as they arise, or a mediator for complaints to ensure that the broader industry is held accountable. It was also suggested that funding bodies have a role to play in ensuring that non-Indigenous production partners have met their obligations and do not perpetuate these behaviours.

For Indigenous producers and creatives, these experiences beg the question; how do you solidify that an Indigenous production means that Indigenous people involved are the core decision makers? How can we execute narrative sovereignty as a mainstream practice?

Some Tips & Tricks to ensure promising co-productions include:

- 1) Ensure that your contracts expressly state what type of decisions are within your control.
- 2) Vet your potential partners, even when you already have established relationships.
- 3) Highlight a strategy or process for when disagreements arise that are derived from racial or cultural positions.
- 4) Value driven projects should expressly be stated as such.
- 5) Use On-Screen Protocols & Pathways.
- 6) Jointly determine budget.
- 7) Ensure your promises are met.
- 8) Review releases.
- 9) Involve creators in marketing & distribution.
- 10) Follow up & evaluation.



**1) Ensure that your contracts expressly state what type of decisions are within your control.**

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*There is a need for non-Indigenous producing partners to recognize that when working through an Indigenous lens, on a show where the Indigenous producer is majority owner and has accessed money through Indigenous networks and Indigenous funding envelopes, "Indigenous content" represents everything – through pre-production, creative, and post. Decision making is not limited to smudging and culturally specific content or Indigenous personnel." Jennifer Podemski*

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In negotiating co-production partnership agreements, it is necessary to ensure the Indigenous creative is empowered to make the creative decisions and that the Indigenous producing partner has financial decision-making power. This has to be contractual. In fact, some respondents suggested refining the Protocols & Pathways document to serve as a contractual agreement that all parties sign at the beginning of the project (as is done when working with unions) to serve as an acknowledgement that protocols will be followed as opposed to suggested or recommended reading. Narrative sovereignty is a concept that needs to be not only understood, but executed:

Culture is a fundamental underpinning of sovereignty and identity, and for the purpose of these protocols, recognition of Indigenous ownership and control over their rights to their intellectual and cultural property and heritage is paramount. Sovereign nations must have control over own stories. To assure sovereign notions and support truly Indigenous projects, Indigenous peoples must:

- have decision making control over the funding and the creative sides of production;
- protect Cultural Property Rights and interests; and
- ensure appropriate consents, access to, and control of Cultural property.

(On Screen Protocols & Pathways, 2019)

The non-Indigenous production community should consider the ways in which they can reinforce Indigenous narrative sovereignty and what roles they can play to promote Indigenous cultural industries, rather than reinvent Indigenous stories in their own image.

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*What I learned is the most important clauses are who has decision making power about what. There are a few trigger points where values can clash: creative decisions, money, and business decisions." Danis Goulet, Night Raiders*

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Make sure it is clear who is empowered to make financial and creative decisions. A sample clause may include:

“Creative measures shall be agreed by 2/3 producers, one of whom is the Indigenous producer.” Those who relied solely on verbal agreements stressed that nothing is too small to put in your contracts. Variations on other conditions to include:

- Selection of Indigenous actors;
- Ensuring 50% BIPOC members on the crew;
- When shooting in the community, the Indigenous producer’s word is final;
- Choice of the Indigenous producer/partner; and
- Review of public communications to ensure privacy and sensitive matters are protected.

## 2) Vet your potential partners, even when you already have established relationships.

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*Partner with other producers or production companies but choose wisely. Early on, as you're making the transition from short films and corporate videos and you want to get your first feature or your first show off the ground, you will face the fact that you don't have enough of a track record on your own to pull in financing. This can be a great learning opportunity or a living nightmare.*

*Have open and honest conversations with potential partners about what you want to get out of this relationship, and what you have to offer. Look at agreements carefully and run them by friends to make sure they say what you want them to say. If there is something in the contract that looks suspicious, ask for it to be changed. If they act defensive or inflexible, you are finding out what kind of a partner they will be during the course of your relationship. It gives you a chance to walk away before it's too late. Or you might still agree to partner with someone even if you know it is not fully to your benefit, but at least you're doing it knowing what the risks and rewards are.*

*Adam Garnett Jones, Director of TV Content and Special Events, APTN*

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## 3) Highlight a strategy or process for when disagreements arise that are derived from racial or cultural positions.

Even in instances where contracts expressed approval over the budget, numerous Indigenous producers felt that “51% means nothing.” In other words, even when these conditions were explicit within contracts, decision making of Indigenous producers was thwarted. Even where non-Indigenous production partners said that they would negotiate in good faith (on paper), even in instances where the conditions in contracts dictate mediation, Indigenous producing partners have been left with unresolved or unaddressed issues. A number of conflicts arise because of hierarchical set culture(s). Ensure that the people in leadership positions are committed to dealing with disagreements in right way before they ever occur. For example, in the event of disagreement over culturally based decisions or choices on the part of Indigenous producers or directors, this (X) is the course of action to resolve disagreements.

To this end it was suggested that restitution is required: if a co-production partner does not abide by financing bodies’ guidelines for Indigenous production or Indigenous funding, there needs to be consequences.

## 4) Value driven projects should expressly be stated as such.

Film, television, and other screen media are practices in cultural re-generation, both in depicting the modern reflections of changing cultures and in preserving traditional cultural practices and stories. Making Indigenous screen-based media is about more than creating a unique cultural (or niche) product - it is part of the process of cultural expression and revitalization. Indigenous screen storytellers seek to honour their

people's journey and find a balance between historical and ongoing injustices while looking forward to the future and sharing the story of the strength of their people. (On Screen Protocols & Pathways, 2019)

Often times cultural decisions are undervalued and not thought of as serious producing. Mainstream productions often have difficulty navigating value-based decisions, such as respecting Indigenous knowledge, values, and decision-making processes. How do you know if people have the same values as you if you don't have a long-term relationship with them?

- Indigenous creators stressed that non-Indigenous companies/corporations need to understand that to most Indigenous partners, this is not simply about a film, but also about spirituality and protection of culture. This is a transformative way of filmmaking that needs to be understood as such.
- It is good practice to declare and state the production's intentions from the beginning, so that so everyone knows, understands, and gets behind the culture of the set. (See our samples, such as Bones of Crows Mission Statement.)



- It is equally important for non-Indigenous counterparts to practice cultural humility. Some found that mandatory training around issues such as the *Indian Act* or Residential Schools and other colonial policies resulting in a “lot of light bulbs going off” and at times made it easier to understand and to integrate Indigenous values into their productions. (See Sensitizing non-Indigenous crew).

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*Non-Indigenous producers need to understand and respect the value of the social capital brought into the mix. We may come up against producers that do not understand or care that we have relationships with communities, and how we engage with communities is just as important as how we engage with the funders. There is a hierarchy in everyone's mind of who is more important, which creates a clash between values of industry and community. Having a values-driven production means that Indigenous values are at the top of the hierarchy. If questions come up, business is prioritized in a much different way.*

*Danis Goulet, Night Raiders*

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## 5) Use On-Screen Protocols & Pathways.

The Protocols & Pathways and Codes of Conduct are considered a great place to start – and many felt these fundamentals are necessary across the board for Indigenous productions. Producers emphasized that once you read the protocols, the next step is to check in with the heads of departments as they need to know what is expected of them, and part of what they're being evaluated on, even check ins

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*“We sent [the protocols] to all the heads of departments as mandatory reading, but I don't think anyone went back to them and asked, did you read the protocols? what were your takeaways? and how will you put into practice?”*

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Reading protocols was mandatory; however, there were some instances of blatant disregard for respect. There is a need for non-Indigenous producing partners to understand that this is not simply a “film”; rather Indigenous filmmaking is often about spirituality and protection of culture – is a transformation that they need to understand. Another suggestion from Indigenous creatives was that a lot can be gathered from unions such as ACTRA work. For example, the Protocols and Pathways could be refined to serve as an agreement signed by all parties (as opposed to suggested reading) – in the signing you acknowledge that you will follow the protocols.

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*Right now, the cultural piece is still so undervalued and not considered to be an essential piece of producing an Indigenous project. So, if you as a producer don't have those skills, you are going to need to rely on someone who does, and they better be named as a producer and be empowered and valued. The challenge as a producer is understanding what you “do not know” and that “it is not up to you” and being able to relax into that.*

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## **6) Jointly determine budget.**

Another issue flagged around co-productions is who holds the pen when setting budgets? Who draws up the budget, dictates rates of remuneration, and determines the big line items for a production? In a typical co-production, it is the co-producer who creates the budget. Clarity and transparency around budget processes (including impacts on shooting schedules and production choices and allocations) would serve to increase the agency and trust of filmmakers.

Where possible, funders should develop and communicate clearer guidelines for co-production. This begins with clarifying what an Indigenous co-producer is expected to bring to the table, and the respective roles/rights of the Indigenous producer in choosing crew, control over budget, retention of creative rights, and what flexibility there is around decision making and execution.

Indigenous involvement in promotions will:



- ensure communications include a community point of view,
- pre-empt any possible damage to a filmmaker's relationship with the community,
- help to avoid negative impacts on the community, and
- protect the meaning or intention of the filmmaker's work.

## **7) Ensure your promises are met.**

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*“Inappropriate planning and attention to protocols by non-Indigenous producers leave Indigenous creatives having to divert energy to recovering relationships with the community, leaving Indigenous creatives stretched and unable to dedicate the time they need to their creative roles, including coaching and directing actors.”*

*Caroline Monnet, Multidisciplinary Artist*

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Lack of appropriate follow up with community and community members was another problem incurred by many co-productions. For the Indigenous creative, this can have a lasting impact on their relationships. Proper follow up may mean ensuring that everyone is paid and properly acknowledge; or, checking in afterwards to see how the community is responding to the project. For some this may mean changing the way you communicate in community, such as going door to door as opposed to sending emails.

## **8) Review releases.**

As we know, release forms give producers ownership. Changing industry practices and standards in this regard has practical application when developing Indigenous industry standards of practice. Suggestions include:

- adding the line on your release forms “for use in this film only” to prevent it being used without proper permission;
- ensuring release forms are in plain language and / or develop alternative ways of doing release forms (such as recordings) that account for language and writing skills;
- having a secondary document of commitments, or a release form from the director to the community; and
- determining if you can provide a copy of the interview and/ or final project to the community or make available the footage that they shot in those communities.

## **9) Involve creators in marketing & distribution.**

Ensure the marketing and distribution team understand and acknowledge that taking the story back to the community is a top priority; and in many instances, projects have an obligation to go back to the community. Doing community screenings and celebrating with the community should be an essential part of the budget and should not be a barrier to a contract with a distributor. Indigenous creators indicated a desire to be involved in:

- reviewing marketing plans and messages to address any concerns of misrepresentation;
- developing community outreach and outreach plans;
- discussions around distribution and sales; as well as,
- developing the festival plan.

## **10) Follow up & evaluation.**

After much advocacy, funders are changing access to Indigenous streams of funding or co-production models to reflect that the Indigenous producer must be a majority decision maker. So, what happens when mainstream co-production partners do not abide by financing bodies guidelines in this regard?

Indigenous filmmakers suggest following up with funders is required, particularly when the spirit and intent of the program, or agreement are not being fulfilled. It was also suggested that funders create some sort of standard template to serve as schedule to co-production agreements to outline the deliverables, definitions, as well as repercussions in the event that the Protocols and Pathways are not followed by non-Indigenous producers.