

TRUST DECLARATION

For the establishment of the **ACTRA Minors' Trust Fund** for the benefit of Minors engaged as Performers under the Independent Production Agreement

THIS TRUST DECLARATION made as of the 9th day of March, 2000, by the:

The ACTRA Performers' Guild (ACTRA)

and

ACTRA Performers' Rights Society (the *Trustee*)

Part 1: Recitals

Whereas:

- 1 the ACTRA Performers' Guild (ACTRA) is a National Association of performers, operating as the exclusive bargaining agent for performers engaged in the production of films, television programs and the like in respect of terms and conditions of engagement;
- 2 ACTRA negotiates Collective and like Agreements with Producers' Associations which cover performers, including performers who are Minors. In the current version of the Independent Production Agreement (the IPA), in effect from August 9, 1999 to December 31, 2001, a Minor is defined as a performer under the age of 18 (see Art. A2701).
- 3 ACTRA and the L'Association des Producteurs de Films et de Télévision du Québec (APFTQ) and the Canadian Film & Television Production Association, the Producers' Associations (CFTPA) who are parties to the IPA, negotiated the following provision into the current version of the IPA:

A2716 Minors' Trust Account After a Minor's total lifetime remuneration reaches \$5,000.00, twenty-five (25%) percent of the Minor's gross remuneration shall be deducted from the total payment due to the Minor by the Producer and remitted to the ACTRA Performers' Rights Society, which shall hold such monies in trust for the Minor upon terms and conditions consistent with the obligations of the PRS to act as a Trustee. ACTRA shall keep track of the Minor's earnings to determine whether the \$5,000.00 level is reached.
- 4 the ACTRA Performers' Rights Society (ACTRA PRS) is a corporation without share capital incorporated and in good standing under Part II of the *Canada Corporations Act*, having its principal place of business at: 2239 Yonge Street, Toronto, Ontario

M4S 2B5 the objects of which allow it:

To act as a non-profit agency for the collection and distribution to those entitled thereto of fees, royalties, residual fees and all other forms of compensation or remuneration to which Members and Permit Holders of ACTRA, and others, may from time to time, be or become entitled by reason of their work or engagement in the entertainment and related industries, pursuant to Collective Agreements negotiated by ACTRA, or otherwise.

5 pursuant to Art. A2716 of the IPA, Producers who are or become parties to the IPA are obligated to remit to the ACTRA PRS funds on behalf of Minor's who are covered by the IPA, such funds to be held in trust by the ACTRA PRS for the benefit for such Minors.

6 this Trust Declaration establishes the ACTRA Minors' Trust Fund

Now therefore the ACTRA Performers' Guild and the ACTRA Performers' Rights Society hereby declare as follows:

1 **Definitions:** Unless otherwise explicitly provided herein the definitions of terms in this Trust Declaration shall be same as in the IPA.

1.1 *Board* shall mean the Executive Board of the ACTRA PRS.

1.2 *IPA* shall mean the current Independent Production Agreement, the terms and conditions of which come into effect on August 9, 1999, and any successor Agreement, thereto.

1.3 *Settlement Funds* shall mean all funds, including Use Fees, paid to the ACTRA Minors' Trust Fund by Producers under the provisions of the IPA, as amended from time to time, the current version of which provides that twenty-five (25%) percent of the Minor's gross remuneration, after a Minor's total lifetime remuneration reaches \$5,000.00, shall be deducted from the total payment due to the Minor by the Producer, which amount shall be remitted to the ACTRA Performers' Rights Society to be held in the ACTRA Minors' Trust Fund in accordance with the terms and conditions of the IPA and this Trust Declaration:

1.4 *Fiscal Year* shall mean the calender commencing on January 1, 2000 and ending on December 31, 2001, and every calender year thereafter.

2 The ACTRA Minors' Trust Fund

2.1 ACTRA hereby establishes the **ACTRA Minors' Trust Fund**, and appoints ACTRA Performers' Rights Society to act as the Trustee.

- 2.2 The ACTRA Minors' Trust Fund shall consist of the Settlement Funds, remitted from time to time pursuant to the terms of the IPA to the Trustee and together with earnings, profits and investments thereon, without distinction between principal and income. These funds shall constitute the Trust Fund hereby created and established hereunder (the *Trust Fund*).
- 2.3 The Trustee accepts the trust and undertakes to hold, invest, manage, distribute and administer the Trust Fund in accordance with the provisions of this Declaration, the Policies, the IPA and the provisions of any relevant legislative provisions.
- 2.4 The Trust Fund includes all property and assets now or hereinafter received by the Trustee under the provisions of Art. A2716 of the IPA, and also includes the earnings, profits and investments thereon.
- 2.5 The Trustee is vested with all right, title and interest in and to the Trust Fund for the uses, purposes and duties set forth in this Declaration.
- 2.6 It is the intent of ACTRA, in establishing this Trust Fund, that all funds remitted to the Trust Fund pursuant to the IPA to be held in trust for Minors, shall at all times be held for the benefit of those Minors. At no time shall any part of the Trust Fund be used for or diverted to purposes other than for the exclusive benefit of Minors, their beneficiaries and their estates or for the purposes of paying the reasonable costs of administration of this Trust Fund.
- 2.7 Upon ceasing to be a Minor, a beneficiary is entitled to the Trust Funds which the Trustee is holding in trust for such Minor. A Minor, so long as he or she remains a Minor is not entitled to request that there be an encroachment upon all or any part of the Trust Funds held in trust for the said Minor, except as provided for in the Policies or Rules promulgated by the Trustee in its discretion, under the provisions of Art. 3.3.
- 3 General Administration: The Trustee shall have, in addition to any other powers and authority to which a Trustee may be entitled by law or as otherwise provided herein, the following powers and authority in the administration of the Trust Fund. The Trustee:
 - 3.1 shall retain and manage the Trust Fund and invest and reinvest the same for the purposes herein set out in such manner as the Trustee from time to time shall decide.
 - 3.2 shall pay or apply the income and\or the capital of the Trust Fund for the purposes of the trust;
 - 3.3 may from time to time make and promulgate reasonable rules, regulations or policies, not contrary to applicable law, designed for the administration of the Trust Fund and to regulate the orderly withdrawal from the Trust Fund of funds to which an

individual beneficiary is entitled consistent with the Trustee's duty to maximize the return on the assets in the Trust Fund, and under the terms of this provision, hereby promulgates Policy No. 1 and Policy No. 2 attached hereto and incorporated by reference, all such rules, regulations or policies being referred to herein as the *Policies*.

3.4 may engage personnel, such as accountants, legal advisors, financial advisors and other consultants, and to do such other acts and incur such obligations as the Trustee deems necessary, advisable or incidental to the conduct of the business or affairs of the Trust Fund;

3.5 may commence, defend compromise, submit to Arbitration or otherwise deal with any claim, action or proceeding in connection with the Trust Fund;

3.6 shall file returns required by any governmental or like authority;

4 Term of the Trust

4.1 The Trust Declaration shall be continued until such time as the Trustee determines that the Trust is no longer required to carry out the purpose for which it was established. The Trust Declaration may then be terminated by a declaration in writing duly executed by the ACTRA Executive Board in accordance with the ACTRA Constitution and By-Laws.

4.2 In the event of the termination of the Trust Fund the Trustee shall firstly, apply the funds for the benefit of the beneficiaries of the Trust Fund, secondly, should there be any surplus remaining, the Trustee shall distribute and apply such surplus in such a manner as will, in its opinion, best effectuate the purpose of the Trust Fund, provided however that no part of the Trust Fund shall be used or diverted other than for the exclusive benefit of Minors, their families or administrative expenses of the Trust Fund.

4.3 Upon termination of the Trust Fund in accordance with this Article, the Trustee shall forthwith notify all necessary parties and the Trustee shall continue as a Trustee for the purpose of winding up the affairs relating to the Trust Fund.

5 **Executive Committee**

5.1 The Trustee, acting through its Board of Directors, at its discretion, may appoint an Executive Committee comprised of such individuals as the Board may from time to time determine. The Executive Committee shall have a minimum of five (5) members with a majority of the said five being members of ACTRA in good standing. The Executive Committee shall exercise such powers as are authorized by the Trustee by resolution.

5.2 Subject to the terms of the By-laws of the Trustee, this Trust Declaration and the

resolution of appointment of the Executive Committee, the Committee may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit and may from time to time adopt, amend or repeal rules or procedures in this regard. Any Executive Committee member may be removed by resolution of the Trustee. Executive committee members shall receive no remuneration for serving as such, but are entitled to reasonable expenses incurred in the exercise of their duty.

- 5.3 The members of the Executive Committee, shall serve without compensation but shall be entitled to be reimbursed from the Trust Fund for all disbursements reasonably incurred in carrying out their responsibilities in carrying out the mandate provided to the Executive Committee by the Trustee.

6 Administrative Powers

6.1 The Trustee, acting through its Board of Directors and in accordance with the Articles of Incorporation and By-Laws, shall have the power and authority to:

- a. establish and administer the Trust Fund for the purposes of carrying out the terms of the IPA;
- b. retain any asset in the form in which it is received so long as the Trustee considers it advisable to do so subject to the laws of the Province of Ontario regulating the investment of trust funds by Trustees;
- c. sell or otherwise dispose of all of the assets under the control of the Trustee in such manner and upon such terms as the Trustee shall decide;
- d. lease or purchase any necessary materials, supplies and equipment and to retain and follow the advice of such investment and legal counsel, administrative, accounting, actuarial, clerical and other assistance as the Trustee shall decide is reasonably required in the performance of its duties, and to pay the costs thereof out of the Trust Fund;
- e. pay out of the Trust Fund all taxes levied or assessed under existing or future laws upon or in respect of the assets forming the Trust Fund;
- f. invest the assets comprising the Trust Fund in such investments as the Trustee sees fit subject to the laws of the Province of Ontario governing investments by Trustees. The Trustee shall have full power to make and retain such investments and reinvestment as in the Trustee's discretion is considered advisable and therefore to invest and reinvest the said assets in bonds, notes, debentures, mortgages, shares or interests in investment trusts and pooled mutual or common funds or any kind or character, certificates of deposit and keep such portion of the said assets in cash or cash balances as the Trustee may from time to time deem to be in the best interests of the Trust Fund, provided that the Trustee shall not be liable for any loss that may happen in connection with any such investment made in good faith in accordance

with Art. 8;

- g. utilize the services of banks, trust companies or other financial institutions, such as without limitation, the ACTRA Fraternal Benefits Society, for the purpose of holding all or part of the assets comprising the Trust Fund, managing the investment thereof and receiving income, issuing receipts and maintaining accounting records.

7 Records and Accounts

- 7.1 The Trustee shall establish and maintain true and accurate records and books of account of all proceedings and financial transactions but may delegate the preparation and maintenance of same.
- 7.2 The Trustee shall periodically (i.e. at least on an annual basis or as otherwise required) prepare or have prepared audited financial statements and the Trustee shall, upon request, make available to any ACTRA member a true copy of the financial statements.
- 7.3 ACTRA will treat the remittances to the Trust Fund as Performer remuneration payable to Minors under the terms of the IPA. The Trustee shall be responsible for determining whether any taxable benefit has been conferred upon the beneficiaries and shall have the power and absolute discretion to make allocations, elections and distributions as they shall deem in the collective interest of the beneficiaries and specifically any allocations and elections as may be necessary under the *Income Tax Act* of Canada and the provisions thereof enforced from time to time. In addition the Trustee shall be responsible for and file any tax returns or other reports as may be required by the *Income Tax Act* or other statute.
- 7.4 ACTRA will keep track of Minors' earnings in accordance with Art. A2716 of the IPA to determine whether and when the \$5,000.00 level of remuneration is reached by each Minor.

8 Liability of the Trustee

- 8.1 The exercise in good faith of any of the powers, authorities and discretion given to the Trustee by this Agreement shall not involve them in any personal liability notwithstanding any loss that may result therefrom to the Trust Fund.
- 8.2 Nothing herein shall protect the Trustee from liability arising out of wilful misconduct, bad faith or negligence, or entitle any Trustee to indemnification for any amounts paid or incurred as a result thereof.

9 Resolution by Arbitration

9.1 Any disputes which may arise in respect of the administration of the terms of this Trust Agreement concerning compliance with the Agreement and the rules promulgated hereunder shall be determined in accordance with the *Arbitrations Act* R.S.O. 1990.

10 General Provisions

10.1 This Trust Declaration may not be modified, amended, cancelled or in any way altered, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and executed by ACTRA and the Trustee.

10.2 In construing this Trust Declaration when the context so requires, the masculine gender shall be read as if the feminine gender were expressed together with any necessary grammatical changes.

10.3 If any provision of this Trust Declaration, or in the IPA or other Collective or like Agreement, be deemed or held to be unlawful, void, or for any reason, unenforceable, it shall be deemed severable from, and shall in no way affect the validity or enforceability of, the remaining provisions hereof or thereof, which shall remain valid and enforceable according to their terms. If such illegality shall make impossible or impractical the functions of the Trust Fund ACTRA shall have the option of either terminating this Trust Fund or adopting a new provision to take the place of the illegal, void or unenforceable provision.

10.4 The recitals above set forth are incorporated herein by reference. Each recital of fact concerning a party shall be conclusive as between the parties hereto.

10.5 **Governing Law** This Trust Declaration was made in the Province of Ontario, and its validity, construction, interpretation and legal effect shall be governed by the laws and judicial decisions of Ontario.

10.6 **Choice of Forum** Any action at law or in equity arising under this Agreement shall be filed only in the Courts of the Province of Ontario.

11 Consent

11.1 The Trustee agrees to act and deal with Trust Fund in accordance with the terms of this Trust Declaration.

IN WITNESS WHEREOF the **Declarant** and the **Trustee** have hereunto set their hands and seals which shall signify the agreement of the parties.

ACTRA Performers' Guild, per:

Stephen Waddell
National Executive Director

ACTRA Performers' Rights Society, per:

Mercedes Watson
Executive Director

ACTRA Minors' Trust Fund

Policy No. 1: Management of Trust Accounts for Individual Minors

The terms of this Policy shall govern the management of the funds received in Trust by the ACTRA PRS for the benefit of the individual Minors who are the beneficiaries of the Trust.

- 1 An individual account shall be established for each Minor who is a beneficiary of the **ACTRA Minors' Trust Fund** by virtue of having been engaged and paid remuneration under the Independent Production Agreement.
- 2 The said individual accounts for each Minor shall be opened and maintained with the Actra Fraternal Benefit Society (AFBS). The investment strategy to maximize the return on the funds in each individual account, consistent with the Trustee's obligations in its capacity as Trustee, shall be based on the expert advice received from AFBS, subject to the approval of the Trustee.
- 3 The Trustee shall keep the trust funds for each beneficiary invested and shall add the net income therefrom to the capital until the beneficiary ceases to be a Minor under the terms of the IPA, (in the current version of the IPA this occurs when a Performer reaches the age of eighteen (18) years) at which time total amount of capital and income accumulated thereon shall be paid to the beneficiary for his or her own use absolutely. If the Minor dies before attaining majority, the Trustee shall pay such capital and accumulated income to his or her personal representatives

ACTRA Minors' Trust Fund

Policy No. 2: Rules for making an Application for a Withdrawal of Trust Funds prior to the Minor ceasing to be a Minor.

- 1 The policy of the ACTRA Performers' Rights Society, in its capacity as Trustee, shall be to allow the withdrawal of Trust Funds by a Minor in very limited circumstances, which are outlined herein.
- 2 The Trustee shall not provide any Producer with an exemption from the obligations to remit the stated portion of a Minor Performer's fees under the terms of Art. A2716 the IPA, except as provided herein. Provided the Board issues an affirmative decision in respect of an Application made under the provisions of para. 3.3 a Producer engaging the Minor shall be provided with a waiver by the ACTRA Performers' Guild in respect of Art. A2716.
- 3 A Minor, by his or her Parent, Guardian or person in loco parentis, may make an Application for the early withdrawal of all or a portion of the Trust Funds held on the Minor's behalf, on the form attached as *Appendix A*, on the following grounds:
 - 3.1 the Minor requires the amount set out in the Application for his or her personal education or professional development and the inability to access the Trust funds would jeopardized the Applicant's educational or professional development;
 - 3.2 the Minor requires the amount set out in the Application due to a medical, psychological or like problem;
 - 3.3 the Parent, Guardian or person in loco parentis of a Minor can demonstrate to the Trustee's satisfaction that a subsisting and irrevocable *inter vivos* Trust has been established for the Minor, the terms of which provide that at least 25% of the Minor's gross remuneration from each engagement (inclusive of Use Fees) covered by the IPA is set aside and held in trust for the Minor until he or she ceases to be a Minor. In order to be eligible under this provision the Parent of Minor must provide a Statutory Declaration of a Barrister & Solicitor in the form attached as *Appendix B*.
 - 3.4 the Minor requires the amount set out in the Application to deal with unforeseen circumstances which create an extraordinary requirement for the funds;
- 4 An Applicant may only submit one Application per 12 month period.
- 5 The Trustee shall establish a Committee to receive and review each Application and the Committee shall make recommendations as regards the disposition of each Application, for review and approval of the Board, which shall have the right and obligation to make the final decision.

- 6 The Committee shall have the right to establish written procedural rules not inconsistent with the Trust Declaration and the Policies. The Committee shall conduct its enquiry in any manner it sees fit and shall not be required to act judicially. However, the Committee does have the right to request and review written submissions, call and hear witnesses, and undertake any other appropriate form of fact finding.
- 7 The Decision of the Board is final and binding and may not be challenged in any manner.

Appendix A

Application for the early withdrawal of Trust Funds

Name of Minor		Date of Birth:
Name of Parent		
Address of Minor		☎
Address of Parent (if different)		☎
Amount of withdrawal requested on behalf of Minor		\$
Date funds Are required		
Basis of Request:	<input type="radio"/> Educational or Professional Development	
	<input type="radio"/> Medical or Psychological Needs	
	<input type="radio"/> Existence of Alternative Trust Fund	
	<input type="radio"/> Other	
Reasons for the Application & the grounds justifying the early withdrawal		

If more paper is required please attach. Please provide all relevant documentary evidence, such as course outlines, medical reports, affidavits or the like.

For office use:

Date received:		Acknowledgement sent on:
Amount in Individual Trust Account:	\$	
Committee Recommendation	Approve Withdrawal <input type="checkbox"/>	Disapprove Withdrawal <input type="checkbox"/>
Board Decision	Approve Withdrawal <input type="checkbox"/>	Disapprove Withdrawal <input type="checkbox"/>

Appendix B

DOMINION OF CANADA	In the matter of an Application for early withdrawal of Trust Funds submitted on behalf of:
PROVINCE OF _____	(Name of Minor)
—	by:
	(Name of Trustees)
	on: (date)

I, _____, of the City of _____, Province of _____

do solemnly declare:

- 1 That I am a Barrister & Solicitor and that I have personal knowledge of the facts and statements contained in this Statutory Declaration
- 2 I am personally acquainted with the Minor (named above), and with the Trustees of the Trust Funds established in favour of the Minor, (named above).
- 3 I state that a Trust Fund has been established in favour of the Minor, and that the terms and conditions of such Trust Fund provide that:
 - a. at least 25% of the gross remuneration payable to the Minor in respect of any and all engagements under the ACTRA Independent Production Agreement is remitted to the Trustee to be held in trust for the Minor;
 - b. the terms of the Trust provide that the Minor is not entitled to in any way utilize or have access to directly or indirectly, the funds in the Trust Fund, until, at the earliest, the date the Minor reaches the age of 18 years;
 - c. the Trust was established on the date noted above;
 - d. the Trust was established by the Trustees names above;
 - e. the relationship between the Minor and the Trustee(s) is:

—
- 4 On the basis of an investigation I have conducted for the purposes of completing this Statutory Declaration, I am satisfied that:

- a. the Trust that was established for the Minor is irrevocable;
- b. the purpose of the Trust is to benefit only the Minor,
- c. the Trustee(s) are in compliance with all their legal requirements in respect of the investment of the Trust Funds;
- d. the Trustees have filed tax returns on behalf of the Trust and that the Trust is in full compliance with the provisions of the Income Tax Act.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the)
 City of _____)
 Province of _____)
 Date: _____) _____
)
)

A Commissioner etc.