

# STAKE YOUR CLAIM



Ontario may let companies use crowdfunding sites to offer equity in their projects, opening the door to greater financing opportunities.

BY MIRELLA CHRISTOU

Crowdfunding has proven to be a boon for many a film and digital project, including last year's Canuck success *Indie Game: The Movie* and this spring's record-breaking Kickstarter campaign for a film version of *Veronica Mars*.

It could soon be an even greater money-raising tool for the Canadian content industry if provincial regulators, led by Ontario, clear the way for a new crowdfunding model – offering equity-stakes in companies and projects online. If the change takes place, indie producers could offer more than just the usual fanboy perks of t-shirts and exclusive DVDs of the project. Instead, they can offer a part of the business or monetizable project itself. However, the very nature of online crowdsourcing – that the money raised could come from anywhere in the world – could bring with it negative tax-credit implications for producers.

Crowdfunding, often aided by social media campaigning, is definitely on the upswing. Transactions through sites

Don't let a little crowdfunding scare you. Director-producer Sean Cisterna raised \$17,000 through Hot Doc's Doc Ignite platform for his doc *30 Ghosts* (pictured).

such as Indiegogo and Kickstarter are projected to hit a whopping \$5 billion in 2013, almost doubling 2012's total of \$2.7 billion, according to Los Angeles-based research firm Massolution. While data on the number of Canadian transactions is hard to come by, Canada is Indiegogo's second largest market after the U.S.

The Ontario Securities Commission (OSC) recently completed public consultations on its equity crowdfunding proposal (see page 20 for details). If approved, regulations would be put in place to make the practice legal for Ontario-based indie production companies (and others). According to director-producer Sean Cisterna, who

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recently raised \$17,000 to complete his documentary *30 Ghosts* using Hot Docs' Doc Ignite crowdfunding platform, the proposed OSC changes would exponentially widen the potential pool of investors able to participate in his productions.

The interest is there, he asserts.

As part of his project-financing work he spoke to industry veterans and companies to get their input on his crowdfunding plans. Some of them would like what they were hearing so much that they'd want to be involved. "Occasionally they'll want an equity position in the project, as opposed to a t-shirt, DVD and autograph combo pack, and I'll have to forego the opportunity," recounts Cisterna, who also raised \$7,000 or about 10% of the budget for his feature film *Moon Point* on Indiegogo in 2011.

When the changes would come to pass is difficult to pin down. Though the OSC has made equity crowdfunding one of its top priorities this year, it won't discuss when, or even if, the necessary regulatory changes would come about.

### JOBS SECURITY

The OSC is closely watching developments south of the border, where the Jumpstart Our Business Startups (JOBS) Act made equity crowdfunding legal in the U.S. a year ago. However, regulator-level changes there have been held up at the Securities and Exchange Commission, the body that must make and enforce the rules to allow equity crowdfunding while also safeguarding against fraud.

No doubt the OSC is waiting to take cues from the globally influential SEC. Provincial securities regulators in Quebec and Alberta are also said to be considering making equity crowdfunding possible.

The risk of fraud from this kind of crowdfunding appears to be low. In the U.K., Australia and Netherlands, where equity crowdfunding has been legal for several years, no incidents of fraud have been reported.

But with the possible opportunity for producers comes a complication, observes Karen Thorne-Stone, the CEO of the

Ontario Media Development Corporation, the body that helps manage Ontario's tax credits in the media realm.

The complication is that an influx of non-Canadians buying stakes in a project puts at risk that project's ability to access tax credits.

The Canada Media Fund (CMF) also cautions that if a project's crowdfunded shareholders are not mostly Canadian, there is the risk that it loses its Canadian ownership. That would be a serious problem.

"Applicants to our programs must be Canadian companies under Canadian control," says Catalina Briceno, the fund's director of industry and marketing trends.

Thorne-Stone adds "It's important to make sure that if the OSC goes forward with an exemption on equity crowdfunding, that we fully understand how it works with tax credits and that we plan for and mitigate any potential negative consequences before they happen."

Using social media to get the crowd interested in project or company equity can also be a tricky matter. Despite the rise in social media, the Canadian Securities Administrators, a national body of all the provincial financial regulators, has no plans to ease the rules that effectively ban using Twitter or Facebook to promote equity offerings. However, an OSC representative noted that a common workaround for this problem is to issue a press release about an equity offer, as you can use social media to raise attention of the release.

Crowdfunding platforms such as Indiegogo are watching the OSC closely. If Ontario opens the door to equity funding, the San Francisco-based company will quickly add features and functions so Canadian producers can take advantage of it, Indiegogo co-founder Danae Ringelmann tells *Playback*.

With the opportunity to use crowdfunding sites to help tap into potential funds from around the world comes a complication: the risk a production loses its status as Canadian owned and hence access to provincial tax credits.

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## FUNDING

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Here are the main points in the Ontario Security Commission's equity crowdfunding proposal:



**The issuer of shares must be a Canadian with the business headquartered in Canada.**

**The equity issue is limited to a total of \$1.5 million in a 12-month period.**

**The issuers can only advertise the share offering on their company website or the funding portal's website.**

**While directly raising attention for an issue via social media is prohibited, the issuer can direct investors to the funding portal or the issuer's website using social media.**

**A registered funding portal must be used, and it must have fraud-prevention safeguards in place.**

**The purchaser must sign a risk acknowledgement form and has a two-day window to consider withdrawing from the investment.**

**A single purchase may not exceed \$2,500 and total no more than \$10,000 per year in one company or project.**

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