CFTPA

Representing television, film
and interactive production in Canada

ACPFT

Porte-parole de l'industrie de la production
cinématographique, télévisuelle et interactive au Canada

Review of the Canadian

Broadcasting System

by the

Standing Committee

on Canadian Heritage

Submission by the

Canadian Film and Television Production Association

10 September 2001

INTRODUCTION

The Canadian Film and Television Production Association (CFTPA) is pleased to participate in the Standing Committee on Canadian Heritage's assessment of the state of the Canadian broadcasting system. We consider this a worthwhile and timely exercise, and request an opportunity to appear before the Committee to expand upon the views set out in our submission.

The CFTPA represents the interests of almost four hundred companies engaged in the production and distribution of English-language television programs, feature films and interactive media products in all regions of Canada. The Association also has an important responsibility to the creative guilds by tracking rights and making the appropriate compensation to the creative talent employed in the making of our productions.

Our members create high quality, innovative television productions that are broadcast on Canadian television, pay and specialty channels and enjoyed by audiences around the world.

Independent producers work in a broad range of program genres and formats to give expression to Canadian stories, interests and concerns from the perspective of our own experiences and in the context of our unique culture and geography. Just a partial list of current drama, children's and documentary programs includes the following:

The Associates	Alliance Atlantis	CTV
Blue Murder	Barna-Alper Productions	Global
Bob and Margaret	Nelvana	Global

Children of My Heart	Buffalo Gal Pictures/Tapestry Films	A Channel/TMN
Cold Squad	Keatley MacLeod Productions	CTV
DaVinci's Inquest	Barna-Alper/Haddock Entertainment	CBC
DeGrassi, The Next Generation	Epitome Pictures	CTV
Franklin	Nelvana	CBC/Family Channel
Incredible Story Studio	Mind's Eye/Vérité Films	YTV/Disney/SCN
Lucky Girl	Triptych Media/Alliance Atlantis	CTV
Made In Canada	Salter Street Film	CBC
Mentors	Minds Eye/Anaid Productions	Family Channel
The New Addam's Family	Shavick Entertainment	Global/Fox
North of 60	Alberta Filmworks Inc.	CBC
Ollie's Under the Bed Adventures	Collideascope Digital	Teletoon
Paradise Falls	Breakthrough Entertainment	Showcase
Profiles of Nature	Ellis Vision	Discovery
Queer as Folk	Temple Street Productions	Showcase/Pridevision
Random Passage	Passage Films	CBC
Sagwa, The Chinese Siamese Cat	Ciné Groupe	Showcase
Tale of Teeka/L'Historie de l'oie	Galafilm	CBC
This Hour has 22 Minutes	Salter Street Films	CBC
The Toy Castle/Le Chateau Magique	Treehouse Sound Venture Productions	TFO/TVOntario
Treks in a Wild World	Sextant Entertainment	Outdoor Life

Turning Points of History	Barna-Alper Productions	History Channel
Worst Witch	Galafilm	YTV/SRC/TFO

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We have provided these program titles as a means of illustrating to the Committee and other interested parties that the independent production community is a vital component of the Canadian broadcasting system. Our broadcast partners, who exhibit and promote our programs, often claim our programs as their own. We want to make it perfectly clear that it is the independent producers who create these shows. It is our work and we are proud of it.

CFTPA'S approach

The terms of reference document indicates that the Committee is seeking input on the present and future state of Canadian content and cultural diversity within the Canadian broadcasting system. The focus of our presentation is a review of the roles of the various participants in the broadcasting system, particularly with regard to the creation and presentation of original Canadian programming.

Our assessment begins with a brief review of the Broadcasting Act and the guiding principles it has established for the Canadian broadcasting system. We also delineate the realities and dispel certain myths related to the economics of Canadian program creation amidst the challenges of the rapidly evolving communications environment. Our submission discusses the impact of government and CRTC policies as well as the financial support structures provided by the cultural agencies in developing and sustaining an indigenous program production industry that has achieved a considerable measure of success with both domestic and international audiences. We demonstrate that the independent production sector is a, if not THE, most important vehicle for achieving the goals that have been set by government, of achieving quality Canadian programming and cultural diversity within the Canadian broadcasting system, at a reasonable cost.

We conclude with a recommendation that the Committee explore with participants in this proceeding how best to achieve the objectives of the governing legislation. In our view, this requires an understanding of the business realities of program creators and of broadcasters, and greater coherence among the various public policy initiatives and support structures that sustain the system.

To assist the Committee in its research, we have appended three studies commissioned by the CFTPA - a review of significant CRTC broadcast regulations, policies and decisions; an assessment of the economic impact of the Canadian Television Fund; and trends in audience viewing.

THE BROADCASTING ACT

The scope of the Committee's analysis includes a review of key aspects of the 1991 Act to ascertain whether it "remains an effective instrument" for the CRTC to deal with the challenges facing the broadcasting industry, in view of the increasing push towards globalization and advances in new communications technologies.

The existing legislation is largely based on recommendations of the Report of the Task Force on Broadcasting Policy (the Caplan-Sauvageau Task Force), which had been tasked by an earlier House of Commons Standing Committee to review the previous statute, the 1968 Broadcasting Act. The 1991 Act was clearly intended to provide a policy framework and regulatory objectives for the Canadian broadcasting system for many years to come. It was carefully worded to be technology neutral and obliges the CRTC to be flexible and adaptable in exercising its regulatory and supervisory powers.

The blueprint for the Canadian broadcasting system is set out in the twenty statements that comprise Section 3 of the Act. These clauses enumerate the particular responsibilities and obligations imposed on the broadcasting system and on the programming and distribution undertakings that are licensed to provide service to Canadians.

The Act clearly states that the Canadian broadcasting system "shall be effectively owned and controlled by Canadians". All elements of the system - the CBC, private networks, under-takings providing service to particular cultural or language groups, as well as educational and community broadcasters - are charged with the task of contributing to the creation and presentation of Canadian programming. Each individual broadcast undertaking is required to make "maximum use, and in no case less than predominant use" of Canadian creative and other resources in producing and exhibiting Canadian programming. Recognition is given to the different characteristics of and conditions in which French and English-language broadcasting operate. Regional needs and concerns are to be taken into account. Finally, we note the specific provision that the programming provided by the Canadian broadcasting system should "include a significant contribution from the Canadian independent production sector".

The CFTPA contends that Canadian content is the key distinguishing feature of our broadcasting system. It is only through the continued presence, in significant amounts, of quality Canadian programming that we can be assured that a distinctive Canadian broadcasting system will continue to exist in the future. This is the essential and compelling tenet of the current legislation, as it was of the previous Act.

> We are satisfied that the general principles in the 1991 Act continue to serve as a valid articulation of the objectives of the Canadian broadcasting system. The powers accorded the CRTC are adequate and appropriate. The language of the legislation is technologically neutral and thus adaptable to future developments. In the view of the CFTPA, the legislation does not need to be changed.

To understand how the broadcasting policy operates on a practical level, it is useful to examine the participants in the system and their respective roles in fulfilling the obligations set for them in the legislation.

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THE PARTICIPANTS IN THE CANADIAN BROADCASTING SYSTEM

The Canadian broadcasting system has evolved over the years into a multi-faceted arrangement consisting of disparate parties discharging a complex series of structural and regulatory measures designed to fulfill Canada's broadcasting policy. In assessing the role of Canadian content within the Canadian broadcasting system, it is important to understand the key components of the system and their inter-relationships. What follows is a brief summary of the roles of government, the CRTC, broadcasters, producers and cultural policy, from the perspective of their respective contributions to the creation and presentation of Canadian programming.

GOVERNMENT

The first element is the Government of Canada. Parliament enacts the governing legislation. It has created two federal departments - Canadian Heritage and Industry Canada - who share responsibility for supervising the broadcasting and telecommunications elements of the Canadian broadcasting system. Parliament has also established the Canadian Broadcasting Corporation/Société Radio-Canada (CBC) as the national public broadcaster, and imposed more exacting obligations on it than are required of private broadcasters. And through oversight of departmental and agency budget estimates, Parliament exercises control over planned programs and initiatives as well as the available resources.

Thirty-five years ago the Government decided that it was important for Canada to develop its own production industry. The creation of the Canadian Film Development Corporation (CFDC, later Telefilm Canada) in 1968, with a mandate to build an independent production industry in this country, was the first initiative in this direction. In the same year, the Government established the CRTC, to regulate and supervise the Canadian broadcasting system in accordance with the broad policy objectives set out in the legislation.

Through Cabinet, the government exercises the power to give broad policy direction to the CRTC within certain limitations, as well as the power to set aside decisions taken by the Commission or to refer matters back to the Commission for reconsideration. Through its power of appointment, Cabinet designates the Chairperson and Commissioners of the CRTC; the President, Chair and Members of the Board of Directors of the CBC; and the Executive Director, Chair and Board members of Telefilm Canada. This confers on the government a direct responsibility for putting in place the key persons who direct and manage essential components of the broadcasting system. In addition, the government appoints the justices who serve on the bench of the Federal Court of Appeal. It is this body to which parties may seek consideration, on matters of law or jurisprudence, on decisions or orders issued by the CRTC and the Copyright Board.

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CANADIAN RADIO-TELEVISION and TELECOMMUNICATIONS COMMISSION (CRTC)

The CRTC is charged with regulating and supervising all aspects of the Canadian broadcasting system so as to implement the policy statements enunciated in the Act. It is empowered among other things to issue (as well as renew, suspend and revoke) broadcast licenses; to make regulations and orders; to publish policy statements and guidelines; to conduct inquiries; and to require the submission of information regarding the programming and financial operations of broadcasters.

With respect to Canadian content obligations, the Commission issues broad regulations particular to a class of license (i.e., conventional television stations or specialty programming services). In addition, in issuing and renewing broadcast licenses, the CRTC has the power to attach terms and conditions particular to the circumstances of each licensee.

To assist the Committee in its understanding of the numerous requirements imposed on licensed Canadian broadcasters, we have prepared a chart entitled "Key Decisions Affecting the Independent Program Production Industry" and a paper entitled "CRTC's Regulation of English-Language Television" (set out below as **Appendix A**). The table summarizes the major elements of some thirty CRTC policies and decisions that have particular significance in terms of Canadian content creation and presentation and provides commentary, from the production industry's perspective, as to their outcome and impact.

The discussion paper outlines briefly the various regulatory mechanisms used by the CRTC over the years to ensure that Canadian stories, voices and experiences are readily available to Canadian viewers. The Commission has used different approaches and tools, reflecting the environment of the day and the degree of sophistication of the evolving industry sectors. In general, the CRTC's approach has been in step with government policy - to develop sustainable Canadian broadcasting and production industries. The major components of Canadian content regulation imposed on the various sectors of the broadcast industry include:

- Minimum baseline Canadian content exhibition requirements for television stations (early 1970s) and for pay television operators (early 1980s). In addition, CRTC has imposed specific exhibition and/or expenditure obligations on TV networks and station ownership groups, at licenses renewal and in its consideration of ownership transactions.

- More ambitious requirements are imposed on the CBC, which is supported with public funds and has been mandated by Parliament to provide service in English and French throughout Canada with distinctively Canadian programming that reflects Canada, its people, and the regions to national and regional audiences.

- The 1975 cable regulations required that a majority of the channels received by a subscriber must be devoted to the distribution of Canadian programming and accorded priority carriage rights to local and regional television stations. The CRTC also introduced the practice of simultaneous substitution and tiering and linkage rules. These initiatives have assured pride of place for Canadian stations and protected the revenue base of Canadian television operators.

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- In the 1980s, the CRTC codified a point system for Canadian programs in the "under-represented" categories of drama, children's, documentary and music/variety programming. Points are assessed on the basis of the nationality of those performing key creative and craft functions. Bonus time credits (150%) were awarded for 10-point drama and children's programming.

- Canadian programming exhibition and expenditure requirements for specialty services are based on commitments by the undertakings and vary with the nature of their program offering. Services accorded the widest distribution via cable were required to meet or exceed the Canadian content exhibition requirements of conventional television stations.

- In 1993 the CRTC codified how it would assess "benefits" in ownership transactions. As the larger cable companies sought to consolidate their exclusive territories with swaps and takeovers, several committed to provide financial support for Canadian program production. Tens of millions in annual commitments towards the creation of future programs have also been offered in recent television ownership applications, notably CanWest's acquisition of the WIC television stations and BCE's purchase of CTV.

- A structural review of the industry in 1993 and revised broadcast distribution regulations in 1997 explicitly required cable and satellite services to contribute to the creation and presentation of Canadian programming. This has resulted in the Canadian Television Fund (CTF), Canada's most important production funding support mechanism.

BROADCASTERS

From the perspective of the Canadian independent production sector, the single most important element of the Broadcasting Act is its encouragement of the development of Canadian expression through a wide range of programming that serves the needs and interests of Canadians. This provision ensures that Canadian resources are used to display our creative talents as storytellers, actors and performing artists and that our information programs analyze events from a Canadian perspective.

It is evident that Canadian broadcasters are the most important outlet for Canadian television programs. Independent producers work with all types of television broadcasters - the CBC and private conventional television stations, specialty and pay television services, and educational broadcasters - to create distinctive Canadian programming from all regions of the country.

The CBC, in particular, plays a vital role as a domestic showcase for high quality, distinctively Canadian television programs. As the national public broadcaster, It is specifically mandated to strengthen Canadian identity by exhibiting programs that reflect Canada's diverse cultural experience. Virtually its entire prime time schedule is committed to Canadian programs. While the CBC continues to produce news, sports and public affairs programs in-house, it has made a strong commitment to independent producers. In 2000, more than 90% of the CBC programs exhibited on the English-language television network in peak evening viewing hours were acquired from the independent production sector.

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On the basis of the Act's injunction that broadcasters must make "predominant" use of Canadian resources in the creation and exhibition of Canadian programming, the CRTC generally requires privately-owned conventional television broadcasters to exhibit a minimum of 60% Canadian content over the broadcast day (defined at 6 am to midnight), with a minimum of 50% during the evening (6 p.m. to midnight).

The various financial support structures outlined below make it possible for broadcasters to licenses programs from independent producers for an amount that represents a portion, ranging from 15-35%, of the total cost of the production.

In June 1999, the CRTC issued a revised policy framework for conventional television broadcasters, according particular obligations on those corporate ownership groups whose stations reach a "national" (75%) share of the English-language audience (CTV and Canwest/Global). Smaller groups (CHUM and Craig), that are deemed to have regional reach, have slightly lower requirements. The policy permits the station groups a large degree of latitude to establish distinctive offerings on their respective television stations, requiring them to air a minimum number of hours of "priority" programming between the hours of 7 and 11 p.m..

(The CRTC slightly revised what types of programming would be considered eligible, adding certain types of regional programming and entertainment magazine programs to the traditional under-represented categories of drama, documentary, children's and music/variety programming.)

Total spending on Canadian independent productions by Canada's private television broadcasters totalled $71.7 million in 1997-98 and $87.5 million in 1998-99.

The specialty programming segment of the Canadian broadcasting system has grown exponentially in recent years, with the licensing of tiers of channels in 1984, 1987, 1994, 1996 and the December 2000 announcement of a framework for the new digital pay and specialty services which are being launched starting this fall. Many specialty broadcasters have similar exhibition requirements to those imposed on private television broadcasters, although their actual obligations take into account the genre of programming featured on the channel and the availability of Canadian programming in that genre.

While some niche programming channels have relied heavily on archival Canadian programming to fulfill their Canadian content requirements, others have proven to be strong collaborators with independent producers to ensure that their schedules contain innovative, diversified and popular Canadian programming choices.

In 1998-99, specialty channels spent $115.7 million on Canadian program acquisition, up from $94.8 million the previous year. During the same time period, pay television services spent nearly $12 million on Canadian programming, a decrease from $14.2 million the previous year.

PRODUCERS

Independent producers bring to the creation of programs a unique combination of business and creative skills. Their role involves taking a program idea or concept through a myriad of development and production stages through to completion. They are responsible for putting together the team of people (scriptwriter, director, production designer, director of photography, performers, music composer, editors, the production crew and post-production lab crafts people) who will turn the concept into a completed program.

Producers are responsible for financing the production, for budgeting and for contracting the services of creative and craft talent in accordance with negotiated guild and union contracts. They negotiate broadcast distribution rights. They exercise financial and creative control over all aspects of the program, from beginning to end, and bear full responsibility for ensuring that the production is realized. In return, they hold copyright in the production.

Up-to-date financial indicators on the performance of the Canadian film and television production industry indicate that the industry has grown nearly 130% over the last seven years, from just under $2 billion to more than $4.4 billion in total production activity in 1999-2000. It is one of the fastest growing sectors of the Canadian economy - growing at an average annual rate of 9.1% from 1995 to 1999. Employment has increased at an average rate of 13.4% over the past five years, making the sector a significant contributor to job creation. Film and television production is labour-intensive, and its workforce includes highly skilled crews, creative talent (writers, performers, directors, editors) and business managers.

Independent production represents the largest portion of the $4.4 billion in total activity, accounting for more than $2 billion. English-language independent production activity in the television sector totalled $1.067 million in 1999-2000, with a further $375 million in French-language production.

Foreign location shooting - productions shot in Canada for US studios and independent producers - last year represented $1.5 billion. In-house production by broadcasters represents less than $800,000 and has remained relatively constant over the period. (This data is extracted from a study commissioned by the CFTPA from PricewaterhouseCoopers, which is included as **Appendix B:** "Assessment of the Economic Impact of the Canadian Television Fund".)

While Toronto, Vancouver and Montreal are the dominant production centres, there is significant production activity in all parts of Canada. Atlantic Canada and the Prairies have also developed strong regional infrastructures. As such the independent production sector plays a key role in the creation of original program content that serves the many cultural and social responsibilities imposed on broadcasters in the legislation. Because of our presence across the country, independent producers add to the diversity of voices and perspectives on our airwaves. Distinctively Canadian content has broad appeal to audiences bound by culture and geography. The strong production and social values of the programs we create also appeal to the international marketplace. In 1998-99, foreign pre-sales and distribution advances for Canadian independent productions totalled more than $450 million.

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CULTURAL POLICY

Recognition that Canadian content is key to our national identity and cultural sovereignty has also been the rationale for the various cultural support structures that have been put in place by federal and provincial governments over the years to nurture and enhance the visual and performing arts, the sound recording and publishing industries, broadcasting and film.

The Canadian Television Fund is a public/private initiative of the Government of Canada and the Canadian cable industry. Both parties contribute financial resources to support Canadian film and television. The CTF administers the License Fee Program (approximately $230 million annually), which is designed to top-up broadcast licenses fees for independent productions in the under-represented program categories of drama, documentaries, variety/ performing arts, and children's programming. To be eligible for support, generally a program must reflect Canadian themes and subject matter, be shot and set primarily in Canada and attain 10/10 points. The other component of CTF is the Equity Investment Program, administered by Telefilm Canada.

Telefilm Canada (formerly the CFDC) was established by the Canadian government as a means of building a Canadian production infrastructure to develop and promote Canadian audiovisual content. Its mission is to provide financial support for the creation and distribution, both within Canada and on the world marketplace, for high quality, distinctively Canadian productions.

The largest component of its financial support (about $100 million annually) is allocated for equity investment in eligible Canadian television programs supported by a broadcast licenses fee that meets certain thresholds, depending on the genre and location of production. Other initiatives support the creation and distribution of Canadian feature films and multimedia products. Telefilm also provides loan guarantees, assistance with versioning (the dubbing or subtitling of Canadian productions into one or both of Canada's two official languages) and with national and international marketing of certified Canadian productions. The agency also administers treaty co-productions, subject to the specific bilateral agreements that have been negotiated between Canada and more than forty foreign countries.

The Department of Canadian Heritage, through the Canadian Audio-Visual Certification Office (CAVCO), and the Canada Customs and Revenue Agency jointly administer a tax credit program for Canadian film and video productions, based on provisions in the *Income Tax Regulations*. The tax credit provides for a reimbursement of a portion of qualified labour expenditures (effectively, 12% of the cost of the production, net of assistance) for certified productions.

In addition, all of the provinces and the Yukon Territory deliver a wide range of financial support programs for television and film production and other cultural activities for eligible parties resident in the province. These initiatives include grants, interest-free loans, tax credits, development assistance, equity investment programs, loan guarantees to financial institutions, marketing and skills development support. Up-to-date details on the programs offered and eligibility requirements are published annually in the CFTPA's Guide to Television, Film and Interactive Production in Canada.

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AUDIENCE

A not-to-be-forgotten component of the broadcasting system is the Canadian viewer. Their program choices have enormous impact on what broadcasters choose to put in their program schedules.

The CFTPA has appended to this submission an assessment of viewing trends in English Canada (see **Appendix C**: "Trends in Canadians' Use of TV") commissioned from Canadian Media Research Inc. It indicates the continued relevance of television and of Canadian-made television programming to Canadians.

The findings provide a clear snapshot of the respective roles of public and private television, of conventional and specialty services. Information about the availability of Canadian programs in the under-represented ("priority") genres serves to underscore the significance of the simultaneous substitution provision to Canadian broadcasters.

CANADIAN VIEWING TRENDS

- Canadians watch an average of 22 hours of television each week.
- In 2000, Canadian private TV stations, pay and specialty services attracted a combined audience share of 61%, the CBC attracted 7% of viewers, and US stations accounted for 30%.
- Canadian programs account for about one-third of TV viewing overall but just one-fifth in prime time.
- Canadian pay and specialty services attract about one-third of the audience to Canadian programs. Private TV stations attract 47% of the viewers to Canadian programs, and the CBC 23%.
- Of total Canadian program expenditures, the CBC spends about $300 million, specialty and pay services about $360 million and private conventional TV about $390 million.
- The most popular types of programs with Canadians are those in the entertainment genres of drama, comedy and variety/music performance. These programs attract 60% of viewing time overall and almost 75% of viewing in prime time (7 - 11 p.m.).
- Foreign drama attracts almost ten times the number of viewers as Canadian drama, which is roughly proportional to the availability of foreign and Canadian drama on Canadian TV screens.

CANADIAN VIEWING TRENDS

- Canadian pay and specialty account for 38% of the audience to Canadian drama, higher than the 30% audience share achieved by private TV stations and the 25% attained by CBC.

- Given the wider availability of foreign drama, it is not surprising that the top 10 regularly scheduled drama series are American shows.

- While such programs attract from 1.5 million to 2.7 million Canadian viewers, it should be noted that these ratings include the combined viewing to both US and Canadian stations, under the simultaneous substitution provisions.

- By way of contrast, the most popular Canadian drama series in 1999-2000 attracted between 200,000 and 793,000 viewers.

- The popularity of Canadian specialty channels with Canadian audiences indicates a strong interest by viewers in services presenting themed programming streams.

- It is predicted that, following a similar trend in the US, viewing of English Canadian specialty channels will surpass audiences to conventional TV stations in 2001.

- Canadian specialty channels play a significant role in the other types of priority programming.

- They provide more than 50% of the audience for documentary and children's programming and attract 60% of the audience to Canadian variety and music programs.

- Canadian children's programming is very popular with its intended target audience and is one of Canada's biggest success stories. Young children (2 to 11) watch Canadian entertainment programs at three times the Canadian average.

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THE ECONOMICS OF CANADIAN PROGRAM CREATION

Effectively, the Canadian broadcasting system is an elaborate scheme of checks and balances whereby the various stakeholders in the system - the CRTC, the broadcasters, the distribution undertakings and the program creators - all have a role to play in ensuring that the policy goals of the Canadian broadcasting system are achieved.

The CRTC licenses broadcasters to serve a particular market or territory or to provide a certain type of programming service. In exchange, the broadcaster must meet certain regulatory obligations - the exhibition of Canadian programming for broadcasters, or the requirement for delivering a predominance of Canadian signals which is imposed on cable and satellite distributors. The Commission exercises control over its licensees through its ongoing supervisory functions and, primarily, because the licensees return to the CRTC on a regular basis for renewal of their undertaking licenses and to provide input to regulatory and policy proceedings.

While the Canadian independent production sector is recognized in the Act as a key contributor to the programming provided by the Canadian broadcasting system, with the exception of a few companies that have successfully applied for and been granted specialty licenses, producers are not broadcast licensees. As such, producers are at somewhat of a disadvantage in terms of their status, rather like the owners of common shares observing the proceedings at an annual general meeting where the preferred shareholders have voting control.

The reality is that, other than news, weather, sports, public affairs and other information programs that are produced in-house, private television broadcasters and most specialty services depend upon the independent production sector to meet their Canadian content levels. Significantly, it is the independent production sector that provides broadcasters with the high-cost drama, documentary and performance programming they need to fulfill key components of their prime time "priority" Canadian programming exhibition requirements.

In discussing how the broadcasting system can meet the Act's expectations for quality programming that gives voice to uniquely Canadian stories and experiences, it is essential to have a clear understanding of the economic realities of Canadian program creation. This means debunking certain myths that have taken on the stature of truth over the past several years.

Debunking Myth # 1:

The Broadcasting Act is NOT just for Broadcasters

In some quarters, there is a belief that the 1991 *Broadcasting Act* is only relevant to the broadcast programming and distribution undertakings whose responsibilities are enumerated in the legislation. This is patently untrue. The legislation speaks to, and on behalf of, all Canadians. It starts with the premise that the Canadian broadcasting system is an essential public service. And the regulator is enjoined to manage and supervise the broadcasting system "in the public interest".

BROADCASTERS HAVE "STAKEHOLDER" STATUS

The regulatory *quid pro quo* - market protection in exchange for Canadian content obligations - and the requirement that broadcasters can only operate under a licenses granted by the CRTC, means that a certain "stakeholder" status has been accorded to Canadian broadcast programmers and distributors. Indeed, the changing interests and business realities of the broadcasters themselves often seem to take precedence, rather than the programming they offer.

As noted above (and set out in more detail in **Appendix A**), a number of measures have been put in place over the years to protect the bottom line of Canada's broadcast licensees. In recent years, we have seen the largest players become even larger. In doing so, they have diversified their media interests, both domestically and internationally, often in areas that fall outside regulatory control.

INTERESTS OF BROADCASTERS ARE CHANGING

Independent producers have consistently stated that we are not opposed to growth and integration, since we recognize that such transactions can develop strong Canadian communications companies able to ensure the provision of high quality Canadian programming. Nevertheless, we are concerned that new business imperatives, particularly when broadcast interests may form but a small segment of the corporate structure, could divert management attention and resources away from original Canadian programming content.

Producers and broadcasters have a symbiotic relationship. Broadcasters are programmers. They contract to exhibit programming, strive to schedule and promote so as to achieve audience (and advertiser) support. Canadian broadcasters have been big boosters of the independent production sector. However, their financial interest is best served when they spread their spending over the greatest number of lower cost imports.

Two of the Canada's private broadcasters have, in recent years, been permitted to substantially increase their size and scope within the broadcasting system. At their recent network renewal hearings, both CTV and Global acknowledged the importance to them of Canadian programming and of their partnership with independent producers in achieving the objective of attracting larger audiences to quality Canadian programming:

> "Our goal at CTV is simple, and it is difficult. We want more people to watch our Canadian programs. We want to erase the difference between good business and good popular culture. We want to produce and present high quality, high audience mainstream news and entertainment…. We can build [on recent audience achievement in attaining the number one position in average audiences for Canadian drama and comedy] with the powerful talents of Canadian producers, performers."
>
> Trina McQueen, President and COO, CTV (17 April 2001, Public Hearing Transcript, paragraphs 72, 98)

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> " … [T]he Global vision is to focus on quality Canadian episodic drama/comedy series, issues-driven documentary specials and pop-culture programming concepts. Our 16 hours a week of priority programs will include programs from independent producers from across Canada, such as those we have successfully aired over the past licenses term in our prime time schedule."
>
> Loren Mawhinney, VP Canadian Production, Canwest Global (18 April 2001, Public Hearing Transcript, paragraph 2250)

While there was considerable discussion during the hearing about the two applicants' respective future programming plans and commitments, it is also notable that significant attention both during the proceeding, in the intervention comments filed, and in the decisions themselves dealt with other matters. These included concerns about cross-media ownership and various requests for relief from or flexibility in respect of established CRTC policy in a number of areas.

BROADCASTERS WANT GREATER CONTROL OVER CONTENT

While budgets for Canadian programs have increased, it must be recognized that the production and publicity budgets for Canadian programs will never match those of the most expensive US series, which are financed by the Hollywood studios that now own all of the US domestic television networks. However, with sufficient investment, the "look" of Canadian productions has been enhanced. The programs are more appealing to viewers, and broadcasters are rewarded with increased advertising revenue.

Canadian production financing support is triggered by a commitment by a broadcaster to "license" a program from an independent producer. (For programs that participate in the financial support mechanisms provided by the CTF and TFC, minimum licenses fee criteria have been established, by program genre and location of production.) In paying a licenses fee, broadcasters acquire the right to air the production a certain number of times. In effect, the broadcast "rents" the program, with the producer retaining copyright in the production.

The producer is the driving force behind the production and exercises creative control over every aspect of it. This means oversight over all phases of the production process. The first order of business is developing the initial idea sufficiently that the concept can be pitched to broadcasters. As discussed above, it is this commitment, to licenses the program for a set number of plays over a prescribed period of time, which triggers other funding support.

The producer is responsible for everything from hiring the key creative team (director, writers, lead performers and other cast members) and technical crew to creation of the series "bible" with character design and wardrobe profile for each performer. It means approval of scripts and all script revisions, of the music, title theme, and even the placement, running time and content of opening titles and closing credits. The producer supervises rough and final cuts, as well as post-production lab work.

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In return, the producer is recognized as owning the program and, as holder of copyright in the completed production, retains control over its exploitation. Theoretically, then, the producer controls all aspects of the production. However, the reality is that, except in the case of off-the-shelf acquisitions, each investor in the production wants to have some measure of input to the creative process. The level of their intervention is tied to the amount of their investment. On this basis, equity investors have more clout than do other participants in the financing structure.

In cases where investors are providing financing over the course of production, they require rights of "creative approval" over virtually every significant aspect of the production. This includes approval of all key creative talent (writers, director, lead performers and other cast members, and music director) as well as scripts and all revisions, rough cuts and final cut, and a myriad of other details. Where the investor is a broadcaster, particularly if the broadcaster's licenses is for exclusive "first window" exhibition rights, it is expected that they will designate a representative to be present at all stages of the production. Often the broadcaster requires the right to designate a senior official of the company as executive producer of the production.

These are indications of an increased desire on the part of broadcasters to take more direct control over the content they exhibit. In some cases, this has meant acquiring a production company in order to create more programming in-house. In other cases, it means commissioning producers to create programs to order. In yet other cases, it means purchasing sports franchises in order to have ready access to hours of program content. Cross-media ownership is but one piece of the puzzle. Their strategies, however diverse, have one thing in common. Broadcasters want to own, not just acquire, the key strands of their program offering - news and information, sports, and entertainment.

We have noted earlier that Canadian broadcasters are unable or unwilling to pay the full costs of the Canadian productions needed to meet their Canadian content responsibilities. However, since their broadcast commitment triggers virtually all of the other funding sources, broadcasters are in a position to take advantage of their dominant role in the financing structure. In some cases, they require producers to make use of broadcaster-owned production or post-production facilities. Such "contributions", if over-and-above a broadcast licenses, are deemed to constitute equity investment in the production.

Effectively this sort of demand, if it were to become common practice, would change the role of the independent producer into "line" (or in-house) producers. Such controls are unwarranted when the broadcaster is paying just a fraction of the production costs. Further, these practices undermine the independent production sector, which has been so carefully developed through government policy over the past fifteen years.

To protect the rights of producers in their dealings with broadcasters, the CFTPA has embarked on a process of negotiating Terms of Trade agreements between independent producers and all of the broadcast ownership groups, including the CBC, as a means to promote clarity, transparency and trust in these relationships.

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CANADIAN OWNERSHIP IS ESSENTIAL FOR CANADIAN PROGRAMMING

It has recently been suggested that it would be in the national interest if Canada were to permit increased foreign ownership, particularly for telecommunications carriers and broadcast distribution undertakings, in order to attract more capital investment. Telephone companies and cable and satellite service providers are key components of the federal government's initiative to ensure that all Canadians are connected to each other, to their communities in which they live and to the world at large.

The CFTPA does not object to this notion. What would concern us, however, is if looser Canadian ownership and control provisions were to be extended to broadcast programming undertakings. The reason is that multinational media conglomerates would rapidly enter the Canadian marketplace. With no ties of history or geography, of shared culture and common social values, these entities would be reluctant, if not outright unwilling, to make a cultural contribution to the Canadian airwaves.

The acquisition and diversification strategies of these large international media companies are geared to using economies of scope and scale to create competitive advantage. As the markets for information and entertainment become more global and as distribution pipelines expand, the distributors will see marked advantages to becoming more involved in content creation. But it is unlikely that they would have much interest in supporting the creation of uniquely Canadian programming nor in responding to the Act's encouragement of cultural diversity and regional expression.

In fact, the US-owned services that are already securely positioned within the Canadian broadcasting system by virtue of their sanctioned broad availability to Canadians (via cable and satellite distribution) are not required to respond to the objectives of the Act. The US conventional networks have long been accorded carriage in Canada, and US cable channels and so-called "superstations" have been used as linkage partners to boost Canadian viewer interest in Canadian pay and specialty programming services. These US-owned services fragment viewership, siphon advertising revenue (except in the case of simulcast programming) and are able to retain every penny of revenue they capture from the Canadian market. They compete directly with Canadian services within our own market, without having to make the contributions expected of regulated services.

Countless studies, reports and submissions over the years from a wide range of interested parties have emphasized that an abundant supply of quality domestic programming is essential if Canada is to maintain its national identity and enhance its cultural sovereignty, which is one of the primary goals of the Act.

Viewers and listeners connect with rich, diverse content that speaks to them directly about this country, its peoples, its regions, its problems and its triumphs. And it is Canadian independent producers, who are located in all parts of Canada, who create this program content that is made available to Canadians by the program and distribution undertakings that make up the Canadian broadcasting system.

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In reality, content IS king. People sit down in front of their television sets, listen to their radios and purchase multi-channel broadcast receiving systems in order to experience the range of entertainment and information programming options available to them. Not because of the appliance or delivery system through which it is received. It is our belief that these content offerings must continue to be recognized as the heart and soul of the Canadian broadcasting system.

> There is clear need for government policy to continue to preserve a secure place for Canadian expression on our television airwaves.
>
> It is critical that foreign ownership limitations continue to be maintained for broadcast program undertakings if we are to be assured that the commitment to Canadian content will be upheld.
>
> The CRTC has, over time, developed a demonstrably successful regime for ensuring Canadian content whereby broadcasters are required to meet general regulatory requirements plus targeted Canadian exhibition and expenditure obligations, commensurate with their resources, in exchange for protected access to the marketplace. This should continue so that we may be assured that those who present Canadian programming maintain their commitment to quality and diversity.
>
> It would be extremely detrimental to the Canadian broadcasting system if the onus to air distinctive Canadian programming that reflects our social and cultural values were to be applied only to the CBC. In the view of the CFTPA, it is essential that television broadcasters make sufficient investment in priority Canadian programming. Broadcasters should also be required to schedule and promote those programs to ensure that Canadians have ready access to them.
>
> The CFTPA considers that measures should be put in place to ensure that smaller and less powerful voices are heard, on all communications platforms. It is of vital importance that Canadian broadcasters provide outlets for such expression from all regions of the country. In this regard, we consider it essential that broadcasters be required to continue to accord unaffiliated producers access to their channels.

Debunking Myth #2:

Canadian Broadcasters DO NOT Spend $1 million/hour for Canadian Programming

CROSS-SUBSIDIZATION OF CANADIAN PROGRAMMING

Virtually since its inception, the Canadian broadcasting system has operated on the basis of an economic model of cross-subsidization. Essentially, the profits earned from airing low-cost American programs compensate the broadcaster for the responsibility of exhibiting Canadian programs on which it cannot hope to earn a comparable return.

When Canadian content quotas were first imposed on private broadcasters, they responded, much in the manner of the CBC, by integrating production and exhibition within their operations and offering relatively low-cost programs created in-house or by affiliated production houses. When the requirements became more onerous, increasing from 40% to 60%, broadcasters resorted to stretching the available program creation dollars over more programs. The offering generally included news, public affairs and sports programming as well as relatively inexpensive how-to and discussion programs, storytelling for children, the occasional variety or music programs, religious services, and game shows.

Broadcasters concentrated their energies on securing simulcast rights to popular American sitcoms and drama series, and entertainment specials, which were available to them at a much lower cost than would be required, if they were to invest in financing similar Canadian programs. In any case, the Canadian production industry was not sufficiently developed at that time to support and sustain the ongoing production of high-cost domestic program series in any significant number.

However, this model also meant that Canadian audiences developed a taste for entertainment programming, particularly drama series, situation comedies and children's programming, with high production values. Canadian policy makers concluded that domestic productions required adequate financial investment if our own programming was to have any chance of succeeding with Canadian audiences.

CHANGES IN PROGRAM FINANCING STRUCTURES

The Broadcast Development Production Fund, created by the government in 1983, was designed as an incentive for broadcasters to supplement their in-house productions with programs obtained from independent producers. It was expected that the broadcast licenses fee payment would be in the order of one-third of the cost of the production. The producer was expected to finance one third of the costs, and the CFDC, which administered the program, invested in the remaining one third, by virtue of equity investment, a loan or loan guarantee.

This neat division of the budget (and of the risks) did not last for long. The broadcaster's contribution rarely approached the anticipated level and pressure was brought to bear on the agency to increase its financial contribution to make up for the shortfall, particularly for programs that were distinctively Canadian. The rationale was that such programs should be supported with public monies since their strong indigenous values made it less likely that the programs would find a market outside the country.

Financing Scenario #1

1992 English Language Drama Series

Cost per episode: $750,000

CANADIAN FINANCING

Canadian broadcast licenses fee	38%
Public agency contribution	38%
Producer contribution *	24%

* Including tax incentives

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By the mid-1990s the precursor to the CTF, known as the Cable Production Fund, had been created. It, too, was intended as to offer an incentive to broadcasters to acquire more independent productions, with a licenses fee program (LFP) which served to "top up" the broadcast licenses fee. By 1998, then, a more typical financing structure for a Canadian drama series involved several more components and a substantially higher per-episode budget.

Financing Scenario #2

1998 English Language Drama Series

Cost per episode: $ 1 million

CANADIAN FINANCING

Broadcast licenses fee	19.5%
License fee program	15.4%
Telefilm Canada	23.1%
Private production fund	0.4%
Advance from distributor	31.0%
Producer contribution *	10.0%

* includes fiscal incentives

The two financing scenarios presented here are indicative of a continuing trend. Production costs continue to increase, primarily because of negotiated settlements with the creative and technical guilds and unions.

There are other notable factors. The producer's ownership stake in his own program is smaller. There is now a reliance on out-of-market sales, which may not materialize. The broadcast licenses fee has decreased substantially. While public and private support mechanisms have been created to help fill the gap, exponential growth in demand for production funding support means that there is simply not enough money in the system to meet the demand. It must be remembered that most of the private funds, which have generally been established as benefits in ownership transactions, have a set life span.

The CFTPA recently commissioned PricewaterhouseCoopers to undertake an "Assessment of the Economic Impact of the Canada Television Fund" (see **Appendix B**). The study indicates that for each dollar invested by CTF in Canadian productions, an average of two dollars is contributed from private and other public sources. Thus, its $200 million annual infusion to Canadian production represents $600 million in production activity. This $600 million represents fully 38% of independent Canadian television production. This equates to 43% of drama, 45% of children's programming, 54% of performing arts/variety and fully 71% of documentary programming created by the independent production sector. (Source: Appendix B, pp. 54 - 55, 57-59.)

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For projects that do not receive CTF support, the financing structure is even riskier. Where CTF is not a participant in the financing of a program, the broadcast licenses fee is generally even lower, since there is no requirement to meet the eligibility thresholds established for the EIP and LFP programs. Public investment declines from 50% to about 20% (attributable to the tax credit) and reliance on foreign investment changes from a minimal 10% to fully 53% of the budget.

This last factor further complicates the dynamics of production since it virtually guarantees that the indigenous character of the production will be of little significance to the foreign investment partners.

Financing Scenario #3

1999-2000 English Language Drama Series

with no CTF support

SOURCES OF FINANCING

Canadian broadcast licenses fee	5.2%
Tax credits	18.8%
Other public funds	0.1%
Other private investment	5.6%
Canadian subtotal: 29.7%	
Distribution advance (anticipated international sales)	13.1%
US licenses fee or equity	32.6%
Offshore investment	24.5%
Foreign subtotal: 70.3%	

THE BROADCASTER'S CONTRIBUTION

While regulatory fiat ensures that there is "shelf space" for indigenous programs in the schedules of Canadian television stations, audience reaction to the program offering has enormous impact on what broadcasters choose to exhibit. Since the private conventional television stations are totally dependent on advertising for revenues, viewing data is an important determinant of which programs merit investment and airtime.

Further, the various public and private investment support structures described above have worked to the broadcaster's advantage. Equity investment funds, federal and provincial tax credits and licenses fee top-up programs effectively subsidize the financial contribution of broadcasters to independent production. If these mechanisms had not been put in place, broadcasters would be paying significantly more to license domestic programming.

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In reviewing the role of CTF in the Canadian production industry, the study summarizes the contribution made by television broadcasters to various genres of programming through their licenses fee payments. For the 1999/2000 year, broadcast licenses fees for English-language independent television productions averaged:

Program genre	Productions with CTF support	Productions with no CTF support
English drama	24.2%	5.2%
English documentary	31.9%	21.0%
English children's	24.6%	6.3%
English performing arts/variety	49.9%	61.5%
Weighted average	**27.0%**	**8.0%**

"Source: Appendix B: , pp. 24, 98-101"

In the United States and the UK, broadcast license fees for independent program production often cover a program's entire budget. Both countries have a substantial domestic population base over which to amortize program costs and international sales bridge any financing gap. Since the domestic population base in both countries is considerably larger than Canada's, programs made in these countries can be sold internationally at very competitive prices.

The average license fee per hour of prime time programming on the conventional US television networks is $2.2 million. This is more than twice the total production budget for all CTF-supported English-language drama in this country.

The situation is very different in Canada. Thanks to the various funding support mechanisms that have been put in place, the broadcast contribution to indigenous programming in the "under-represented" programming categories continues to represent a small portion of the actual production cost.

While the budgets of some high-end Canadian drama programs (expressed in Canadian dollars) now approach those of lower-cost US series - in the order of $1.25 million per episode. But the cost borne by the Canadian broadcaster is a fraction of this. For English drama that receives federal financial support (through Telefilm and CTF), the average licenses fee in 1999 - 2000 was 24.2%, or less than ¼ of the cost of the production.

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Debunking Myth #3: The producer bears

CONSIDERABLE "risk" in creating Canadian programs

While there will always be more demand for funding support for programming than funds available, as noted earlier the CTF's equity investment and licenses fee top-up programs, federal and provincial tax credit incentives, the various provincial initiatives, as well as the private funds set up by broadcasters and distributors, combined with broadcast licenses fees do provide a substantial base for supporting television production.

CANADIAN PROGRAMS IN THE INTERNATIONAL MARKETPLACE

We have noted that the producer takes significant financial risk with each production. His investment often consists of deferred payment for costs incurred. These debts are often only recovered if the program provides sufficient returns, above and beyond the Canadian financial structure. This means that the producer is fully compensated only when the program achieves after-market success - subsequent broadcast windows (often for minimal licenses fees) or, better, international sales.

This presents its own conundrum. To attract an international audience, a program must be universal in its appeal. Some can achieve this despite being deeply rooted in a particular geography and culture. These tell stories that speak to all of us. For the most part, however, the export market prefers entertainment programming that is not identifiably foreign in terms of cultural values.

The situation is entirely different for Canadian documentary and children's programs, where Canadian traditions and values are highly esteemed. The difficulty in these cases is that domestic licenses fees must cover a relatively larger portion of the production budget, since the envelopes for these types of programming are vastly over-subscribed.

FINANCIAL RISKS BORNE BY PRODUCERS

There is a widespread belief that producers bear absolutely no financial risk in the programs they create. It is thought that the producer's job is merely to fill in all the application forms and to schedule the payments to cover costs as they are incurred. Nothing could be further from the truth.

Program financing structures are complex and unique to each individual production. Putting in place all the components of the program budget may take as long as two or three years, during which time one or several of the key participants in the financial structure may back out of their commitment. This is why producers create separate corporations to manage the financial arrangements for each separate program (even setting up a new corporation for successive "seasons" of a long-running series). With this type of structure, the overall financial health of the production company is protected if a particular program experiences financial difficulties.

With each passing year, the producer bears more financial risk. We have noted that production budgets have increased, more than doubling over the past several years. We have also noted that there has been no increase in the public funding component of the financial structure and that broadcast license fees have been declining. Effectively, this means that the producer's operating margin is being squeezed.

In addition, administrative delays at funding agencies, struggling to cope with more and more applications have created an unforeseen financial burden for the producer. It is now fairly standard practice that interim financing costs can consume up to 20% of the budget. Spread over the industry, this collective debt adds up to hundreds of millions of dollars. And it is only the banks and other moneylenders who benefit from this situation.

> <u>Given the administrative delays that have developed at the funding agencies, measures should be taken to ensure the producer is not penalized for additional financing costs attributable to impediments outside his control</u>. For instance, we suggest that interest charges, over-and-above those forecast, which are due to delays in receiving funding, should be considered the first tier of recoupment, ahead of equity.

Another issue is the recent tendency for broadcasters and the funding agencies to treat tax credits as part of the financial structure of projects. This was not the original intent. Tax credits were designed as a fiscal incentive - monies effectively returned to the producer upon completion of a project, to assist with the financing of other productions.

> Accordingly, the CFTPA recommends that a review be undertaken with the public agencies to restore the original objective of the tax credit system, which was to provide corporate financing for the independent producer rather than project financing.

Further, the production sector's ability to produce television programming is also being challenged with the near collapse, over the past two years, of the international rights market for higher budget Canadian productions, especially drama programs. Effectively, distribution advances for foreign rights cannot be considered to be a meaningful component of the financial structure.

This growing gap in the financing has put immense pressure on producers to bridge finance and assume responsibility with their banks and the funding agencies for the balance of the production budget. Meanwhile, the delays in commitment drawdowns are lengthening as new documentation requirements are added to the application process. Cash flow and budgeting are difficult to manage. Financial payments are increasingly out of synch with actual production schedules. The situation has reached near crisis proportions.

Producers are starting to question whether it is in their interest of their companies to continue to take on the crippling costs of creating higher budget Canadian programming. From the CFTPA's perspective, recognition must be given to the fact that if this trend continues, only the largest and most viable production companies will be in a position to create the strong indigenous programming required by the Canadian broadcasting system.

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The CFTPA has recently written to the board of the CTF to express our concern with the situation and to suggest some remedies, including an immediate review of recoupment, distribution expenses, financing thresholds and caps for projects that receive public funding support.

ENSURING A HEALTHY INDEPENDENT PRODUCTION SECTOR

As entrepreneurs in a thriving industry, it is essential that our membership have access to capital to grow their companies. This objective is rarely achievable given the inherent risks outlined above. This means recognition and support for the three types of production that are undertaken by our sector.

The first group are high point-count Canadian programs that readily receive CTF support (and which would otherwise not be made).

The second type are so-called "industrial" programs with fewer identifiably Canadian elements. The financing of such productions can be supported with export sales. We are somewhat concerned, however, that Canada's prized support mechanisms, with their focus on rewarding identifiably Canadian programs, discourages public financial assistance for programs that strive to appeal to audiences beyond our borders. While such programs may well meet the established thresholds on the point scales of CAVCO or the CRTC, they will be refused funding support from the CTF-run programs (if they even qualify), in favour of other shows with stronger domestic values.

The final component of production activity in Canada is foreign location shooting or "service productions". Experience with such programs has greatly increased the depth of the Canadian talent pool. Writers, directors and producers, as well as technical crews have had the opportunity to develop and refine their skills and has helped to create an indigenous production industry that has won Canada international recognition.

It is essential that recognition be given by the various components in the broadcasting system - government, CRTC, broadcasters and cultural policy agencies - that all three elements of production are important and merit support. We fully acknowledge that public financial input should be strongest to support the development of distinctively Canadian programs of high quality. What we wish to ensure is that the policies and programs that have been put in place to meet this laudable objective do not inadvertently jeopardize the ongoing health of the very industry these initiatives are designed to support.

> In this regard, <u>we ask that consideration be given to ensuring that the required resources are made available to the CTF and tax credit offices to ensure greater efficiency in their decision-making processes and in the provision of those funds</u>. In this regard we note that the various private investment funds, which are required to meet stringent cost criteria, are effective and proficient in their administration and deliverables.

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<u>ENVIRONMENTAL FACTORS</u>

As noted in the Committee's terms of reference document, the influences of changing technology, convergence and globalization are bringing significant new pressures to the delicately balanced Canadian broadcast infrastructure.

CONSOLIDATION AND CONVERGENCE

The January 2000 merger of America Online and Time Warner precipitated a flurry of acquisitions and takeovers in the Canadian media landscape as corporate entities determined that "bigger is better" and that survival depends on embracing multiple streams of activities. Horizontal integration is essentially the consolidation of a number of entities involved in the same type of business into larger corporate groups. Examples are the elimination of many small and medium-sized cable companies as Rogers, Shaw and Cogeco acquired and swapped properties to extend their distribution networks over wider territories. Similar mergers have taken place in the conventional television sphere. One such example is Canwest/ Global's acquisition of the WIC television stations.

Vertical integration involves expanding a company's sphere of influence into different activities. Examples are the takeover by Québécor (a publisher) of Vidéotron's cable and television interests in Quebec, and BCE's acquisition of the CTV stable of television and specialty channels. This has also led to an acceleration of the tendency for publicly traded broadcast companies, who are beholden to their shareholders, to demonstrate continued growth through cross-media purchases.

In the past couple of years, Canada's media landscape has changed irrevocably with the emergence of the new Bell/Globemedia conglomerate which includes the Globe and Mail along with CTV and the direct-to-home satellite distribution undertaking ExpressVu all under one corporate roof. The Asper family, which controls the CanWest/Global empire has purchased the Hollinger string of newspapers, including the Globe's major rival, the National Post.

These changes have substantially altered the role of the broadcaster, which now has much more interest in exercising control over the content disseminated over its network of media outlets and of finding efficiencies through content-sharing among the different media interests within the corporate entity. Consolidation also means, from the producer's perspective, that there are fewer doors to knock on when seeking an exhibition outlet for a program.

TECHNOLOGY, NEW MEDIA and COPYRIGHT

The emergence of the Web as a new medium for digitally delivered cultural products provides new challenges and opportunities for broadcasters, producers and distributors. It also raises serious intellectual property issues. In recent years, there have been several attempts both within Canada and outside our borders to launch webcasting services. The intention is to "stream" broadcast signals via the Internet, outside the regulatory regime and in clear contravention of underlying copyright in the programs and channel brands.

The Web is also rapidly becoming a medium for transactional e-commerce and the delivery of entertainment products. And the marriage of the computer and digital technology further enhances the ability to reuse and enhance content in a myriad of ways for many disparate purposes.

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Once all components of the Canadian broadcasting system convert to digital format - from camera and sound recording through the editing process to the transmission and delivery of programs - the same "image" could be "repurposed" and made available as a published work (a book), an entertainment program, or on DVD. Components of the work could be taken and used in completely different circumstances as readily as an editor selects from a bank of background noises and sound effects to supplement the dialogue in a dramatic performance.

Widespread attention was given in the past year to the ability of Napster and similar computer programs to bypass the rights regime of the sound recording industry and offer free-of-charge downloading via the Internet of a vast array of musical selections. Infringement of copyright concerns have also been raised in regard to book publishing and the unauthorized release of feature films using the Internet.

> As our cultural products enter the globalized creative arena, the challenge is to ensure that intellectual property rights continue to receive adequate protection, despite changing technology. As the first step in meeting this goal, <u>in the CFTPA's view it is imperative that Section 31 of Canada's Copyright Act be amended on a fast track basis, so that rightsholders will be protected when their work is distributed on new media systems</u>.

ACHIEVING THE OBJECTIVES OF CANADIAN BROADCASTING POLICY

We note that the Standing Committee's objective in undertaking this review is to develop a revised legislative/regulatory framework that supports Canadian expression and balances cultural, social and economic concerns. The production industry believes that the greatest progress in the development of Canadian programming, particularly programming reflecting Canada's regions and diverse peoples, has resulted from the combination of regulatory and structural support mechanisms that have been put in place and adjusted over the past thirty years. The result is a very strong broadcasting industry and a professional program production industry.

We are now poised for a new era in broadcasting. Fragmentation of audiences through the multiplication of services and the capacity of new technologies to readily access foreign content pose threats to our ability to ensure a strong presence of Canadian programming reflecting our cultural diversity. At the same time, the emergence of focused, experienced broadcasting, distribution and production companies can help to ensure the presence of well-funded attractive Canadian content that Canadians will wish to watch and listen to (and perhaps download). But these goals will not be met by wishing for them to happen or depending upon the good will of broadcasters, distributors and producers. It is regulatory compunction that has brought about the successes to date and this will be required in future.

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It can be argued that the broadcasting system is at a crossroads, pulled in all directions by various, often conflicting, impulses. Nevertheless, we consider that the existing Act and the tools it puts at the disposal of the CRTC have sufficient force and effect to ensure the continued presence of quality Canadian programming on our airwaves.

As we have made clear throughout this submission, the marketplace for independent production is indirectly shaped by several pieces of legislation. In addition to the *Broadcasting Act* with its imperatives for Canadian program creation and presentation, we fall within the boundaries of several other pieces of federal legislation. The *Income Tax Act* has established a tax credit program that provides significant support to our activities. We seek protection for our intellectual property rights under the *Copyright Act*.

In addition, since our industry is sustained to a significant degree by the programs administered under the CTF, we must understand the parameters established in *The Canadian Film Development Act* (often referred to as the Telefilm Act). Last year, in the context of the Department of Canadian Heritage's review of the organizational structure and governance of the CTF, the CFTPA sought a legal opinion from Robert J. Buchan of Johnston and Buchan on the constraints imposed by this legislation. His opinion noted several shortcomings in the CFDC Act. First, the statutory mandate for Telefilm Canada only makes reference to foster the development of a feature film industry in Canada. (There is no reference to television or video production, let alone new media.) Its governance structure is highly unusual, with the Executive Director of the agency effectively accountable to Cabinet rather than to the Board of Telefilm.

Further, rather than amending the legislation over time, as the role of Telefilm changed, its responsibilities have been sanctioned through Memoranda of Understanding with the responsible Minister. In the words of the opinion, this is an unorthodox procedure that "flies in the face of the principles of accountability and transparency in the administration of public funds".

To facilitate the Committee's understanding of Canadian program creation, our submission has addressed the various components that play a part in this process and the business realities of program creators and of broadcasters.

SUMMARY OF CFTPA's SUBMISSION

The Government has made a commitment to Canadian content through the policy objectives established in the Act and the range of support structures that have been put in place to nurture and sustain a strong Canadian programming presence on our airwaves. It clearly recognizes that the Canadian independent production industry plays an essential role in helping broadcasters to achieve the goal of presenting high quality programming that appeals to Canadian viewers.

A significant component of the Committee's agenda is consideration of the future of the Canadian broadcasting system. In this context, it has sought advice as to whether the existing *Broadcasting Act* and the principles it articulates are appropriate on a going forward basis.

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The need for government policy to continue to preserve a place for Canadian expression on our television airwaves is clear. The CRTC has, over time, developed a demonstrably successful regime for ensuring Canadian content whereby broadcasters are required to meet general regulatory requirements plus targeted Canadian exhibition and expenditure obligations, commensurate with their resources, in exchange for protected access to the marketplace. This should continue so that we may be assured that those who present Canadian programming maintain their commitment to quality and diversity.

It is essential that broadcasters continue to provide access on their channels for programs from unaffiliated producers. Measures should be put in place to ensure that less powerful voices are heard and that there are outlets for expression from all regions of the country. There is a need to have in place terms of trade agreements to establish clarity, transparency and trust in the relationships between independent producers and the broadcast community.

We must ensure that the synergies afforded by horizontal and vertical integration are harnessed to meet the goals of Canadian content and cultural diversity. Foreign ownership limitations must continue to be imposed on broadcast programming undertakings if we are to be assured that the commitment to Canadian content will be upheld.

Recognition must be given to the fact that only viable production companies will be in a position to create the strong indigenous programming required by the Canadian broadcasting system. Immediate action is required to ease the financial risk that is borne by producers, particularly the component attributable to lack of resources or inefficiency in administering public support programs.

There is an urgent need to revise Canada's copyright regime to ensure that intellectual property rights are protected in the face of a rapidly changing technological environment.

> We urge the Committee to explore with the participants in this proceeding how best to ensure that the various cultural objectives that have been established for the Canadian broadcasting system and the existing support systems for program financing are integrated into a coherent framework.

The CFTPA is calling on the government to ensure that there is a sense of consistency amongst the disparate components of the cultural policy framework. This requires clarity of vision, accountability and transparency. Without a strong industry, it will not be possible to sustain the creation of a wide range of quality programming that appeals to Canadian viewers. We must be in a position to tell our own stories, if we are to survive in this globalized, US-dominated world.

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The independent production sector needs support to sustain an industrial infrastructure to support our role in the Canadian broadcasting system. It is time to link together the distinct legislative elements that govern our industry to ensure that they work in tandem in support of the overarching objectives. This will ensure that strong Canadian cultural industries thrive and that Canadian content is seen here and abroad.

SUMMARY OF RECOMMENDATIONS

1. The CFTPA is of the view that the legislation does not need to be changed. We are satisfied that the general principles in the 1991 Act continue to serve as a valid articulation of the objectives of the Canadian broadcasting system. The powers accorded the CRTC are adequate and appropriate. The language of the legislation is technologically neutral and thus adaptable to future developments. (Page 4)

2. There is clear need for government policy to continue to preserve a secure place for Canadian expression on our television airwaves. (Page 18)

3. It is critical that foreign ownership limitations continue to be maintained for broadcast program undertakings if we are to be assured that the commitment to Canadian content will be upheld. (Page 18)

4. The CRTC should continue to require broadcasters to adhere to Canadian content requirements, in order that we may be assured that those who present Canadian programming maintain their commitment to quality and diversity. It is essential that television broadcasters make sufficient investment in priority Canadian programming. Broadcasters should be required to schedule and promote those programs to ensure that Canadians have ready access to them. (Page 18)

5. Measures should be put in place to ensure that smaller and less powerful voices are heard, on all communications platforms. It is of vital importance that broadcasters to continue to accord unaffiliated producers access to their channels. (Page 18)

6. Given the administrative delays that have developed at the funding agencies, measures should be taken to ensure that the producer is not penalized for additional financing costs attributable to impediments outside his control. For instance, we suggest that interest charges, over-and-above those forecast, which are due to delays in receiving funding, should be considered the first tier of recoupment, ahead of equity. (Page 24)

7. The CFTPA recommends that a review be undertaken with the public agencies to restore the original objective of the tax credit system, which was to provide corporate financing to the independent producer rather than project financing. (Page 24)

8. We ask that consideration be given to ensuring that the required resources are made available to the CTF and tax credit offices to ensure greater efficiency in their decision-making processes and in the provision of those funds. (Page 25)

9. It is imperative that Section 31 of Canada's *Copyright Act* be amended on a fast track basis, so that rightsholders will be protected when their work is distributed on new media systems. (Page 27)

10. Finally, the CFTPA urges the Committee to explore with the participants in this proceeding how best to ensure that the various cultural objectives that have been established for the Canadian broadcasting system and the existing support systems for program financing are integrated into a coherent framework. (Page 29)

End of document