Broadcaster Support For Canadian Feature Film

Expanding the Audience with Television Platforms

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A Study for

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For Canadian Feature Film

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Table of Contents

List of Appendices

List of Tables

Table of Abbreviations and Definitions

BNPH	Broadcasting Notice of Public Hearing (CRTC)
BPN	Broadcasting Public Notice (CRTC)
CPE	Canadian Program Expenditures
CRTC	Canadian Radio-television and Telecommunications Commission
BDU	Broadcasting Distribution Undertaking
CTF	Canadian Television Fund
CFFF	Canada Feature Film Fund
DTH	Direct-to-Home Satellite
Eligible CPE	Canadian program expenditures that the broadcaster may submit as part of its CPE commitments as a percentage of gross annual revenues earned by the service during the previous year. Includes the programs telecast CPE plus other eligible programming and production expenditures, such as licence fees paid by the CTF and script development expenditures for non-telecast programs.
Exempt BDU	A small-size broadcasting distribution undertaking that is exempted from the requirement to hold a licence
HD	High Definition
Home Video (market of)	Denotes the market for the sale and rental of films on physical media (DVD, videocassette) for home use.
LPIF	Local Programming Improvement Fund
NCPE	Non-Canadian Program Expenses
New Release Pay TV	Pay TV service that mainly shows feature films during their first exhibition cycle, about one year after their theatrical release (TMN, Movie Central, Super Écran, and Super Channel).
OTA	Over-the-air
PBIT	Profit Before Interest and Tax
PPV	Pay-Per-View Television
Programs Telecast CPE	Canadian program expenditures incurred directly by the broadcaster for programs telecast, INCLUDING expenditures for: concept development, dubbing, close captioning and described video, as well as the tangible benefits related to the transfer of ownership but EXCLUDING other eligible programming and production expenditures. The breakdown of Canadian program expenditures by category that the CRTC publishes is based on the programs telecast CPE.
Rerun Pay TV	Pay TV service that mainly shows feature films at least three or five years after their theatrical release (Mpix, Encore Avenue, CinéPop).
Satellite or DTH BDU	Broadcasting distribution undertaking by direct-to-home satellite (Bell TV, Star Choice)
SVOD	Subscription Video On Demand. SVOD allows the user to access, over a fairly long period (usually one week or one month), any of the components of a *programming block*, in return for a monthly subscription fee or for free.
Terrestrial BDU	Any type of broadcasting distribution undertaking, other than by direct-to-home satellite, including cable BDUs, telephony BDUs, etc.
TVOD	Transactional Video On Demand. TVOD allows the user to access a *single program* for a much more limited period (normally 24 hours) in return for a fee (or for free). Each single program constitutes a distinct transaction.
VOD	Video On Demand

Introduction

This study was commissioned by Telefilm Canada for the benefit of the Working Groups on Feature Film for the English speaking market and the French-language market. The study is being prepared at a time when the feature film industry around the developed world is facing unprecedented problems. Although theatre audiences in North America rebounded at the end of 2008 after years of decline, DVD sales have continued to drop. In 2007-08, the financing for independent films experienced a boom and bust syndrome. But these factors have been dwarfed by the problems presented by the current recession, which has drastically tightened available credit facilities for what has always been a risky business – the making of the independent film.

Like independent filmmakers in most other developed countries, Canadian filmmakers need government support to survive. Their form of expression is the most expensive to produce, the hardest to finance, and the riskiest to distribute. But when everything goes right, the feature film can also be one of a country's most significant cultural products.

In this study, we focus on independent film, i.e. feature film that is not financed by the Hollywood majors, who continue to dominate screens around the world, although less so than in the past. We do not examine the problems faced by made-for-TV drama, which operate under a different economic model, although we recognize that those problems are also significant.[1]

Since 2000, support for our feature films has been governed by the Canadian Feature Film Policy[2], which set four objectives:

- to develop and retain talented creators;
- to foster the quality and diversity of Canadian feature films;
- to build larger audiences at home and abroad for Canadian feature films; and
- to preserve and disseminate our collection of Canadian feature films for audiences today and tomorrow.

Five years later, the Standing Committee on Canadian Heritage released a 247-page report entitled *Scripts, Screens and Audiences: A New Feature Film Policy for the 21st Century*.[3] That report was the culmination of an intensive study of the Canadian feature film industry. The Committee heard from more than 180 witnesses at hearings in five cities. Although the government changed shortly after its publication, the work that went into that report deserves note, and the recommendations made in the report are still relevant today.

The present study comes little more than three years after the Report of the Standing Committee was released. A number of developments have occurred since then that need to

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[1] For a study of the problems faced by TV drama, see Peter S. Grant, *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets* (International Affiliation of Writers Guilds, December 15, 2008), available at http://iawg.org/Stories%20Under%20Stress.pdf

[2] *From Script to Screen : New Policy Directions for Canadian Feature Film* (Ottawa, October 5, 2000)

[3] *Scripts, Screens and Audiences: A New Feature Film Policy for the 21st Century*, Report of the Standing Committee on Canadian Heritage (Ottawa: Government of Canada, November 2005)

be taken into account. As noted above, DVD sales have slumped and independent films went through a boom and bust cycle that has now been exacerbated with the impact of the current financial crisis.

Given these developments, it may be understandable that greater recognition is now being given in many countries to the role of other platforms in supporting the domestic film sector - conventional television, pay television, video on demand and the internet. In February 2006, in fact, three months after the Standing Committee's report was released in November 2005, the European Audiovisual Observatory published a major study entitled *Broadcasters' Obligations to Invest in Cinematographic Production*, which outlined the extent to which the feature film industry in Europe was dependent on broadcaster support. However, this study came too late to be taken into account in the Report of the Standing Committee, and although the latter report did examine film support programs in a number of foreign countries, it did not address the need for or the potential impact of broadcaster support.

This study is made up of three parts. In Part I we examine the problems faced by independent films in a number of developed countries, beginning with an analysis of major developments since 2005, including the impact of the current financial crisis on filmmaking. Then we turn to Europe, where feature film has long been considered an important cultural product. We examine how countries in Europe support their film industry and in particular, to what extent they are looking to multiple platforms, including conventional television, pay television, video-on-demand, and the Internet, to provide that support.

In Part II, we examine the current state of play for Canadian filmmakers in this country, again focusing on the extent to which alternative platforms are being used to support domestic filmmaking. In particular, we examine the extent to which existing television platforms in Canada support Canadian feature films, including a survey of current regulatory requirements imposed by the CRTC under the *Broadcasting Act*.

Finally in Part III, we present some recommendations for government and regulatory action, based on the findings made in Parts I and II. As will be seen, we draw upon successful models in other countries to recommend that Canada adopt some new policies to address the central reality of technology – the need for Canadian feature films to be accessible on multiple platforms in order to reach wider audiences.

By enlisting the Canadian broadcasting system to support Canadian feature films, a key objective of Canada's Feature Film Policy will be advanced, namely, "to build larger audiences at home and abroad for Canadian feature films."

Part I of this study was prepared by Peter S. Grant, Part II by Michel Houle, and Part III represented the collaborative effort of both authors. A note about the authors is presented in Appendix 8. This study was commissioned by Telefilm Canada. However, the opinions expressed herein are those of the authors only and do not necessarily represent those of Telefilm Canada.

PART I

Support for Independent Films in the Global Marketplace

1. Independent Filmmaking at a time of Financial Crisis

Playing as they do in a global film marketplace, Canadian feature filmmakers face competition not only from Hollywood but from around the world. Like independent filmmakers in other countries, Canadian filmmakers are niche players. They lack the budgets to compete directly with Hollywood but strive to succeed with smaller titles.

There was a time only a few short years ago when independent films were seen as a new formula for success. Venture capital was attracted to the sector based on the track record of a number of relatively low-cost titles that had unexpected success at the box office. Attracted by the scent of profit, a number of major Hollywood studios set up subsidiary "art-house" divisions devoted to independent films. With the influx of $13 to $18 billion in financing, the number of "indie" pictures vastly expanded.

Along with that availability of financing came a steady rise in marketing and production costs for indie films released by the Hollywood majors. The increase in those costs between 2001 and 2007, for both the Hollywood majors, and their art-house subsidiaries or affiliates, is graphically shown below. By 2007 the average cost of a major film was over US$100 million, with included close to US$40 million in marketing costs (prints and ads). The average cost of an art-house release by one of the Hollywood majors had risen from US$40 million to US$75 million, which included US$25 million of marketing costs.

Table 1

The Rising Costs of Hollywood Films
($ US Million)

		2002	2003	2004	2005	2006	2007
MPAA Mainstream Films	Production Cost	47.8	66.3	65.7	63.6	65.8	70.8
	Marketing Cost	30.4	39.5	34.8	36.1	34.5	35.9
	Total	78.2	105.8	100.5	99.7	100.3	106.5
MPAA Art-House Subsidiary Films	Production Cost	34.0	46.9	29.0	23.5	30.7	49.2
	Marketing Cost	12.6	15.1	11.4	15.2	17.8	25.7
	Total	46.6	62.0	40.4	38.7	48.5	74.8

Source: Motion Picture Association of America (MPAA).

At the same time, there was a steadily increasing number of independent films coming from outside the Hollywood studios. This is graphically shown in Table 2 below.

As will be seen, between 2001 and 2007, the major studios released about 200 films a year, a number that includes their art-house releases.

However, the number of films released by independent distributors rose from less than 300 a year in 2001 to more than 400 in 2007. Even this number understates the problem, because hundreds of other independent films were produced but were never able to get a theatrical window in the United States. Those films, if released at all, were sent direct to DVD.

Table 2

Feature Films Released in the United States

	2002	2003	2004	2005	2006	2007
No. of Films Released by the MPAA	220	194	199	190	203	179
Independent Films Released	229	265	275	345	396	411
Total	449	459	474	535	599	590

Source: MPAA

By 2008 the dynamic of rising costs, oversupply and disappointing box office turned sharply negative. Too many films sought too few slots in theatres each weekend. The oversupply of indie pictures made it harder to get exhibition windows and drove up marketing costs, as each film had to spend more to compete.

Faced with declining profits, the Hollywood studios cut back. Warner Bros. shut down its Picturehouse and Warner Independent subsidiaries and cut the staff of New Line Cinema by 90%. Paramount Vantage was reabsorbed by Paramount Pictures. Fox Searchlight cut back on its number of titles. Universal Pictures decided to sell off its indie subsidiary, Rogue Pictures. ThinkFilm encountered major financial difficulties.[4]

However, the cutbacks at the studios reflected more than just an oversupply of films. It also reflected the realization that the business model itself was changing. Audiences in theatres in the U.S. were shrinking in size year by year, although this was masked by increases in ticket prices.[5] Of even more concern, DVD sales, which had long surpassed theatre tickets as a source of revenue for feature films, were declining.[6]

All of these factors were troubling enough by mid-2008. But with the advent of the financial recession, the problems facing the film sector have exacerbated. Last October, both Paramount and NBC Universal announced that they were trimming their film slates and cutting their budgets. With the tightening of credit, a veteran producer predicted a "massive reshaping of the landscape."[7]

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[4] Lauren Schuker and Peter Sanders, "Glut of Films Hits Hollywood," *The Wall Street Journal*, September 3, 2008.

[5] "Big box office doesn't reflect a film's popularity," MSNBC.com, September 19, 2008; Michael Cieply, "Blockbuster Openings, Lackluster Box Office," *New York Times*, December 28, 2008.

[6] Brooke Barnes, "DVDs, Hollywood's Profit Source, Are Sagging," *New York Times*, November 21, 2008. See also Dawn C. Chmielewski, "Netflix misses quarterly subscriber numbers (can you say recession?)" *Los Angeles Times*, October 6, 2008.

[7] Diane Garrett, "Hollywood adjusts to new economy," *Variety,* October 20, 2008.

The consequences of this for both the Hollywood studios and independent filmmakers were outlined in a blog for the *Wall Street Journal* last fall:[8]

> "While movies are for Main Street, film companies are accountable to Wall Street," said Tuna Amobi, senior research analyst for Standard & Poor's, at Tuesday's Dow Jones-Nielsen Media and Money Conference.
>
> Wall Street, however, has little money, and even less that it is willing to put into movies. Lehman Brothers and Merrill Lynch both had active film financing banking groups that appear down for the count as their parents struggle with new ownership.
>
> Hedge funds, avid buyers of debt financing attached to movies, also have cleared the scenes. "The investments are a long-term commitment, but the hedge funds have one-year redemptions," said Benjamin Waisbren, CEO of Continental Entertainment Capital. "People called this structured finance. Now it's destructured finance."
>
> It is quite a reversal for an industry that was swimming in cash just months ago… What that means is that the heyday of easy film financing is gone – and with it a lot of the chances for the kind of quirky-cute "independent" films that represent box-office risk.

How is the situation for independent film in other countries around the world? The story is a mixed one.

The Report of the Standing Committee on Canadian Heritage included an analysis of support measures for feature film in Australia, France, Germany and the United Kingdom.[9] Although a few changes have occurred since the report was tabled in late 2005 – for example, the Australian Film Commission and the Australian Film Finance Corporation merged into Screen Australia in 2008 – this analysis continues to be relevant in identifying the role of the national agencies responsible for the support and direction of their feature film industries in the four countries.

In Europe, recent data from the European Audiovisual Observatory confirms that unlike Hollywood, the average cost of European films has not risen significantly in the last five years. This is shown in Table 3 below.

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[8] Heidi N. Moore, "The Credit Crunch Hits the Movies," *Wall Street Journal*, October 15, 2008. Note that Lehman Brothers subsequently went bankrupt.

[9] *Scripts, Screens and Audiences: A New Feature Film Policy for the 21st Century*, Report of the Standing Committee on Canadian Heritage (Ottawa: Government of Canada, November 2005), at pp.99-115.

Table 3

Average Production Cost of European Feature Films
(€ Million)

	2002	2003	2004	2005	2006	2007
France	4.4	4.6	5.3	5.0	5.3	5.4
Spain	2.4	2.4	2.7	2.7	3.2	2.5
Germany	8.3	4.0	3.0	3.1	4.3	4.2
United Kingdom	9.6	15.1	10.7	10.7	10.8	10.3
Italy	3.3	3.3	4.2	4.0	4.1	4.5

Source: European Audiovisual Observatory

As will be seen, in 2007, the average cost of a European film in the five largest countries was about €5.4 million, i.e. about US$7.3 million at the then prevailing exchange rate. This compares with the average cost of a mainstream Hollywood film in 2007, which was US$70.8 million, almost 10 times greater. (By contrast, the average cost of a Canadian film in 2007-08 was only C$3.4 million.[10])

However, despite this disparity in cost, European films have managed to maintain a healthy share of the local box office, ranging from 24% to 28%, although cinemas are still dominated by Hollywood movies. This is shown in Table 4 below.[11]

Table 4

Market Share of Films in European Theatres
(% Admissions)

	2002	2003	2004	2005	2006	2007
European Films	24.74	25.34	24.62	24.59	27.89	27.84
U.S./European Films*	9.43	3.01	5.78	12.54	5.11	7.17
U.S. Films	64.08	69.38	67.33	60.21	63.80	63.13
Films from Other Countries	1.75	2.27	2.27	2.66	3.20	1.86

**Films made in Europe, mostly in the U.K., but financed by Hollywood*

European filmmakers also continue to benefit from a broad array of government support measures. These are outlined in more detail in the next section of this study, and it is clear that these have been critical to the survival of the European film industry.

However, concerns continue to be expressed on a variety of issues. A central conundrum is the age-old problem that European films may do well in their country of origin but they rarely travel well. Even European co-productions face difficulties in achieving success across borders. This is shown in Table 5 below, which shows the market share of European films (a) in the country of production, and (b) across all cinemas in Europe.

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[10] See Appendix 1 for further details on production costs and box office market share for Canadian feature films. The C$3.4 million number comes from CFTPA and APFTQ, *2009 Profile: An Economic Report on the Canadian Film and Television Production Industry*, at Exhibit 2.74.

[11] *Film and home video*, Volume 3 of the Yearbook 2008 (Strasbourg: European Audiovisual Observatory, published on January 20, 2009)

Table 5

Market Share of European Films in 2007
(% Admissions)

Country of Production	*Market Share in Its Own Country*	*Market Share Across Europe*
France	32.33	8.20
United Kingdom	11.84	5.75
Germany	17.52	3.60
Spain	12.47	2.02
Italy	29.52	3.80
Other European films	-	4.46

Complaints also continue that there are too many films in Europe seeking access to too few screens.[12] In that connection, a study in early 2007[13] made the following comments:

> "In the European Union, about 800 feature films will be produced in 2007. In each European country, around 300 films will be released theatrically of which the Hollywood studios will be responsible for around half. On average, European audiences will watch around 100 films over the year, around 15 of which will be national films. European citizens will watch one quarter of the films made in their own country and one in thirteen films from other European countries."

European films, like independent films elsewhere, will undoubtedly be adversely affected by the unprecedented financial pressures arising from the recession. However, it is clear that governments in Europe are continuing to support their film sector and this will provide something of a safety net. Accordingly, it is worth looking more closely at the European film market to see if lessons can be drawn from their recent experience. But before doing so, it may be useful to provide a broader analysis of the types of measures that governments can introduce to support the film industry.

[12] See, generally, "Public policies for film: Challenges in a Changing Context," Background paper for a Council of Europe Film Policy Forum, *Shaping Policies for the Cinema of Tomorrow*, Krakow, September 11-13, 2008. Also see Henning Camre and Jonathan Davis, "The Trouble with European Cinema," Presentation at the 2007 Sundance Film Festival.

[13] Jonathan Davies, "Digital Armageddon," Think Tank on European Film and Film Policy, Published in FILM #57, May 2007.

2. The "Cultural Tool Kit" for Local Film

Governments in developed countries around the world have introduced a variety of measures to support their local filmmakers. These measures, along with others intended to sustain and develop a broader range of popular cultural products, can be seen as part of a "cultural tool kit."[14] Among others, the tool kit includes six types of measures:

- The institution of public broadcasting can be used to support local films, since public broadcasters can be given a mandate to support local cultural expression in a variety of formats and languages. Public broadcasters can also be seen as a means to provide local and alternative expression in digital and on-line media.

- The imposition of reasonable scheduling requirements on private broadcasters and other cultural gatekeepers. A few countries require a certain proportion of screen time in cinemas to be devoted to local films. But more commonly, many countries expect private broadcasters to include local films in their program schedules, along with other programming that would be otherwise underrepresented, such as local TV drama, children's programs, or documentaries.

- The imposition of expenditure requirements on privately owned cultural gatekeepers to support the creation of local cultural products. A variant of this model is to impose a levy on box office or distributor subscription revenue which goes to a funding agency to support investment in local expression. Examples include the box office levy by the French government to support local film production and the requirement imposed by Australia, Canada and France on film-based subscription programming services to expend a certain proportion of their revenue or programming budget on local films. In Italy, commercial broadcasters must spend at least 4% of their revenue on the support of Italian films.

- The application of national ownership rules in certain cultural industry sectors. This hopefully adds local "green lights" for the benefit of indigenous producers. Broadcasters in the United States, Canada, Australia and many other countries are required to be locally owned. In countries outside the United States, the effect of these rules is to create broadcast companies that provide a local "green light" for the benefit of indigenous producers, so they have more doors to go to besides Hollywood.

- The use of competition policy measures, to support independent production and to lessen the dominance of gatekeepers. An example is the rule in a number of countries requiring their broadcasters to acquire a certain proportion of their programs from independent producers.

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[14] For a fuller description of the cultural tool kit, see Peter S. Grant and Chris Wood, *Blockbusters and Trade Wars: Popular Culture in a Globalized World* (Vancouver: Douglas & McIntyre, 2004), at Chapters 7 to 14.

- The support of the creation or distribution of cultural products through subsidies or tax incentives. This is probably the most common type of measure used in developed countries around the world to support a diversity of cultural expression. For example, the movie trilogy, "The Lord of the Rings," would never have been made but for tax incentives from Germany and New Zealand. In the UK, financial support for the UK Film Council comes from the proceeds of the National Lottery. And many countries provide direct subsidies from government for film production, script and concept development, training, film festivals, and many other support elements,

It should not be surprising that so many developed countries support their feature film industry. As the Report of the Standing Committee on Canadian Heritage noted in 2005, "film has been one of the most powerful and influential cultural media in the history of the world… Because film is so accessible to those watching, it was the first truly mass cultural medium."[15]

Feature films can be the most expensive form of cultural product, because film production requires a full panoply of creative resources to be deployed. However, many countries have also begun to realize that the creative sector, of which the film industry is a major part, is one of the most important drivers for their economy. A study published in November 2006 entitled "The Economy of Culture in Europe" underlined the culture sector's potential for creating more and better jobs in the future.[16] The study showed how the cultural industries in Europe drive economic and social development, as well as innovation and cohesion. According to the study, the cultural sector in Europe employed at least 5.8 million people in 2004, which is more than the total working population in Greece and Ireland put together. Furthermore, that sector accounted for 2.6% of the gross domestic product (GDP) of the EU in 2003.

In August 2008, a similar study was published by the Conference Board of Canada.[17] The analysis, entitled "Valuing Culture: Measuring and Understanding Canada's Creative Economy," concluded that Canada's cultural sector directly contributed about $46 billion – or 3.8% - to overall Canadian GDP in 2007. It also estimated that the culture sector's impact on the economy was much broader – $84.6 billion in 2007, or 7.4% of total real GDP. As the study noted,

> "Countries around the world, as well as many cities and regions, recognize that a dynamic culture sector plays a key role as a magnet for talent, enhances economic output, and acts as a catalyst for prosperity."

This conclusion was picked up by the Canadian government in its Throne Speech of November 19, 2008, which noted that "[c]ultural creativity and innovation are vital not only to a lively Canadian cultural life, but also to Canada's economic future."

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[15] *Scripts, Screens and Audiences: A New Feature Film Policy for the 21st Century*, Report of the Standing Committee on Canadian Heritage (Ottawa: Government of Canada, November 2005), at p.1.
[16] KEA European Affairs, *The Economy of Culture in Europe* (Brussels, European Commission, 2006)
[17] *Valuing Culture: Measuring and Understanding Canada's Creative Economy* (Ottawa, Conference Board of Canada, 2008).

Reflecting its recognition that the creative sector in general, and the film industry in particular, should receive support, Canada has deployed a wide range of measures from the cultural tool kit to support Canadian filmmakers.

However, given the unprecedented financial pressures facing the independent film sector, it is worth re-examining the ambit of these measures to ask whether Canada is doing all that it could to support local films.

In this part of the report, we examine the European film market to see if lessons can be drawn from their recent experience.

3. Support for Local Feature Film from European Broadcasters

A number of sources provide details on the broad panoply of measures used in Europe to support local films. In 2004, for example, the European Audiovisual Observatory published a major study comparing the approaches used in European countries to support film and audiovisual works.[18] In 2006, a survey of national funds was carried out by the Copenhagen ThinkTank on European Film and Film Policy.[19] And a more recent study was published in August 2008 as a background paper to a Council of Europe Film Policy Forum in Krakow held in September 2008.[20]

However, these studies tend to focus on public funding and do not emphasize a compelling feature of the European environment, namely, the significant support for local feature film that comes from the over-the-air TV broadcasters.

A study published by the European Audiovisual Observatory in 2000 showed that television investment accounted for between 30 and 74 percent of the financing for the production of feature films in Europe, depending upon the country.[21] Much of that revenue was generated by public funds derived from taxes on television companies and by pre-sale agreements, in which television stations supported projects in exchange for the right to broadcast the films two years after their theatrical release.

The Observatory, which gathers data about broadcast media in 34 countries, also reported that almost 80 percent of the feature films produced in Europe were being made in the five largest countries, namely, Germany, France, Spain, Italy and Britain. And in all those countries, filmmakers receive some degree of financing from television.

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[18] André Lange and Tim Westcott, *Public funding for film and audiovisual works in Europe – A comparative approach* (Strasbourg: European Audiovisual Observatory, 2004)

[19] *Information Notes and Survey of National Funds*, Think Tank on European Film and Film Policy, #1, Copenhagen, June 30, 2006.

[20] "Public policies for film: Challenges in a Changing Context," Background paper for a Council of Europe Film Policy Forum, *Shaping Policies for the Cinema of Tomorrow*, Krakow, September 11-13, 2008.

[21] André Lange (ed.), *European films on European television* (Strasbourg: European Audiovisual Observatory/Eurodata-TV-Médiamétrie/Essential Television Statistics, 2000).

In 2006, the Observatory updated its analysis and published a study entitled *Broadcasters' Obligations to Invest in Cinematographic Production*.[22] The study showed that in some European countries, obligations on broadcasters to invest in or support feature films are found in legislation or legal decrees (for example, in Belgium, France, Greece, Italy, the Netherlands, Poland, Portugal, Spain, Romania and Hungary), or in conditions of licence (for example, in Norway). In a number of countries (for example, Denmark, Germany, Austria, Switzerland, Sweden and Finland), film funding agreements have been entered into by broadcasters in order to support the local film industry. And in other countries (for example, the United Kingdom, Ireland and Estonia), public service broadcasters have voluntarily supported local feature films as part of their public service mandate.

While the approach of these countries differs in terms of how the legislation or obligation is worded or implemented, the overriding principle is clear: *over-the-air broadcasters are seen in each of these countries as an important mechanism for supporting the financing and exhibition of local feature films*.

Some examples illustrate how the principle is applied in practice. The following provides a summary of the situation in the five largest European countries, in order of size, followed by a note on the situation in five smaller European countries.

Germany

With the largest population of any European country, Germany also provides the largest support for its two public broadcasters, ARD and ZDF, through a licence fee system. Both ARD and ZDF have entered into an agreement on support for German feature films with the Film Support Institute (FFA), pursuant to the *Film Support Act*. Part of the support is to fund film co-productions and each year the two broadcasters make available €4.6 million for this purpose. They also contribute €11 million per year for film aid. Most of this is paid in cash, but a portion is provided through services in kind, such as advertising time. Broadcaster support is very significant in German film production, often contributing up to 30% of production costs. However, private broadcasters in Germany are not required to support European films.

France

France has the most extensive broadcast support system for feature film of any European country. To begin with, all free to air TV broadcasters in France (including *TF1, M6, France 2* and *France 3*) are required to contribute 3.2% of their revenue for the previous year to the production of European films; 2.5% of this must be devoted to the production of European films made mainly in the French language. The contribution can be by way of pre-purchase of broadcast rights or by the purchase of shares in the co-production. In 2004, these free to air broadcasters financed 103 films of which 97 were French initiatives, for a total of €124.4 million.

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[22] *Broadcasters' Obligations to Invest in Cinematographic Production* (Strasbourg, European Audiovisual Observatory, 2006).

The terrestrial pay channel *Canal Plus* is required to devote at least 12% of the year's total resources to the pre-purchase of broadcast rights to European feature films, 9% of which must be for European films made in the French language. The acquisition of broadcast rights may not be below a minimum guaranteed amount per subscriber, as specified in the channel's agreement with the *Conseil supérieur de l'audiovisuel* (CSA). In 2004, *Canal Plus* spent €136.7 million on the pre-purchase of 124 European films. The Franco-German arts channel *Arte* is not subject to these obligations but in fact it exceeds them, typically investing 5% of its turnover in European feature films through its subsidiary Arte France Cinéma. This supports about 20 films each year, for a budget of €7 million.

Pay movie channels in France using cable or satellite (e.g. *Ciné Cinéma* and *TPS Cinéma*) are required to spend at least 21% of their revenue on the acquisition of rights to European films, of which 17% must be for films in the French language. In 2004, *TPS Cinéma* spent €31.9 million on the pre-purchase of European films and *Ciné Cinéma* spent €9.4 million.

According to a recent study carried out for the European Audiovisual Observatory, in France, "broadcasters in both the public and private sectors, through their production subsidiaries, invest beyond the compulsory amount."[23]

United Kingdom

"Over the air" television in the United Kingdom is currently provided by five terrestrial networks: BBC One, BBC Two, ITV, Channel 4, and Five.

All five of these channels broadcast feature films, and about one-quarter of these showings consist of British films. In 2007, for example, BBC 1 broadcast 66 UK films, BBC 2 had 180, ITV1 had 58, Channel 4 had 170, and Five broadcast 64 UK films. While most of these showing consisted of older UK films, about 24% of them were recent British films, i.e. released theatrically since 1999. On average, a person in the UK watches 78 films in a year, three in the cinema, 18 on DVD/video, one via video-on-demand, and 56 on television. (This analysis does not include films that are not legally supplied.)

Financial support for the British independent films has come particularly from BBC Two and Channel 4. In the case of BBC Two, this has reflected its focus on less mainstream programming which has included some highly praised U.K. drama series as well as independent films. In February 2006, the BBC executed a Memorandum of Understanding with the UK Film Council that included a five point plan to increase BBC support for British films. (A copy of the Memorandum is attached as Appendix 3.)

For its part, Channel 4 has a distinguished record of funding the production of independent British films, including *My Beautiful Launderette, The Madness of King George* and the Oscar winning *Last King of Scotland*. Channel 4 was the first U.K. broadcaster to focus solely on commissioning programs from the independent production sector (although all

[23] See Philie Marcangelo-Leos, "France", in *Broadcasters' Obligations to Invest in Cinematographic Production* (Strasbourg, European Audiovisual Observatory, 2006), at p.64.

U.K. broadcasters are now required to outsource at least 25% of their programming from such sources).

Italy

In Italy, all television broadcasters, public and private, are required to reserve at least 10% of their annual advertising revenue for the production and purchase of audiovisual and children's programs and European works, including those made by independent producers. 40% of this quota (i.e. at least 4% of overall ad revenue) is reserved for the production or acquisition of the broadcast rights for European feature films.

Spain

In Spain, both public service and private commercial TV broadcasters are required to invest 5% of their operating income in financing European feature films as well as television films exceeding 60 minutes in length. TV series are excluded from the calculation. Private TV broadcasters challenged this rule in the courts in 2005 but the case is still pending, and on September 4, 2008, the Spanish Advocate General proposed referring certain questions to the European Court of Justice. In the meantime, the obligation continues in force. The Spanish Parliament approved a new *Cinema Act* on December 28, 2007, which also includes the 5% investment obligation. [24]

Smaller European Countries

Many smaller countries in Europe also look to their broadcasters for support for their feature film industry. In *Denmark*, for example, the two public service broadcasters, DR and TV2, contribute financially to strengthen the production of Danish films. This amounts to about €4.5 million per year in the case of DR. In the French-speaking community in *Belgium*, TV broadcasters are required to devote a percentage of their turnover (1.4% to 2.2% depending on the total revenue) to the production of audiovisual works from independent producers; while satellite and cable distributors in Belgium are required to make a contribution of €2 per year per subscriber to the Cinema and Audiovisual Centre in two six-monthly instalments. In the *Netherlands*, the public broadcasters invest about €9 million a year in Dutch feature films. In *Norway*, the private broadcaster, TV2, is required by condition of licence to make an annual financial contribution of about €2.6 million to Norsk Filmfond. And in *Switzerland*, both public and private broadcasters are required to support the cinema industry. The public broadcaster, SRG SSR, provides about €13.1 million annually to the "Audiovisual Pact" which funds Swiss films, while private broadcasters in Switzerland pay between 2% and 4% of gross revenue to support film production.

Broadcaster Support for Film Funding Bodies in Europe

The 2006 study by the European Audiovisual Observatory also examined the significance of broadcasters' direct and indirect aid to film production in Europe. One statistic stood out,

[24] Communication to the author from Francisco Javier Cabrera Blázquez, Analyst (Legal Information), European Audiovisual Observatory, January 22, 2009.

namely, that payment from the TV broadcast sector to public film funding bodies across Europe accounted for almost one-third of all public film aid in Europe. This is shown in Table 6 below, which shows the contributions (rounded up or down to the nearest %) to the budgets of funding bodies in 31 European countries in 2002.

Table 6

Origin of the Budgets of Public Funding Bodies in Europe

Source of Contribution	*Percentage Contribution*
Supranational organizations	8%
State	21%
Community, regions, local authorities	12%
Cinema	11%
Television	33%
Video	2%
Cable	0%
Lottery	5%
Other	8%

Source: European Audiovisual Observatory

In France and Germany, the two largest countries in Europe, the direct payments of TV broadcasters form an important part of the funding of their national film institutes, the FFA in Germany and the CNC in France. In fact, 75% of the CNC budget is funded by television.

Some Observations

Based on a review of the foregoing, a number of observations seem appropriate.

The first is that there is increasing recognition of the importance of platforms other than theatrical exhibition for achieving domestic film policy.

Theatrical box office numbers, while important, should no longer be seen as the only or even the best measure of popularity or value for local films. Even in Hollywood, which is driven by box office numbers and projections, theatrical box office revenues are rarely enough to cover the cost of production. A similar situation applies in Europe. As noted at a Council of Europe forum in September 2008, "we have come to a situation in which it is very rare for European films to earn enough at the box office to cover even the cost of releasing the film, let alone to enable revenues to flow back to the producer to cover the cost of making the film."[25]

The importance of the role of other platforms, particularly television, in achieving domestic film policy, was specifically addressed by the UK Film Council in its most recent annual statistical report:[26]

[25] "Public policies for film: Challenges in a Changing Context," Background paper for a Council of Europe Film Policy Forum, *Shaping Policies for the Cinema of Tomorrow*, Krakow, September 11-13, 2008, at p.9.
[26] UK Film Council, *2008 Statistical Yearbook*, at p.5.

> "While most media attention is paid to the cinema release of films, it is via television that people watch most of the films they see. In the UK in 2007, the total audience for film on television was 3.1 billion, 19 times larger than the cinema audience and three times larger than the estimated audience for film on DVD/video… British films attracted around one-fifth of the television film audience – 590 million viewing occasions in 2007, about 10 per person. Of those viewing occasions, roughly one-quarter were for recent UK films (released theatrically within the last eight years), suggesting that the Government's investment in UK film reaps a substantial dividend in terms of public enjoyment."

In France, by comparison, the Conseil supérieur de l'audiovisuel (CSA) issued a report in September 2008 expressing concern about a decline in showings of full-length feature films on French television channels, to the detriment of French and European cinema.[27] However, the audience for those films was stable, as long as it did not suffer from similar programming on competing channels. It is clear from the CSA report that the broadcasting of cinema films on television continues to be seen as a vital means to achieve larger audiences in France.

While the importance of reaching film audiences through the means of television is now increasingly recognized, European film has long depended on television companies for financial support as well. The regulatory requirements for broadcasters to support local films have already been noted. But TV broadcasters in Europe have also been driving forces in terms of film investment. As the *New York Times* noted back in 2000:[28]

> "Television companies are the driving force in the business development of filmmaking in Europe, with Canal-Plus in France, Britain's Channel 4 and others acting as mini-film studios. In the last few years, they have expanded their involvement with the creation of Studio Canal-Plus and FilmFour Limited, stand-alone entities that receive funds from the channels that own them but produce movies for theatrical release. The films, of course, have second and third lives on free and pay channels; but European television serves to support, not compete with, national film industries. In France, for example, pre-sale contributions from television networks are generally not paid until the film is shown in theatres; this prevents the possibility of straight-to-TV movies, but has created the need for short-term bank loans to see filmmakers through development, production and post-production. Film advertising is not allowed on French television, to provide something of a level playing field for rich production companies and more modest independent producers."

There is recognition that this is changing. Certainly as more channels are added and as audience becomes more fragmented, the ability of the over-the-air broadcasters in Europe to

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[27] Conseil Supérieur de l'audiovisuel, *La place du cinéma dans les meilleures audiences de la télévision* (September 29, 2008).
[28] Kristin Hohenadel, "Where Television Sponsors the Film Industry," *New York Times*, June 11, 2000.

support high-cost domestic programming like feature film is challenged.[29] And to the extent that the current recession results in reduced ad expenditures from major advertisers, it will also adversely affect the ability of ad-reliant TV broadcasters to support local filmmakers.

Another factor that needs to be borne in mind is the differing support system for public broadcasting in various countries. Calculations of the per capita support for public broadcasters in 18 countries in 2007, prepared for the CBC by Nordicity Group Ltd. and expressed in Canadian dollars, are set forth in Appendix 2 of this report.

What becomes clear from reviewing these calculations is that developed countries fall into three categories when it comes to their support for public broadcasting. In high-support countries, like the U.K., Germany, Denmark, Finland, Norway, Sweden and Switzerland, public broadcasters receive per capita funding from $105 to $145 per year. In medium-support countries, like France, Ireland, Austria, and Belgium, public broadcasters receive per capita funding from $60 to $80 a year.[30] And in low-support countries, like Italy, Canada, Australia and New Zealand, public broadcasters receive less than $50 per capita funding from government or licence fees to support their operations. (The CBC received only $33.78 per capita in 2007.)

In the two countries which provide the most financing for their public broadcasting, Germany and the United Kingdom, much greater reliance is placed on the public broadcasters (ARD and ZDF in Germany and BBC in the UK) to support feature film than is expected of the private broadcasters in those countries. In most of the other countries noted, however, and particularly in medium and low support countries, like France, Italy and Spain, both public and private broadcasters are required to financially support local feature films.

This would suggest that if the European experience is to be applied, Canada should look to both its public and private broadcasters to support Canadian filmmakers, given the fact that the CBC does not receive the level of funding given to public broadcasters in high-support or medium-support countries.

The higher degree of penetration of subscription programming services in Canada, compared with other countries, also suggests that greater reliance should be put on this sector to support Canadian film.

There is also room to examine the role of new media in supporting local feature films. To date, the internet has provided a useful way of aggregating and delivering expensive audiovisual content made for other media, but it does not finance that content. Feature films appearing on the internet are currently financed by other means.

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[29] See "Public policies for film: Challenges in a Changing Context," Background paper for a Council of Europe Film Policy Forum, *Shaping Policies for the Cinema of Tomorrow*, Krakow, September 11-13, 2008, at p.12.

[30] In reviewing the 2007 numbers, it should be noted that on January 5, 2009, the French government banned advertising in prime-time on France's public broadcasters (France 2 and France 3), with all advertising to be banned by the end of 2011. The government indicated that it would make up the difference through levies or other means. This would increase government support for public television in France from $65.07 per capita to $75.78 per capita. For further details, see Appendix 2.

In December 2007 the European Commission adopted a new *Audiovisual Media Services Directive*, which amended and renamed the *Television without Frontiers Directive*. Non-linear or "on-demand" programming on the Internet is subject to the following obligation in Article 3i of the new Directive:

> "Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service."

The actual measures to be applied by each member state to the website operators or Internet service providers in their jurisdiction are left to each member state to determine. It is too early to see how member states in the EU will choose to implement the Directive or if their approaches turn out to be effective. However, the Directive makes clear the importance of ensuring that local content is available on new media. It is also noteworthy that attention has been focused on the financing of local content as well as on its promotion and availability.

In that regard, however, a key mechanism for increasing local content on the Internet must be to continue the application of the existing cultural tool kit on traditional television and subscription programming services. The reason is that the programming they finance will also show up on the Internet. And so to the extent the choices, range and varieties of expression in traditional media are expanded, that pluralism is likely to carry through to the Internet. In that sense, the Internet can serve as a "force multiplier" for policies that support diverse local content in traditional media.

Part II

Support for Feature Film in the Canadian Broadcasting System

4. Introduction

Focus of Part II

Telefilm Canada asked us to develop for the Working Groups of the English-language and French-language markets of the *Canada Feature Film Fund* (CFFF) appropriate recommendations concerning regulatory measures, policies or licence conditions that could be adopted so that the undertakings making up the Canadian broadcasting system – for which the Canadian Radio-television and Telecommunications Commission (CRTC) ensures monitoring and regulation – can better contribute to reaching the objectives of the *Canadian Feature Film Policy*.

The central objective of the *Canadian Feature Film Policy* remains:

"Reaching audiences by ensuring a healthy supply chain continuum from creator to citizen, so that Canadian content is available and accessible to Canadians"

Initially, the instruments to measure the achievement of this objective were centred on the primary exhibition market of feature films: movie theatres. We do not presume, of course, to deny the importance of this market, which remains the sacred ground where a film's career usually plays out; the initial showcase that will determine, in large part, the success of a feature film on the subsequent broadcast windows: home video (DVD rentals and sales), video on demand, pay-per-view television, pay TV, over-the-air television, etc.

However, in terms of reaching the public, movie theatres can only rely on a relatively small portion of audiences generated by a feature film during its first exhibition cycle. For example, a successful Canadian feature film normally attracts a lot more viewers during its broadcast on the last window of this first cycle, namely during its first broadcast on over-the-air television, than it does in movie theatres. Meanwhile, it will have been exhibited on all the intermediate windows between movie theatres and over-the-air television and will thus have generated significant audiences.

At present, very precise data on the number of viewers and television viewers on the first (movie theatres) and last (over-the-air television) window of the first exhibition cycle are available and regularly made public. Yet equally precise and sophisticated data-gathering and publication instruments still need to be implemented to try to measure the cumulative audiences generated by film sale and rental in DVD format and by transactions that occur when a film is released on video on demand or pay-per-view television. Even the cumulative audiences that a Canadian feature film can reach during its runs on pay TV – which can quite easily be calculated using existing audience measurement instruments – are not currently the subject of regular compilations and publications.

The compilation of all these audiences is necessary to truly evaluate if and how the objective of reaching as many Canadians as possible has been attained.

Canadian Heritage is currently working on implementing such measurement instruments or on improving the existing instruments, so that we are able, in a few years, to more accurately evaluate the number of viewers and television viewers reached in the cumulative total of all the windows that are accessible to Canadians and which they can use to watch a Canadian feature film.

Without wishing to get ahead of these results, it is already known that film consumption takes place by and large on windows that are subsequent to movie theatres. As pointed out in Part I , by addressing the issue a bit differently, a recent study conducted by the UK Film Council established that, in 2007, a British citizen watches, on average, 78 feature films a year, including 3 in movie theatres, 18 on DVD, 1 on video on demand and 56 on television.[31] This distribution is of course dependent on the penetration level of the different windows as well as on the development of various broadcasting undertakings unique to the British market; this distribution would probably be a little different in Canada, but not fundamentally with respect to the ratio of films seen in theatres versus those on the windows subsequently considered as a whole, and especially on all types of television windows.

In such a context, the regulation of the Canadian broadcasting system as well as the obligations applied to the different categories of television services that show feature films – video-on-demand services to over-the-air broadcasters – are able to play a decisive role in reaching the objective of making Canadian feature films accessible to the greatest number of Canadians, so that they at least have the opportunity and possibility to exercise the free choice of watching these films.

In this sense, the *Canadian Broadcasting Policy*, set out in Section 3(1) of the Broadcasting Act, and the *Canadian Feature Film Policy* are related parties. The theatrical feature films are recognized Canadian programs [*Category 7 d) Theatrical feature films aired on TV*] and, as such, they fall within the scope of the regulations of the Act that oblige the Canadian broadcasting system and the undertakings that collectively make it up to foster Canadian expression and to call upon Canadian artists [3(1)d)(ii)], to contribute to the creation and presentation of Canadian programming in a manner and form that takes into account their respective circumstances [3(1)e)], to make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming [3(1)f)] and should include a significant contribution from the Canadian independent production sector [3(1)i) (v)], among others.

In our opinion, a better linking of these two policies would unquestionably serve the public interest and contribute to the success of their respective implementation.

[31] Sources: European Think Tank on Film and Film Policy, *Public policies for film: Challenges in a changing context, Background paper,* August 2008.

Objectives and approach used

The objective given to us is to make recommendations that might contribute to this better linking of the *Canadian Broadcasting Policy* and *Canadian Feature Film Policy.* In particular, these recommendations should ensure that in the implementation of the first policy, the CRTC takes into account the realities, issues and specific needs of the Canadian film industry and, ideally, to make sure each of the Canadian program service categories, given its particular situation and mission, brings an appropriate support to the financing, broadcast and promotion of Canadian feature films.

During the past two years, the CRTC has carried out the review of *Certain aspects of the regulatory framework of over-the-air television* and then the review of the *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* and began a consultation process on the *Perspectives on Canadian broadcasting in new media*. Over the next three to 18 months, the Commission should review the *Regulatory framework for video-on-demand undertakings*, carry out the licence renewals of the French and English networks of Société Radio-Canada / CBC as well as of most of the major private over-the-air television networks (*CTV*, *Global*, *TVA, etc.*); and also those of the three major new release pay TV networks (*TMN*, *Movie Central* and *Super Écran*) and then those of several video-on-demand and pay-per-view television services.

Note that during the reconsideration of the regulatory frameworks of over-the-air television and discretionary programming services (specialty service and pay TV), two proposals that might have had significant implications for the focus of this study – usually made elsewhere by representatives from the Canadian program production sector – were put on the table and the subject of much debate:

- First proposal: subject the private over-the-air television services to annual Canadian program expenditure obligations in percentage of gross annual revenues earned by the service during the previous year (based on the existing model of the specialty service and pay TV sector)

- Second proposal: subtract from the determination of the amount of eligible Canadian program expenditures reported by over-the-air, specialty or pay TV broadcasters (and which they can submit, if necessary, toward their Canadian program expenditure obligations in percentage of revenues), the licence fee top-ups paid from the Canadian Television Fund (CTF)

At the end of these two review processes, the CRTC did not adopt these proposals. It is unlikely, in our opinion, that the Commission will deal with these questions in their entirety in the context of licence renewals for individual services. However, as discussed below, it is possible the Commission will address a more limited and circumscribed issue. The Commission has already indicated its concern about the changing ratio of Canadian to non-Canadian programming expenditures for the over-the-air broadcasters and even suggested that it could impose targets on expenditure of Canadian drama as a percentage of annual

gross income[32]. If the three main categories of broadcasters – over-the-air, specialty and pay - are all subject to some form of obligation to make Canadian programming expenditures as a percentage of revenue, the Commission could more easily - and fairly - reconsider the question of excluding contributions from the CTF from the calculation of those expenditures.

Nonetheless, the upcoming processes – review of the regulatory framework of VOD and PPV services and the licence renewal of individual services of major players – offer the Canadian film industry an excellent opportunity to better combine the Canadian television and film policies and ensure more effective and better focused support to Canadian feature films from Canadian broadcasting undertakings. Once all the regulatory frameworks are reviewed and all these licences are renewed for seven years, it will be quite a while before this opportunity comes again.

In the sections to come, we will address each of the windows related to the television business categories where the new Canadian feature films are presented during their first exhibition cycle: Video on Demand (VOD) and Pay-Per-View (PPV), Pay TV and Over-the-Air Television. For each one, we will: attempt to establish the current and future importance of this window in the broadcast of new Canadian feature films on television; do a brief overview of the evolution of the relevant regulatory framework; seek to identify the main issues related, as the case may be, to the review of their regulatory framework (VOD and PPV) or to the licence renewal of the main players (pay TV and over-the-air television); and, lastly, make recommendations on the regulatory provisions or licence conditions that could contribute to achieving the objectives of the *Canadian Feature Film Policy.*

In Section 8, we briefly emphasize that vast audiences are also reached thanks to the multiple broadcasts of Canadian feature films on a wide variety of broadcast windows subsequent to the first exhibition cycle during many decades. To achieve the objectives of the *Canadian Feature Film Policy*, it is therefore equally important to ensure that the rerun pay TV services, like the specialty services which devote a large part of their programming to broadcasting feature films, make – each based on its respective situation, the nature of service and genre – an appropriate contribution to the acquisition and broadcasting of Canadian feature films.

In Section 9, we will propose certain measures that the CRTC could adopt to foster a better understanding and ongoing monitoring of the contribution of the different categories of television undertakings to the financing and broadcasting of Canadian theatrical feature films (category 7 d), through the publication of its *Statistical and Financial Summaries* and *Annual Monitoring Reports*.

It goes without saying that the recommendations made here are those of the author and do not necessarily reflect the positions of Telefilm Canada or the CFFF Working Groups, who are free to use these recommendations as they please.

[32] See below, pages 68 and 69.

5. Video on Demand and Pay per View Television

Introduction

During the review process of the regulatory framework of the broadcasting distribution undertakings and discretionary programming services, a strong consensus emerged within the industry around the fact that video on demand (VOD) would experience very significant growth and assume considerable importance in the evolution of the Canadian broadcasting system.

Most of the broadcasting distribution undertakings believe that the "on-demand" consumption of exclusive contents as well as contents available at the same time by linear television will become a practice that is increasingly popular and desired by television viewers, who now wish to see what they want when they want, and not at a time decided by programmers.

Even though they only came into operation at the start of the decade (2002 for Shaw, Rogers and Cogeco; 2003 for Vidéotron), the VOD undertakings enjoyed a very quick deployment among the terrestrial distributors. Today all the terrestrial distributors – medium and large size – offer both transactional VOD (TVOD) and subscription (SVOD) services.

Table 7

Terrestrial distributors offering TVOD and SVOD services

Broadcasting distribution undertaking (BDU)	*TVOD*	*SVOD*
Cable:	X	X
Rogers Cable	X	X
Shaw Cablesystems	X	X
Vidéotron	X	X
Cogeco Cable	X	X
Videon CableSystems	X	X
East Links Cable Systems	X	X
Mountain Cable Vision	X	X
Câblevision du Nord du Quebec	X	X
Westman Communications	X	X
Telco:	X	X
MTS Allstream	X	X
SaskTel	X	X
TELUS	X	X

Sources: CRTC, Statistical and Financial Summaries, pay TV, pay-per-view television, VOD and individual specialty programming services; Licensing decisions, Internet Site and press releases of individual BDUs.

TVOD allows the user to access a *single program* for a much more limited period (normally 24 hours) in return for a fee (or for free). Each single program constitutes a distinct transaction. This is the usual access mode for new theatrical feature films but it can also be

used for all other program categories (documentaries, interviews, shows, series episode, rerun films, etc.).

SVOD allows the user to access, over a fairly long period (usually 1 week or 1 month), any of the components of a *programming block*, in return for a monthly subscription rate or for free. This programming block may consist of a choice of programs from a Canadian or foreign linear television service. It may also be made up of programs from one or more different sources for which the rights were acquired directly from the producers or distributors by the VOD service that packages them and offers them to users.

The main services or programming blocks currently available on SVOD in Canada are listed below in alphabetical order:

• *Anime Network On Demand* offers subscribers 25-30 hours of Anime Network content at any time per month, refreshed with about 5, 6, or 7 hours of new content per week (25% refresh per week).

• *AOVTV On Demand* provides 50 adult (porn) titles, with new titles added each week, from the AOV TV adult content premium service.

• *Family On Demand* offers a minimum of 30 hours of programming from Family Channel and Playhouse Disney, refreshed weekly.

• *here! On Demand* offers a wide variety of groundbreaking and acclaimed original movies and series plus the world's largest collection of gay and lesbian films appealing to the broad-based, diverse LGBT audience. Every month, up to 40 hours of unique movies and series is available as part of the service.

• *Howard TV On Demand* offers unlimited access to uncensored Howard Stern content (more than 40 shows per month).

• *Movie Central On Demand* (formerly *Movie Central EXPRESS*) gives subscribers on-demand access to a wide selection of the feature films and TV series available on Movie Central.

• *Mpix On Demand* gives users access to a selection of movies available on Moviepix anytime they want. At the time of launch, a library of 35 movies was available on the SVOD service.

• *Playboy on Demand* gives subscribers on-demand access to Playboy TV series and a changing library of specials.

• *Super Écran sur demande*, Canada's first French-language SVOD service, gives subscribers on-demand access to some of the films available on Super Écran. About 45 or so movies are available on the SVOD service. Content is replenished regularly, with new movie titles added each week and a completely new lineup introduced each month.

• *Super Channel On Demand* gives Super Channel subscribers on-demand access to a selection of the month programming available on the multiplex channels of Super Channel.

• *Teletoon On Demand* provides Teletoon subscribers on-demand access to a selection of the programming available on the linear broadcast channel.

• *Teletoon Jr. On Demand* provides Teletoon subscribers on-demand access to a selection of programming for young children available on the linear broadcast channel.

• *The Movie Network On Demand* provides users access to a selection of hit movies available on The Movie Network anytime they want. More than 100 titles are currently offered, including movies and HBO and Showtime content. Programming is replenished regularly, with new movie titles added each week and a completely new lineup introduced each month.

• *Too Much for TV On Demand* provides unlimited access to a selection of more than 40 uncensored shows per month.

• *Treehouse On Demand* is a service for preschoolers from Corus Entertainment that provides unlimited access to a selection of 30 hours of children's programming refreshed weekly from Corus' Nelvana children's TV production division.

• *Vortex On Demand* provides unlimited access to a selection of children's programming (aimed at children aged six to 12 years old) from Corus Entertainment's Nelvana children's TV production division.

• *WWE 24/7 On Demand* features network shows, specials, pay-per-view events, and best-selling videos from World Wrestling Entertainment, Inc.'s 90,000+-hour library. Subscribers have access to 40 hours of content each month.

• *YTV Anime On Demand* offers subscribers more than 45 hours of Anime Network content for the teen and tween market at any time per month.

Sources: Boon Dog Professional Services inc., Canadian Digital TV Market Monitor, Tracking the Growth and Development of the Digital TV Distribution Market, Vol. 2, Report 2 – Data from August / September 2008.

Today, the VOD technical implementation costs are within the reach of smaller-size terrestrial BDUs, which seek regional VOD service licences that are primarily transactional (TVOD) and centred on showing feature films. This is occurring at an increasing rate: the CRTC granted three such licences in 2007 and six in 2008 (to BDUs other than those mentioned in Table 1).[33]

The generalization of TVOD, which has considerable advantages over pay-per-view television (PPV) – in particular, the key choice of deciding the viewing time, the availability of the film for 24 hours, the ability to stop and resume viewing, to rewind or fast-forward, etc. – has negative repercussions on terrestrial PPV services, which for the most part has seen their revenues diminish significantly in recent years and for which the medium- and long-term future, with respect to the broadcasting modes of new feature films, appears compromised, in the terrestrial distribution world.

[33] See Broadcasting Decisions CRTC 2007-63, 2007-276, 2007-382, 2008-3, 2008-175, 2008-176, 2008-290, 2008-362 and 2008-366.

Satellite distribution lends itself less well to the technology inherent in VOD. For example, ExpressVu continues to focus on PPV, to which it has devoted a very large number of channels, which allows it to offer a wide range of broadcasting windows to blockbusters (that start every 15 minutes) and to continue to see their annual revenues grow. Bell ExpressVU also promotes Personal Digital Recorders (PDR) in order to offer its subscribers the flexibility of watching the films and programs that they want.

As in any emerging sector, the VOD service revenues are increasing very quickly: this growth was over 150% between 2005 and 2007 according to the CRTC.[34] This despite the fact that the Commission's *Statistical and Financial Summaries* for *pay TV, pay-per-view, VOD and specialty services* are not exhaustive and reveal certain inconsistencies in the presentation of data.[35] Note however that the oldest established services surveyed show an average *annual* growth of their revenues ranging from 105% to 184% between 2003 and 2007.

In brief, the accelerated deployment and growing VOD usage rate (by both cable broadcasting and Internet[36]) will very likely profoundly disrupt the consumer patterns of television programs and require the development of new forms of partnerships and commercial agreements among linear broadcasters from all VOD categories and services. However, this is not the purpose of this study. We will instead examine the implication of this evolution on the broadcast of theatrical feature films.

Implications on the sequential market for the exhibition of feature films

When TVOD came on the scene, it was first perceived as a circumscribed window for the exhibition of feature films on television, in direct competition with PPV since it filled the same niche, in an orderly and sequential market that anticipated periods of exclusivity for each of these windows: Movie Theatres, Home Video, VOD/PPV, Pay TV, Over-the-Air TV, and which offered the same luxury of anticipating blackout periods between the transition from one window to another.

Even though it is not the only factor that contributed to this evolution, the arrival of VOD very likely intensified the phenomenon of speeding up the pace of transition from one

[34] Sources: CRTC, Communications Monitoring Report, 2008, Table 4.3.16.

[35] For example, Cogeco's VOD service, *Cogeco On Demand*, which has been in operation since October 2002, was not surveyed, while the *Rogers on Demand* service reveals Canadian program expenditures equal to zero from 2003 to 2007, despite cumulative revenues of over $100M for the period. These inconsistencies make it impossible to paint an accurate picture of the evolution of revenues from this programming undertaking category as well as the revenues/expenditures ratio of Canadian programs.

[36] In Europe, 72% of VOD services that offer access to the request for programs of linear broadcasters – what the French call "catch-up TV" – are distributed on the Internet. Sources: *La vidéo à la demande en Europe, Seconds recensement des services VoD de janvier 2008,* Observatoire européen de l'audiovisuel. As for the French-language broadcasting market in Canada, TVA is making several of its programs available on *Illico On Demand* after their broadcast on over-the-air television, while Radio-Canada is making certain programs, including several episodes of original Canadian drama series, available for 7 days on its Internet site.

window to another that has been observed for several years and which has repercussions on the entire exhibition chain.

Despite the fact that the home video market, at the beginning of the decade, held an exclusivity period of a few months before the exhibition of a film on PPV or VOD, this period today is now just a few weeks. It should be expected that, in the not-too-distant future, new feature films will be simultaneously available on the home video market, on VOD and on PPV as the transition period between theatrical release and home use tends to get shorter and shorter.

In view of this acceleration, pay TV, which currently shows new feature films approximately one year (10 to 14 months) after their theatrical release – which incidentally lets it respect periods conducive to certain types of films (i.e. releasing Christmas films the following Christmas) – will probably want to shorten this period and change it instead to 8-10 months. As it usually acquires exhibition rights for one year, this will make the film available earlier for over-the-air broadcasters. Certain rerun pay TV services have already anticipated this acceleration and have asked (and been allowed) to modify their licence conditions so as to reduce from 5 to 3 years the minimum period between the release of a film and its exhibition by rerun pay TV.[37]

As such, each service is trying to access the new theatrical feature films as quickly as possible, so as to benefit the most from the launch campaign effect in theatres and from the buzz surrounding its exhibition on this first market and which surrounds the many international and national year prize-awarding ceremonies, which occur at the beginning of the year following their launch. The scope of this initial promotional campaign, the ability of the film to stay in theatres and to generate positive word-of-mouth, the type of lasting impression created by the media coverage, will very likely become even more important factors than they already are for the ability of a film to generate the maximum potential viewers on each of the windows.

Moreover, VOD is no longer just one window among the others, as it now has a defined and circumscribed place in a sequential exhibition market. In fact, over the short term, VOD, under the form of TVOD or SVOD, will assume a major role in the exhibition of feature films *on all the broadcasting windows subsequent to exhibition in movie theatres*:

- As a simultaneous exhibition window in direct competition with home video and PPV, in its TVOD form.

- As a complementary mode for showing films broadcast on new release pay TV, in its SVOD form. This is already the case and represents a significant factor in attracting, retaining and satisfying subscribers.

- Possibly – although this is less likely – as a complementary mode for showing first-run feature films on over-the-air television, in its SVOD form.

[37] See Broadcasting Decisions CRTC 2009 – January 12-16, 2009.

- As a directly competitive or complementary mode for showing films on television, in TVOD or SVOD mode, on the subsequent windows (second cycle), whether rerun pay TV services, specialty services in the broadcast of feature films or over-the-air television services.

In fact, the existing VOD services no longer just show *new release* feature films but also offer, in TVOD mode, rerun feature films from all periods that they often acquire from distributors when there is a re-release on DVD, at the same time as they also offer access in SVOD mode to films broadcast by certain rerun pay TV services and specialty services.

This points to the importance that VOD is called on to take in the exhibition of feature films on television. And thus the importance, in our opinion, that the Canadian film industry adopts a concerted response strategy during the review of the VOD regulatory framework that will take place in winter/spring 2009.

Review of the evolution of the regulatory framework

The first licences for VOD services were granted in 1997 but the five services that were the approved never saw the light of the day. The decision was most likely premature given the technological development of the distribution networks at that time, and perhaps also a bit naïve, since it anticipated that the BDUs – which were without access rights – would welcome such services offered by non-related third parties, rather than offer these services themselves.

A second group of licences was granted in 2000, all to BDUs or to undertakings related to the BDUs. This was more successful. At that time, the Commission reviewed the regulatory framework applicable to the VOD services and subjected all the licensees to similar licence conditions. Reproduced below are those conditions pertaining to the focus of this study.

<u>Conditions of licence of authorized VOD services as of 2000</u>

2 The licensee shall ensure at all times that:

2.1 at least 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian.

2.2 the feature film inventory includes all new Canadian feature films that are suitable for VOD exhibition and which meet the approved *Pay Television Standards and Practices Code.*

2.3 at least 20% of all programming other than feature films in the inventory available to subscribers is Canadian.

3 The licensee shall contribute 5% of its gross annual revenues to a Canadian program production fund administered independently of its undertaking.

4 The licensee shall ensure that at least 25% of the titles promoted each month on its barker channel are Canadian titles.

5 The licensee shall remit, to the rights holders of all Canadian films, 100% of the revenues earned from the exhibition of these films.

This central corpus of licence conditions for Canadian content has not been modified since.

Meanwhile other regulations – such as the ban on advertising or on programs produced by the licensee or a related company (applicable under the *Pay Television Regulations, 1990* to all pay TV, pay-per-view and VOD undertakings) – have been modified. All VOD undertakings that make the request were authorized, by condition of licence, to keep advertising messages already included in a program previously aired by a Canadian linear service. They are also authorized to broadcast up to 10% of programs produced by themselves or related companies.

During the review process of the regulatory framework of the discretionary programming services, begun in 2007, the CRTC noted that the framework established in 2000 had been basically designed in accordance with the feature film offerings on TVOD. It thus presented significant gaps given the rapid and multifaceted evolution that VOD has enjoyed since then. In particular, it mentioned the relatively weak Canadian content requirements, with respect to both feature films and other Canadian programs, as well as the questionable broadcasting practices for programming blocks, especially blocks made up exclusively of foreign programs (and, in certain cases, coming from the linear programming of foreign services whose distribution is not authorized in Canada).

At the end of this process, the Commission stated that it did not have all the relevant information to immediately determine the new VOD regulatory framework. Given the importance that it is called on to take, as well as the numerous and complex issues that have been raised but not resolved, the Commission decided to embark on a new round of consultations before finalizing the new regulatory framework for VOD.

This led the CRTC to publish a call for comments (Broadcasting Public Notice CRTC 2008-101) in which it sets out its changing thinking and raises several specific issues. The Société Radio-Canada proposed that this consultation process be postponed for a year; this proposal was opposed by a majority of Canadian programming undertakings and broadcasting distribution undertakings. The Commission therefore decided to reject the proposal of Radio-Canada, while agreeing to move back the document submission dates: the interventions must be submitted by February 26, 2009 and the replies by April 2, 2009.

Main issues during the review of the VOD regulatory framework

The television program production and Canadian theatrical feature film sector will therefore have, in the very near future, the opportunity to express its views on what this new regulatory framework should contain, and particularly on the contribution obligations to Canadian programming that should be imposed on the VOD undertakings.

We will be focusing here on those issues that are more directly related to the broadcasting of theatrical feature films, by examining each of the existing licence conditions that make up this regulatory framework.

- ***Percentage of Canadian feature films in inventory***

At present, each VOD service must ensure that at least 5% of the English-language feature films and not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian.

These percentages appear very low compared with the obligations imposed on other categories of broadcasters whose programming predominantly consists of new theatrical feature films, such as new-release pay TV services. They also seem low compared with the actual place occupied by Canadian feature films, in terms of number of titles, in the overall supply of feature films shown in movie theatres in Canada, for each linguistic market.

Table 8

Share of film offerings (number of titles) captured by Canadian feature films in movie theatres in Canada based on language of operation from 2002 to 2007

	2002	2003	2004	2005	2006	2007	Average
FR	16.6%	19.1%	22.4%	20.9%	18.7%	20.4%	19.8%
ENG	13.2%	13.4%	15.1%	13.8%	12.1%	12.6%	13.3%
TOTAL	**15.8%**	**18.7%**	**20.0%**	**18.6%**	**16.2%**	**17.8%**	

Sources: Profile, An Economic Report on the Canadian Film and Television Production Industry, 2006 and 2008 editions. Original data source: Motion Picture Theatre Association of Canada.

As Table 8 indicates, in number of titles and in yearly average from 2002 to 2007, Canadian films represented nearly 20% of all films exhibited in *French* version (original, dubbed or sub-titled) in movie theatres in Canada (annual variation of 17% to 22%). Meanwhile, Canadian films represented 13% of all films exhibited in *English* version (original, dubbed or sub-titled) in movie theatres in Canada (annual variation of 12% to 15%).

At the very least, the obligations imposed on the VOD services should be adjusted so that they are closer to the reality of the theatrical film market, such as it has evolved. To this end, the current obligations could easily be doubled (i.e. 10% of titles in English / 16% of titles in French), without imposing undue constraints on the VOD services, whose obligations would remain much lower than those imposed on pay TV for example (See Section 3).

It would also be appropriate to change the wording of the obligation a little bit so that it clearly applies to new feature films offered on TVOD. This had been the focus of the initial obligation, but is no longer as evident in a context where VOD undertakings now offer rerun feature films on TVOD as well as on SVOD (e.g. Mpix On Demand). This is a practice that should apply to other rerun pay TV or specialty services in the broadcasting of feature films.

The new wording could specify the following:

> *The licensee shall ensure at all times that at least 10% of the English-language feature films and not less than 16% of the French-language feature films in the TVOD inventory available to subscribers are Canadian.*

A *new* feature film could be defined as a film available on TVOD at least one year after its theatrical release.

- ***Obligation of showing all new available Canadian feature films that are adapted for VOD***

We see no reason to modify this obligation since, unlike the linear programming services that compete among each other to stock up on films and programs, the VOD services are types of parallel monopolies. Each terrestrial BDU broadcasts only one VOD service, which is connected to it; the BDU subscriber thus cannot choose from among the different competing VOD services; the VOD service that is offered to the subscriber is the only one available and it must therefore offer the subscriber all the new Canadian feature films released in movie theatres in Canada that are available and that are suitable for this window.

- ***Percentage of Canadian programming other than theatrical feature films***

As the Commission noted, the current requirement level (20%) is low and was established to give maximum flexibility to the VOD services during their start-up phase, in their programming components that the Commission anticipated as being marginal (as centre stage was taken by the new theatrical feature films).

With the development of SVOD, the existing obligation no longer makes sense, since in theory it allows Canadian over-the-air, specialty or pay TV services to offer programming blocks, stemming from their linear programming, containing a much lower Canadian content level than that which they are respectively subject to on the original service.

The proposal that *each programming block available on SVOD by a Canadian linear broadcaster must contain a percentage of Canadian content equal to that which is imposed on this linear service by regulation or by licence condition* seems the easiest to apply and the most equitable. In fact, this is the current practice of several new-release or rerun pay TV services (*TMN On Demand*, *Mpix On Demand*, *Super Écran sur demande*) that are compelled to include in each programming block offered on SVOD the same percentage of Canadian content as on the original service. This provision would make this practice mandatory for all the linear broadcasters.

As for the programming blocks that do not come from the Canadian linear broadcasters, but which the VOD service puts together itself by acquiring the rights from the producers or distributors of these programs, a percentage of Canadian content must also apply. *A percentage of 30% does not seem excessive in our view here, if we consider the minimum requirements imposed on the different categories of Canadian program services which,*

depending on their nature and distribution status, can vary from 15% to 90%, but which stand at or above 30% for the very large majority of them.
This percentage could also apply to the overall inventory of programs other than the new theatrical feature films that the service offers in TVOD mode.

- ***Contribution to the independent Canadian program production funds***

Two issues are raised here: on the one hand, that of its *size* in percentage of the gross annual revenues of the VOD service; on the other, that of the *beneficiaries* of this contribution and more specifically the *purposes* for which it must be allocated.

With respect to the first issue, it is difficult to establish a point of comparison between the Canadian programming of VOD services and that of other Canadian programming service categories; upon which a specific argument can be based. The way in which the Canadian program expenditures are reported by the individual VOD services, in the Commission's *Statistical and Financial Summaries*, seems to reveal a lack of harmonization in the definitions, which makes any coherent evaluation impossible.

In BPN CRTC 2008-101, the Commission brings up the possibility of removing all restrictions related to the broadcast of advertising on the VOD platform, with the proviso that the programming be acquired from Canadian rights holders, and of encouraging the use of targeted advertising in the VOD environment as well as the negotiation of cost and revenue sharing related to the implementation of this new form of advertising, among VOD services and linear services.

If these expected evolutions take shape, it will very likely be increasingly difficult to determine the exact contribution of VOD services in terms of financing Canadian programs, in a context where they will be offering more and more programming blocks in SVOD from Canadian linear broadcasters, to the financing of which they will not have directly participated, and which will generate advertising revenues instead of transactional revenues related to specific titles.

If the portion of net advertising revenue sharing that will go to the Canadian linear programming service is calculated in the gross annual revenues and it results in Canadian program expenditures (assuming of course that it is subject to the yearly expenditure obligation in percentage of its revenues), the portion of net advertising revenues going to VOD will not result in any specific Canadian program expenditures. Its contribution to financing Canadian programming will be limited to the contribution that it must make to the independent Canadian program production funds, which to us seems to argue in favour of an increase in the percentage of this contribution.

In fact, even though the VOD services are broadcasting programming undertakings within the meaning of the regulations of the Commission, with respect to offering SVOD programming blocks from Canadian linear broadcasters, they act more like a broadcasting distribution undertaking would, which delivers a preexisting programming service to the subscriber. *Given that the Commission has deemed it appropriate to raise from 5% to 6% the*

BDU contribution to Canadian programming in percentage of their gross annual broadcasting revenues, it would also make sense to raise the contribution of VOD services to the independent Canadian program production funds from 5% to 6%.

It should be noted here that it is during the introduction of the direct-to-home (DTH) satellite distribution undertakings and DTH PPV services that the Canadian government required, by decree, that these two undertaking categories remit "a financial contribution of more than five per cent of gross annual revenues to the production of Canadian programming"; (Orders P.C. 1995-1105 and P.C. 1995-1106). Later, out of concern for competitive equilibrium, the Commission imposed similar obligations to the terrestrial BDUs, terrestrial PPV services and VOD services. It would thus be logical, once again, to increase at the same time and in the same proportion, the obligations of the BDUs and VOD services from 5% to 6%.

As for the second issue, that of the purpose of the contribution, it should be pointed out that the Commission does not currently require that any portion of this contribution be directed to supporting *Canadian theatrical feature films*. This is astonishing given that, when it was imposed in 2000, the CRTC was convinced that the main activity of VOD services was going to be the distribution of theatrical feature films.

One of the best ways to join together the Canadian film and television policies would of course be to remedy this situation and set out in the new regulatory framework *that a significant predetermined portion of the contribution remitted by the VOD services to the independent Canadian program production funds must be used by them to support the production of new Canadian theatrical feature films (Category 7 d).*

In our opinion, there are several factors in favour of adopting such a provision. First, the fact that from its entry on the scene up to the present – and probably for several more years still – the offering of theatrical feature films in TVOD mode constitutes the main sources of *revenues* of VOD services.

Indeed, even if the VOD services offer more and more programs other than the feature films in TVOD mode, most of them are available for free after their broadcast on linear television. They generate an increased demand for the service and contribute to creating the habit of using VOD, thus fostering the growth of the VOD market share at the expense of PPV. They can increase the revenues of related linear services if they are able to charge advertisers more based on these additional television viewers, etc.; but they do not generate very significant revenues for the VOD service itself. It is still the theatrical feature films that generate the most revenues via subscriber transactions.

In the SVOD sector, the most popular programming blocks are those offered by the new release pay TV services, which are still largely made up of feature films. During the last conference of the Canadian Association of Broadcasters (CAB), a representative from Astral Télé Réseaux pointed out, during a workshop, that *TMN On Demand* "*is the #1 on-demand channel in Canada. It reaches 337 000 viewers in an average week, and has a 76% share of all on-demand viewing*." And, as mentioned earlier, all the applicants that obtained new

VOD service licences in 2007 and 2008 stated that their programming would consist primarily of new theatrical feature films.

In short, it seems logical and equitable, in this context, that a significant part of the contribution of VOD services to the independent Canadian program production funds must necessarily be allocated by these services to support Canadian theatrical feature films. This would be a simple and effective way of better aligning the *Canadian Broadcasting Policy* with the needs of the Canadian film sector and foster achieving the objectives of the *Canadian Feature Film Policy*.

- ***Transfer to the rights holders of all Canadian films the entire amount of revenues coming from the broadcast of these films***

This measure was adopted in order to increase the revenues that Canadian feature films enjoy from their exhibition on VOD. The amounts that are paid by the users during transactions on a given title are normally shared among the BDU offering the service, the VOD service itself and the provider, usually the distributor in the case of new Canadian theatrical feature films. Under this provision, the distributor receives its share plus that which is normally allotted to the VOD service.

Despite being well intentioned, questions can meanwhile be raised about the effectiveness of this measure. Admittedly, it does increase the revenues that the Canadian distributors can draw from this window; these distributors can thus theoretically offer higher distribution advances ("minimum guarantee") for the acquisition of the distribution rights of films on the Canadian market, or at least reduce the financial risks that they take in paying these advances. Meanwhile, certain VOD services brought up the fact that depriving them of any revenue related to the presentation of Canadian feature films was perhaps not the best way of encouraging them to devote sustained promotional efforts to showcase them.

In its submissions in response to BNPH CRTC 2007-110, Telefilm Canada suggested, among other things, that the Commission *call upon the VOD undertakings to include in their inventory a "Canadian films in theatres" section that would contain all the trailers of new Canadian feature films from the moment they are made available to movie theatres up to the end of a film's career in theatres.*

Telefilm stressed that such a section "would constitute a sizable promotional tool for Canadian feature films in theatres, to which all Canadians enjoying access to a VOD service could refer, to get a preview of each of the Canadian feature films playing in theatres or coming soon. For the VOD undertakings, this would constitute an anticipated form of self-promotion since, as previously mentioned, they must offer all new Canadian theatrical feature films that are suitable for presentation on VOD."

It seems to us that if the Canadian industry could obtain from the VOD services an agreement to offer this promotional section – and/or put in place other initiatives centred on the promotion of Canadian films – in return for removing the obligation to give up their

share of revenues stemming from the offering of new Canadian feature films on TVOD, Canadian cinema would come out on top, at least in the case of English-language films.

In fact, most of these films often have difficulty obtaining a sufficient number of screens and getting adequate media coverage at the time of their theatrical release. Their launch campaign often goes unnoticed for a vast majority of Canadians. They could thus largely benefit from such a promotional instrument, which would allow all Canadian subscribers to a BDU that offers a VOD service, the possibility of finding out about the Canadian feature films that are or will soon be shown in theatres and get a peak at their genre, style and content.

However, it is a different story with respect to French-language feature films that usually enjoy a slot in theatres and a launch campaign commensurate with their potential; and that also already enjoy sustained media coverage and that would therefore have more to lose by relinquishing the portion of revenues that the VOD service transfers to them on each transaction.

- ***Promotional channel***

In the Broadcasting Notice of Public Hearing CRTC 2008-101, the Commission examines whether it is still relevant to make the licensees of VOD services ensure that at least 25% of the titles that are promoted each month on its promotional channel are Canadian titles.

Indeed, it may be asked if the promotional channel of the VOD services is often consulted. Most of the VOD services instead offer a "menu" from which the subscriber can access a description of all the titles in inventory, grouped according to theme ("Films," "Series," "Free programs," "Youth," etc.) and sub-theme (the "Films" theme could be offered in "New releases" and "Previously released films" or by genre: "Action," "Comedy," "Thriller," "Horror/Fantasy," etc.).

In this context, the promotional channel issue appears less obvious, although it is not excessively restrictive for the VOD service to continue to be subjected to this obligation. That said, the *promotion* of Canadian films by the VOD services remains a significant issue, but the forms that this promotion may take must go beyond the percentage of Canadian films in the servers or on the menu.

For the linear broadcasters, the percentage of Canadian content broadcasting that a particular service presents over the entire broadcast day, in the evening (6 p.m. to midnight) or in peak viewing (7 p.m. to 11 p.m.) will have a tangible impact on the viewing that will be devoted to the Canadian programs on this service. The greater the Canadian program offerings of this broadcaster when a large number of television viewers is available, the greater the chances that these viewers decide to watch a Canadian program.

Meanwhile, the "on-demand" consumption of films and television programs is less affected by the percentage of Canadian works in the inventory available on the server of a given VOD service, since the television viewer may decide at any moment to watch the program of his or

her choice. The reputation that precedes the film or program, the allure of the description provided, the fact that the film is recommended by the VOD service (i.e. under the heading "One from the heart," "Our suggestions," or "Undiscovered gems") or by the public (i.e. in a list of the "10 most requested films") are equally elements likely to influence subscribers' decisions. As a result, any initiative taken by the VOD services seeking to *increase the notoriety* and *ensure the promotion* of Canadian feature films available on TVOD could contribute to reaching the objectives of the *Canadian Feature Film Policy* and should be encouraged by the CRTC.

Yet, with respect to the presentation of Canadian feature films on this window, the main issues remain:

- *The update of the percentages of new English- and French-language Canadian feature films in the inventory available on TVOD*

- *Maintaining the obligation of showing all available Canadian feature films that are adapted for VOD*

- *The increase of the contribution of VOD services to the Canadian independent program production funds, accompanied by the obligation to devote a significant predetermined portion of it to the development and production of theatrical feature films (category 7 d)*

- *The obligation made to the programming blocks stemming from Canadian linear broadcasters (including pay TV services) that are offered on SVOD of having at the very least the same percentage of Canadian content as on the original service*

- *The increase of Canadian content percentage of programming (other than new theatrical feature films) that is available in TVOD mode or that is put together by the service (i.e. other than that stemming from a Canadian linear service) to be offered in SVOD mode.*

- *The expectation to include in the menu of the VOD services a "Canadian films in theatres" section that would contain all the trailers of new Canadian feature films, from the moment they are made available to movie theatres up to the end of a film's career in theatres.*

▪ ***Other questions***

The Commission also wonders if it should *exempt from obligations the VOD services controlled by small terrestrial BDUs that are or will be exempt from the obligation of holding a licence.* This seemed logical, inasmuch as the new proposed obligations – that the medium and large VOD undertakings would be able to assume without difficulty – could be more difficult to respect for the smaller undertakings which, for the most part, have just

recently obtained a licence and are or will be in start-up phase. And which, in any case, will have a restricted transaction potential due to the small size of their service area.

Given that, as mentioned before, the subscribers to a given BDU service only have access to one VOD service, it would be important that the CRTC continue to express its expectations *"to the effect that each VOD service offer wherever possible on-demand programs in both official languages and that the licensees respect their commitments with respect to the French programs."* Moreover, the Commission should ensure compliance of these expectations, during the licence renewal of each service, a statutory component of its analysis and impose, as needed, restrictive obligations to those licensees that have not respected these expectations without compelling reasons.

- ***Pay-per-view television***

One of the issues of the review process of the regulatory framework for the BDU undertakings is that of whether the Commission must henceforth consider the PPV and VOD undertakings as belonging to the same category and subjecting them to, in whole or in part, the same regulatory framework.

In our opinion, before taking a position with respect to this issue, it is important to consider the particular situation of each of the two major categories of PPV licences currently granted by the Commission, namely the PPV services offered by terrestrial distribution and the PPV services offered by direct-to-home satellite (DTH).

As stated in the introduction, a DTH BDU like Bell ExpressVu devotes to its PPV service a very large number of channels offering its subscribers a "near VOD" experience. Bell's PPV service – *Vu!* – operates in an environment where it does not have to compete with a VOD service offered by the same BDU. The revenues from this service enjoyed an *annual* average growth of 14.4% between 2003 and 2007, and an overall growth of 71%, going from $29.4M to $50M during this same period.

Presumably, the DTH PPV undertakings, *which operate in an environment where they do not have to compete with a VOD undertaking offered by the same BDU*, could be subject to a regulatory framework and obligations that are similar to those that we have just touched on for the VOD services.

Meanwhile, it is a different story for the terrestrial PPV undertakings, which operate in an environment where they experience direct competition from a VOD service offering its users undeniable advantages. As a result, several of these services report a significant decrease of revenues since the introduction of VOD and now experience negative profitability.

To properly understand the difference between these two situations, note that the *Statistical and Financial Summaries, pay TV, pay-per-view television, VOD and individual specialty programming services* of the CRTC reveal that in 2007, *DTH Canal Indigo* enjoyed an PBIT margin of 41.53% while *terrestrial Canal Indigo* had a negative PBIT margin of -21.88%.

Prudence is called for here before harmonizing the regulatory framework and obligations of the VOD and PPV services. Remember that there are also specialty PPV services in sectors other than feature film, including sports, and above all remember that, unlike VOD, the PPV services are *linear* programming services which, in order to be deployed and offer a "near VOD" experience, must be able to have a very large number of channels. However, this is a factor that the PPV service does not control: it is the BDUs that distribute it that determine, on their own, the number of channels that they decide to grant.

For all these reasons, we believe that *the new regulatory framework should apply only to the VOD services and that the obligations which are appropriate to impose on the PPV undertakings should be the subject of a case-by-case analysis, during the licence renewal of each individual service, taking into account its situation and the particular environment in which it evolves.*

During the review process of the VOD regulatory framework, the Canadian film industry should thus, in our opinion, focus on the obligations that must be imposed on the VOD undertakings – which constitute a strong-growth sector and are called on to occupy all the feature film broadcasting windows subsequent to movie theatres – and put back in the context of the licence renewal of the individual PPV services the discussion of obligations that should be imposed, case by case, to the undertakings of this sector, whose overall role is declining.

6. Pay Television

Introduction

Even though there were 15 Canadian pay TV services in operation in 2007, most of them did not play a significant role in financing or broadcasting *new* Canadian feature films. Instead they devoted themselves to broadcasting: rerun films (*Mpix, Encore Avenue*, *CinéPop*), music (*ATN Music*), sports (*Cricket 1*), youth/family programming (*Family*) or third-language programs aimed at specific cultural communities (e.g. *ATN Tamil*, *ATN South Asia*, *ATN Carib*).

In 2007, three general interest pay TV services focused primarily on broadcasting *new* theatrical feature films: *The Movie Network* (TMN) (Regional, Canada East), *Movie Central* (Regional, Canada West) and *Super Écran.* These three were joined by a new English-language pay TV service, *Super Channel*, in 2008. These are the services – which we designate as new release pay TV services – that will be the focus of our attention in this section.

Contribution to financing the feature films supported by the CFFF

Among all the categories of the private sector television undertakings, the three services in operation in 2007 are those which contributed the most to financing the Canadian feature films supported by the CFFF in 2006-07 and 2007-08, in the form of investments or pre-buys – within or outside the financial structure.

Table 9

Contribution of private broadcasters to financing the Canadian budget share of feature films supported by the CFFF in 2006-07 and 2007-08

	French-language films	English-language films	Total
Number of titles	35	52	87
Canadian budget share	137 547 414	246 295 507	383 842 921
Total contribution of Canadian private broadcasters	1 495 000 (1.09%)	8 151 000 (3.31%)	9 646 000 (2.51%)
- including pay TV	***1 225 000*** ***82%***	***7 496 000*** ***92%***	***8 721 000*** ***90%***
- including Over-the-Air TV	*175 000* *12%*	*575 000* *8%*	*750 000* *8%*
- including Others	*95 000* *6%*	*80 000* *1%*	*175 000* *2%*

Sources: Telefilm Canada

As Table 9 shows, the total contribution from the different categories of Canadian private broadcasters is modest: 2.5% of the Canadian budget share of the 87 feature films supported.

And it would obviously be a lot less without pay TV which accounts for 90% of the total participation of Canadian private broadcasters, with a variant of 82% for the French-language films and 92% for the English-language films.

These data do not include the acquisition of licence fees made at a later date; they only concern the investments and pre-buys (within or outside the financial structure) that are known at the financing package phase.

Pay TV represents an important window both in terms of revenues generated and viewers reached for Canadian cinema, especially for the English-language feature films that collectively have more difficulty attracting viewers in theatres, and very likely on the non-regulated subsequent windows (home video) or offering pay-per-view (PPV) or video-on-demand access (VOD).

As a whole, the Canadian films exhibited in English-language version (original, dubbed or sub-titled) in movie theatres in Canada enjoyed a cumulative box-office total of $6.9M in 200738 – of which no portion was probably transformed into producer revenue share – while in 2006-07, pay TV contributed up to $4.1M to financing the only English-language feature films supported by the CFFF, under form of investments or pre-buys (not including later acquisitions). This speaks to the importance of this window as a source of private financing.

The four new release pay TV services in operation also contribute to the development of projects by providing assistance for scriptwriting as well as the acquisition of rights. Pursuant to their licence conditions, they should collectively devote $5M during the current broadcast year.

It is therefore very important for the Canadian film industry that its partnership with pay TV be continued and developed, as it represents an indispensable part of the equation.

Review of the evolution of the regulatory framework

From the time of restructuring the pay TV sector in 1984 to the present, there have not been substantial reviews of the regulatory framework for general interest pay television.

The three services already mentioned have not seen their definition of the nature of the service significantly modified. They are still authorized to broadcast a wide range of program categories (Categories 2, 3, 6, 7, 8, 9, 10 and 11) with a limit on the quantity of sports programs (5% of the grid) and an obligation to devote at least 50% of their quarterly programming to drama programs (Category 7).

In practice, pay TV has adopted an opposite path to VOD. While the latter was initially authorized mainly as a transactional mode for feature film broadcast and quickly evolved to provide all the program categories offered by the linear broadcasters, new release pay TV, which from the outset was and today still is authorized to distribute nearly all the program categories, voluntarily decided to focus predominantly on the drama programming. With the

[38] See detailed data in Appendix 4.

exception of certain comedy shows and documentaries about the cinema or shown in theatres, its programming today consists mainly of new theatrical feature films, made for pay, drama series and mini-series.

The distinctive elements found in the *Pay Television Regulations, 1990* – such as the ban on broadcasting advertising or on presenting programs (other than filler programming) produced by the licensee or a related company – have also remained unchanged. Also staying the same are the principles behind the obligations for Canadian content and the contribution to Canadian program expenditures in percentage of revenues. During the licence renewals, certain terms (inclusion of revenues from satellite BDUs and any return on capital invested in the programming in the gross revenues) may have changed but not the fundamental principles.

The only major change to the regulatory framework was the Commission's decision in 2006 to authorize an English-language general interest national pay TV service, which was directly in competition with TMN and Movie Central and enjoyed a guaranteed access to the distribution.

The CRTC was convinced that the addition of a new player could be beneficial for the Canadian production industry, by increasing the support to quality feature films and dramas: "*The Commission is of the view that the introduction of a competitive English-language general interest pay television service could lead to a net increase in the range of $70 million on Canadian programming expenditures for Canadian feature films and drama over seven years.*" In this same decision, the Commission meanwhile refused a request for a French-language service in direct competition with *Super Écran*, by stating in particular that it: "does not consider that the possible benefits of introducing a competitor to Super Écran are sufficient to outweigh the risks, given the relatively small size of the French-language market."

This decision constituted an exception to the policy in force since 1984 of not authorizing pay TV (or specialty) services to enter directly in competition with an existing service. The new service only came into operation in 2008 and it could thus take a few years to measure its impact on the dynamic of the new release pay TV sector and on the increase of its net contribution to Canadian programming.

During the review of the regulatory framework of the discretionary programming services, begun in 2007, there was very little discussion about pay TV per se. Most of the key questions – such as those concerning the access, diversity of genres or dispute resolution processes – were handled without making a clear distinction between specialty and pay TV services from category A, as a whole, and specialty and pay TV services from category B, also considered as a whole.

During this process, as during the one that the Commission devoted to Canadian dramas between 2003 and 2005 and also during the process that led it to submit a report in 2007 to Canadian Heritage on the structure, governance rules and guidelines of the *Canadian Television Fund* (CTF), several parties from the independent production sector

recommended that the Commission no longer authorize the Canadian broadcasters to include in the calculation of the amount of eligible Canadian program expenditures (that they may submit, if applicable, towards their Canadian program expenditure obligations in percentage of revenues), the licence fee top-ups paid by the Canadian Television Fund (CTF).

The advantages of such a provision are obvious. Currently, instead of adding the BDU contribution to the CTF to the Canadian program expenditures made by Canadian broadcasters, the BDU contribution largely reduces the amount that the discretionary programming services must themselves devote to Canadian programming under their licence conditions, which seems to run contrary to the objective that the Commission said it would pursue in 1994 when it created the *Production Fund* (now the CTF).

But as mentioned in the introduction, the issue has been raised time and again before the Commission in different processes over the past five years – including the process on the CTF which best lends itself to making a change, as this rule is an integral component of the creation of this Fund – and has not been retained by the Commission. It is therefore highly unlikely that Commission revisits this issue of general intent in the framework of the licence renewal of individual services.

Thus, at the end of this process, there was no significant review of the pay TV regulatory framework, nor is any other process expected in this regard in the near future. The next step that will allow the Canadian industry to submit its views will be the licence renewal of the three services established in 1984. In principle, their licences have all been renewed administratively up to August 31, 2009. It is possible however, even probable, that the Commission grants a new administrative renewal to these services – so as to determine the new VOD regulatory framework before embarking on their renewal.

Main issues during the licence renewals

The main issues that the industry would like to discuss with the licensees during these licence renewals are very likely those concerning the licence conditions related to the broadcast of Canadian content and the Canadian program expenditures.

With regard to the new release pay TV services, the possibility of offering programming blocks in SVOD mode has surfaced as a significant factor in attracting, retaining and satisfying subscribers. It is therefore a major issue for them (and indirectly for the Canadian feature film industry). For, without this possibility, the new release pay TV services would probably be faced with losing subscribers to the VOD services. However, we assume that this topic will have already been debated – and, hopefully, will enjoy a positive resolution – during the review of the VOD regulatory framework.

The new competitive environment in which the established services will henceforth have to evolve – with the addition of a direct competitor in the English-language market, which has a national licence (offering certain undeniable advantages over regional licence holders), as well as the deployment of VOD and a rapid increase of film offerings and other video

contents by Internet – will likely be brought up by the licensees as factors that do not bode in favour of augmenting their obligations.

There is little doubt that that the film industry will nonetheless have high expectations, given the financial soundness of the two major groups holding these licences, Astral and Corus.

- ***Broadcast of Canadian content***

In terms of the broadcast of Canadian content, the four new release pay TV services all have similar licence conditions, namely:

- 30% of the time from 6 p.m. to 11 p.m. and
- 25% the rest of the time during which the service is available

This works out to an average of 26% over a 24-hour broadcast. These percentages must be respected on each of the multiplex channels.

If this percentage is compared to that of Canadian feature films in movie theatres in terms of number of titles (20% in French / 13% in English) and all the more in terms of box-office share (19% in French / 1% in English)[39], it is decidedly proactive, especially for the English-language services. Yet, the pay TV services can (and very likely must) rely on other types of original Canadian programs (made for pay, drama series and mini-series; documentaries and variety shows from time to time) to help them meet their obligations for the broadcast of Canadian content.

Given that the established pay TV television services already broadcast, as a general rule, all Canadian feature films released in theatres in their linguistic market, the main effect of increasing the percentage of Canadian broadcast content, in this context, would very likely a) force them to subject Canadian feature films to a very high repeat factor; which often tires subscribers' patience or puts them off and/or b) encourage them to reduce the share of the grid occupied by theatrical feature films at the expense of other Canadian program categories.

For this reason, we believe that an increase in the percentage of the broadcast of Canadian content would not be desirable and would not contribute to reaching the objectives of the *Canadian Feature Film Policy*.

- ***Canadian program expenditures***

The three established services are subject to similar licence conditions, which set the percentage of gross annual revenues earned by the service during the previous year that the licensee must devote to the Canadian program expenditures based on the number of subscribers. The relationship between the percentage and number of subscribers varies according to the respective size of the market served by *TMN*, *Movie Central* and *Super Écran*.

[39] See detailed data in Appendix 4.

- For *TMN*, the scale has a percentage change of 22% (459 999 subscribers or less) to 32% (820 000 subscribers or more)

- For *Movie Central,* the scale has a percentage change of 18% (149 999 subscribers or less) to 31% (450 000 subscribers or more)

- For *Super Écran*, the scale has a percentage change of 20% (199 999 subscribers or less) to 24% (250 000 subscribers or more)

These scales were already in effect in 1995 and the Commission deemed it appropriate to leave them as is during the renewals in 2001. The maximum subscriber thresholds set out by the scales have long since been exceeded. According to the CRTC's statistical and financial summaries of each service, in 2007 *TMN* had about 1.1 million subscribers, *Movie Central* around 880 000 subscribers and *Super Écran* some 550 000 subscribers.

There is most definitely a case for reviewing these scales so that the maximum subscriber thresholds set out in them constitute real targets rather than a backward glance. However, it is obviously not possible to simply continue the rationale behind these scales and add, for example, 1 percentage point per block of 25 000 subscribers in the case of *Movie Central.* Such an exercise would result in a sudden increase from 31% to about 50% of the percentage applicable to this service, which would greatly surpass that which is required on average of the different categories of Canadian broadcasters (more on this later).

In addition, if ever the two English-language regional services were to merge to form a national service, so as to better compete with *Super Channel*, the strict application of one or the other of their existing scales would very likely oblige them to devote over 90% of their gross annual revenues to the Canadian program expenditures – which obviously makes no sense.

This demonstrates the arbitrary and somewhat artificial nature of these scales, whose introduction stems from an earlier period. Moreover, when the CRTC granted a new licence to *Super Channel* in 2006, it did not use this formula. Instead, it imposed on the licensee a fixed yearly percentage applicable starting in the second year, namely 32%.

One way of evaluating the appropriate percentage to apply, is the one which the Commission chose to establish in the two sectors or major genres of specialty television that it decided to open up to competition, i.e. "National news" and "Sports." In both these cases, the Commission deemed that the most appropriate and equitable approach consisted in subjecting all these services that will henceforth be in direct competition to similar licence conditions and obligations with regard to the broadcast of Canadian content and Canadian program expenditures.[40]

[40] See Broadcasting Public Notice, CRTC 2008-100 and 2008-103.

Given that the Commission has recently set the percentage of expenditures of *Super Channel* at 32% for each year of its licence term, which will expire on August 31, 2012, the logic of this method would suggest imposing, during their licence renewal, requirements similar to those of the two English-language services that are in direct competition, namely *TMN* (which is currently at 32%) and *Movie Central* (which is currently at 31%). In this way, the three English-language services in direct competition would have identical obligations for the broadcast of Canadian content and the Canadian program expenditures. This would establish, so to speak, that 32% is the optimum percentage the Commission decides to require of the new release pay TV Canadian undertakings in the existing context.

Another possible evaluation method is the one that the Commission first used in 2004 to determine whether there should be – and if so to what extent – an increase in the percentages of the Canadian program expenditures during the licence renewal of 22 analog specialty services that were authorized in 1996.

The Commission then decided that the services which had a historical PBIT margin (i.e. average PBIT margin over the 7 years of the licence period) significantly better than the average of the analog specialty services industry (during the last year where data are available), should increase their percentage of Canadian program expenditures. As well, it established a gradual scale of increase (from three to seven percentage points) based on the size of the favorable variance between the historical PBIT margin of the service and the average PBIT margin of the industry. If the historical PBIT margin of the service was similar or less than the average PBIT margin of the industry, its percentage of Canadian program expenditures remained unchanged.[41]

In 2006-07, the average PBIT margin of the analog pay TV industry was 28.32%. Meanwhile, the historical PBIT margin of the three new release pay TV services (for 2001-2007) is as follows: TMN: 20.95%; Movie Central: 26.66% and Super Écran: 28.80%[42]. If the Commission applies this method to analog pay TV – as it has done since 2004 for the analog specialty services – each of these services would see its percentage of expenditures remain the same, since they have a historical PBIT margin similar to or less than the average PBIT margin of the analog pay TV industry.

Thus, the two methods already used by the Commission in similar contexts – introduction of competition or licence renewal of analog services since 2004 – arrive at similar results and argue in favour of maintaining, with very little difference, the existing percentages.

Another way of approaching the problem is the comparison with other sectors of the industry, other categories of broadcasters, to try to evaluate if the obligations currently imposed on the new release pay TV services fall within the norm of what is required of other components of the Canadian broadcasting system.

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[41] See Broadcasting Public Notice, CRTC 2004-2.
[42] See detailed data in Appendix 5.

To this end, Table 10 establishes the percentage of gross annual revenues enjoyed during the previous year that each of the broadcaster categories devoted to the eligible Canadian program expenditures in 2007.

Table 10

Eligible Canadian program expenditures in percentage of the previous year's revenues Comparative among different categories of private broadcasters in 2007

Over-the-air TV	Analog specialty	Specialty Cat.1	Specialty Cat. 2	All specialty services	New release pay TV (obligations)
29.24%	45.60%	40.18%	22.48%	43.97%	29.97%

Sources: CRTC, Statistical and Financial Summaries, Television, 2003-2007; Statistical and Financial Summaries (with amortizations), Pay TV, pay-per-view, VOD and specialty programming, 2003-2007

As the table shows, the average contribution required of three services – based on their individual percentage of expenditures and their relative weight in terms of revenues – results in a minimum contribution equal to 30% of the revenues that they enjoyed during the previous year. This percentage is more or less equivalent to that which the over-the-air private broadcasters devote to their Canadian program expenditures, but noticeably less than what the category 1 analog specialty services* devote (* now grouped under the heading "category A services" with access rights).

This seems to suggest – unlike the two other methods – that there would be room for an increase in percentage of the Canadian program expenditures of these pay TV services, to keep them in line with the other service categories. However, it would be a different story if the percentage of Canadian program expenditures were compared to the percentage of Canadian content presented by each broadcaster category.

Conventional broadcasters, for example, have Canadian content broadcast obligations of 60% throughout the day. Given that they have devoted about 30% of their revenues to Canadian programs, they thus contribute 0.5% of their revenues for each percentage of the broadcast of Canadian content.

As for the new release pay TV services, they have Canadian content broadcast obligations of 26% throughout the day. Given that they must devote 30% of their revenues to Canadian programs, they thus contribute 1.2% of their revenues for each percentage of the broadcast of Canadian content. This is more than double the contribution of the over-the-air private broadcasters.

Briefly put, it is always complex and tricky to compare the "performances" of the different broadcaster categories, which each fulfill a very different mission and are subject to a set of highly variable obligations that interact in a unique and particular way.

It is also possible to compare the obligations of Canadian pay TV services to those levied on similar services elsewhere in the world. Part I of this study by Peter Grant reveals that the

obligations of Canadian services are significantly higher than those imposed, in France, on a Hertzian pay TV service like *Canal Plus*, namely 12% of revenues to European films including 9% to French-language European films (which is closer to the share that must be devoted to *national* films) or to pay TV services distributed by BDUs, such as *Ciné Cinéma* and *TPS Cinéma*, namely 21% to European films including 17% to French-language European films.[43] However, once again, prudence is called for here in these international comparisons given the unique broadcasting system history of each country, definitions that are not comparable, and the fact these percentages refer specifically to films and not programs, etc.

In summary, the different approaches used to arrive at divergent results sometimes indicate that there are certain arguments in favour of increasing the percentages. Yet, more often than not, other arguments and methods – including those normally used by the Commission in similar contexts – argue in favour of the status quo.

There is thus not clear evidence that the percentages of Canadian program expenditures of new release pay TV services must categorically be increased so that the contribution of pay TV to the development, financing and broadcasting of Canadian feature films continues to grow. Remember that the inherent beauty of a system that determines Canadian program expenditures in percentage of revenues is that it ensures – in a growing sector – a yearly increase of Canadian program expenditures at least equal to the increase of revenues, without having to modify the percentage. As such, between 2003 and 2007, the revenues of the three services in operation rose by 30.06% and their programs *telecast* Canadian program expenditures increased by 30.08%.[44]

All industry stakeholders must grasp these different methods and argue their points of view.

- ***Expenditures and broadcast time allotted to the drama series***

From the perspective of support to Canadian feature films, some regret the growing emphasis that the pay TV services have placed in recent years on the financing and broadcasting of original Canadian drama series.

Note that this phenomenon especially concerns English-language pay TV. *Super Écran* is not as significantly vested in the financing and acquisition of equivalent French-language drama series; this very likely reflects that fact that, in the French-language broadcast market, other distributor categories fill this niche. Whereas *TMN* and *Movie Central* have no doubt seen the opportunity to bridge the gap – in the English-language broadcasting market – arising from the gradual withdrawal of over-the-air private broadcasters with respect to original Canadian programming (See Section 7).

[43] For more details, see Part I of this study, page 15.

[44] Note that the Programs *Telecast* CPE do not include the amounts received from the CTF but only the amounts expended by the licensees. Sources: CRTC, Statistical and Financial Summaries, Pay TV, pay-per-view, VOD and specialty programming, 2003-2007.

From the more general perspective of those who support Canadian dramas, it is therefore very difficult to find fault, given that this support perfectly complies with the definition of the nature of their service.

Moreover, it would be astonishing if the Commission – or other stakeholders from the Canadian drama production sector – were open to these recommendations seeking to limit the contribution that pay TV brings to the financing and broadcasting of original quality Canadian drama programming other than theatrical feature films.

- ***Minimum percentage of total programming and Canadian programming that must be devoted to the dramas.***

At present, the new release pay TV services are all subject to a double requirement in terms of percentage of drama programs in their programming grid. As such, they must:

- devote, each quarter, at least 50% of *total* programming to dramas
- devote, each year, at least 50% of *Canadian* programming to dramas

In practice, the share allotted to the dramas in the total programming and in the Canadian programming is very likely higher, given that despite their general interest service licence, the new release pay TV services have definitely decided to position themselves as services that are devoted almost exclusively to feature films and other drama programs (made for pay, series, mini-series, etc.). This obviously has repercussions on their total program expenditures as well as on their Canadian program expenditures, which are also very likely allocated for the most part to the dramas.

Their next renewals could provide the opportunity to adjust the licence conditions listed earlier so that they better reflect their concrete practices as well as their commitment to drama programming.

One modification that might be suggested is to increase from 50 to 75% the minimum requirements for the percentage of total programming and Canadian programming that must be devoted to the dramas on a quarterly and annual basis respectively.

A similar provision could also be added to the licence condition regarding the Canadian program expenditures, so as to ensure that, *over the entire licence period, at least 75% of the Canadian program expenditures are devoted to the drama programs.*

These new obligations would reflect the licensees' own positioning choices, by providing the Canadian feature film production industry and TV drama program sector with assurances for maintaining these choices and directions.

- ***Other questions***

Other questions have been raised during the last licence renewals of the three services in question or during the process which led to the authorization of Super Channel, which refer to aspects that are not subject to particular licence conditions. These questions could be brought up once again during the licence renewal of *TMN*, *Movie Central* and *Super Écran*. However, the Canadian film production industry must be aware of the clear message resulting from the review of the *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services:* the Commission wishes to distance itself from micro-regulation and only wants to keep in its rulings, policies and licence conditions those obligations that are *essential* to reaching the objectives of the *Broadcasting Act*.

<u>*Calculation of licence fees per subscriber*</u>

A frequently raised question, particularly by the distributors, is the amount of licence fees paid to acquire Canadian films. At one time, these amounts were determined based on the number of subscribers, with each Canadian film receiving an acquisition amount equal to X times the number of subscribers.

This system offers growth guarantees for the acquisition amount, over the years, based on the annual growth of the number of subscribers. Meanwhile, it does not take into account the value of films on the market since the acquisition price is determined by number of subscribers to the service and not by its relative success in theatres and its relative drawing power for these subscribers.

Today, the prevailing method is related more to the market: the acquisition amount offered for each Canadian film varies according to the use value that the pay TV service assigns it. Thus, users pay more for a large box-office hit (*Passchendale* or *Bon Cop/Bad Cop*) than for a film that receives little attention. This acquisition amount is and will very likely be increasingly felt in the English-language market due to the fact that there are now new release pay TV services in direct competition, which may increase the prices for obtaining the film rights of the biggest blockbusters.

Each of these systems or methods thus has certain advantages as well as disadvantages. It is likely that the first method favours low-success films and puts other films at a disadvantage; whereas the opposite holds true for the second method. However, we do not have precise data to evaluate the merits, from a financial perspective, of each of these approaches and their respective impact on the total revenues that would result from its application for Canadian feature films considered as a whole.

Yet it seems to us initially that if the Canadian broadcasting industry and Canadian film industry develop stronger and mutually beneficial ties, they must acknowledge the realities of the market instead of focusing on the out-of-touch obligations of these realities.

Distribution of expenditures between investments and acquisitions

Another question that is sometimes raised is that of the distribution of programs telecast Canadian program expenditures between investments and acquisitions.

By and large, distributors prefer that the most possible resources be allocated to the acquisition expenditures of feature films; they believe that when a pay TV service invests a significant sum in the direct financing of a film, it tends to reduce the acquisition amount offered on top of this, which penalizes the ability of distributors with less revenues from this sector to repay their distribution advance.

On the contrary, producers, generally speaking, appreciate the fact that pay TV can directly invest in financing a film, and devote the greatest amounts possible as this enables the film to more easily complete its financing package.

It is not our intention to engage in this debate. We are simply providing in the pages that follow certain financial information which reveal that between 2003 and 2007, for the combined total of the three new release pay TV services then in operation, there was little variation between the percentage of programs telecast Canadian program expenditures allocated respectively to *Investments* (15%) and to *Acquisitions of rights* (70%). The only category to experience a significant increase is *Script and concept*; this increase occurs essentially at the expense of *Filler programming*.

Table 11

Evolution of the programs telecast Canadian program expenditures of the three analog pay TV services showing new release films

	2003	2007	Growth
Acquisition of rights	25,585,229 69%	33,950,910 70%	32.70%
Script and concept	1,746,710 5%	3,416,951 7%	95.62%
Filler programming and program production	4,215,490 11%	3, 955,576 8%	- 6.17%
Investment	5,732,930 15%	7,174,506 15%	25.15%
Total	37,280,359	48,497,943	30.08%

7. Over-the-Air Television, Public and Private

Introduction

Part I of this study conducted by Peter Grant revealed that, throughout the world, and especially in Europe, over-the-air television, both privately and public owned, play a very significant role in the financial support and promotion of the national cinema. The study also found that the *legal obligations* of investing in the *theatrical films* are often part of the legislative and regulatory corpus adopted by the States.

In Canada, such legal obligations – specifically related to theatrical feature films – do not exist in the *Broadcasting Act*. Of course, as was already mentioned, several provisions of Section 3(1) impose, on all the programming and distribution undertakings that make up the Canadian broadcasting system, general obligations with respect to the creation and broadcast of Canadian programming, which includes feature films as well as all other categories of Canadian programs but without particular emphasis or consideration.

As well, no obligations of this kind are found in the *Television Broadcasting Regulations* – which more particularly concern over-the-air television services – adopted by the CRTC in 1986 and reviewed periodically since then. During the last two reviews of the regulatory framework of over-the-air television in 1999 and 2007, the Commission imposed certain obligations to over-the-air private broadcasters with respect to the *broadcasting* of original Canadian programs, applicable to a fairly large group of program categories (non-specific in terms of individual categories), from among which the dramas, including theatrical feature films, are only one sub-category.

With regard to the national public broadcaster, the question of the support that it could bring to Canadian cinema was the topic of discussion during the last licence renewals of the English- and French-language networks as well as the voluntary commitments of both networks, which are time-limited (5 years), but never gave rise to specific licence conditions.

In brief, there is currently no *specific obligation with respect to the investment, acquisition or broadcasting of Canadian theatrical feature films* by over-the-air Canadian broadcasters, whether public or private. This sets Canada apart from most Western countries, especially as concerns public television.

Contribution to financing feature films supported by the CFFF

It will thus come as no surprise that the contribution of over-the-air broadcasters to financing feature films supported by the CFFF, in the form of investments or pre-buys – within or outside the financial structure – is overall very modest.

As the following table shows, the combined total of 2006-07 and 2007-08 for all over-the-air Canadian broadcasters only contributed up to 1.44 % to financing the Canadian portion of the budgets of theatrical feature films supported by the CFFF. This in addition to the licence

fees that they paid to the producers or have agreed to pay to the distributors, at the financing phase, and, which are within or outside the financial structure. These data do not include the acquisitions that are made after the fact.

Table 12

Contribution of over-the-air broadcasters to financing the Canadian budget share of feature films supported by the CFFF in 2006-07 and 2007-08

	French-language films	English-language films	Total
Number of titles	35	52	87
Canadian budget share	137,547,414	246,295,507	383,842,921
Total contribution of over-the-air broadcasters within and outside the financial structure	**4,370,000 (3.18%)**	**1,165,000 (0.47%)**	**5,535,000 (1.44%)**
Contribution of over-the-air public broadcasters	**4,195,000 (3.05%)**	**590,000 (0.24%)**	**4,785,000 (1.25%)**
- including CBC	-	300,000	300,000
- including SRC	4,125,000	280,000	4,405,000
- including educational TV	70,000	10,000	80,000
Contribution of over-the-air private broadcasters	**175,000 (0.13%)**	**575,000 (0.23%)**	**750,000 (0.19%)**
- including CTV	-	-	-
- including Global	-	-	-
- including TVA	175,000	-	175,000
- including TQS	-	-	-
- including Others	-	575,000	575,000

Source: Telefilm Canada

- ***Variation based on linguistic market and public/private***

The situation is very different according to the linguistic market. French-language films enjoy a contribution from over-the-air broadcasters in percentage of Canadian budgets that, despite being modest in its own right, is over *7 times greater* than that enjoyed by English-language feature films.

It might be thought that this difference reflects their respective drawing power with television viewers, which is much greater for French-language films vis-à-vis francophone audiences than for English-language films vis-à-vis Canadian anglophone audiences. This argument is especially valid for the private commercial broadcasters whose financing relies almost exclusively on advertising revenue, i.e. audiences reached. Meanwhile, it is less the case for the national public broadcaster, which receives significant parliamentary appropriations to help fulfill its public service mission.

However, this 7 to 1 gap is not occurring in the over-the-air private television sector, but in the public television one, and more specifically for CBC/Radio-Canada.

In fact, the *private* over-the-air broadcasters contribute more to financing English-language feature films (0.23%) than to French-language films (0.13%), always in percentage of Canadian budgets. Admittedly, this is an extremely modest participation which, in the case of English-language films, comes exclusively from independent broadcasters or regional networks, since neither CTV nor Global – the two major English-language private networks – contributed to financing any of the 87 feature films from this corpus. That said, the contribution of private over-the-air broadcasters to financing English-language feature films is nonetheless almost equal to that of over-the-air public broadcasters as a whole, and *is nearly double that of the CBC English network.*

From a public policy perspective, it seems to us that therein lies the rub. It appears difficult to understand and accept that the English-language network of the national public broadcaster has almost no interest in financing pre-buys of new Canadian feature films supported by the CFFF.

In fact, its participation in this regard was almost zero in 2007-08 and practically nonexistent in 2006-07; in total, this contribution comes out to $300 000, i.e. 0.12% of the Canadian budget share of the 52 English-language feature films. This is in contrast to that of the French-language network, Radio-Canada, which contributes up to 3.05% – namely 25 times more – to financing the Canadian budget share of the 25 French-language feature films, and which is by far the main contributor, as it provides nearly 95% of the total contribution of over-the-air broadcasters. In addition, Radio-Canada participated in certain English-language films, for a dollar amount ($280 000) comparable to that of the CBC ($300 000).

Problem and evolution of the regulatory framework of private broadcasters

Without wishing to take the side of the over-the-air private broadcasters, the fact of the matter is that theatrical feature films today generally do not have the drawing power for over-the-air television audiences that they did one or two decades ago.

The broadcast windows preceding release on conventional television have multiplied – Home Video, Pay Per View, Video On Demand, Pay TV – and together reach growing audiences, while reducing the number of television viewers for which the broadcast on over-the-air television constitutes a "first opportunity," after the theatrical release, of seeing a film that has a certain appeal for them. The value over the medium term (e.g. 2nd and 3rd broadcast) of these same feature films has also declined, given the increasing number of subsequent rerun pay TV and specialty services that exploit the feature film broadcast niche in a multitude of genres.

Moreover, it should be stated that, in recent years, private over-the-air broadcasters, especially English-language ones, have abandoned Canadian dramas in general. This situation is capturing the attention of members of the Canadian production industry, be they producers, scriptwriters, directors or actors. The issue of broadcasting and financing theatrical feature films by private over-the-air broadcasters is a more general one, which must be taken into account.

- ***Review of the evolution of the regulatory framework***

In 1999, the CRTC made significant modifications to the regulatory framework of over-the-air television, which sought to give more maneuverability and flexibility to private broadcasters, by maintaining the general broadcasting obligation of 60% Canadian content in the day and 50% at night, and by creating certain broadcast obligations for particular Canadian program categories. Among these modifications:

- remove any obligation of Canadian program expenditures in percentage of advertising revenue or annual gross revenue earned by the station or network

- replace the concept of underrepresented programs with the concept of priority programs, which include a much larger range of program categories, accompanied by weekly broadcast obligations, during peak viewing, of a certain number of hours for these priority Canadian programs, which vary according to the network size

Several have already expressed the fear that the first modification may result in a reduction of Canadian program expenditures in favour of foreign programming, and that the second may cause a decrease of broadcast time and Canadian drama program expenditures in favour of other categories included in the definition of priority programs, especially since the children's programs (usually dramas) were excluded.

Note that some years later, namely in 2003, the Commission created a working group and put in place a process with the goal of adopting "*viewing and expenditure incentives for English-language Canadian drama*" and to "*ensure that French-language Canadian drama remains a key component of peak time viewing.*" As one can see, the objectives were clearly distinct according to the linguistic market, which reflected a different analysis of the prevailing situation in each of these markets.

Such being the case, the measures that were implemented at the end of this process were similar in both linguistic markets. They consisted mainly of granting additional advertising minutes (above the maximum 12 minutes per hour then authorized) to the over-the-air and specialty broadcasters who contribute to the pre-financing of original Canadian dramas, including drama series for children and theatrical feature films (even if these were previously broadcast by a VOD, PPV or pay TV undertaking). The number of minutes authorized varied based on the hourly production costs.

The Commission had included in its plan a process for analyzing the impact of these incentives in 2008-09, but, as was the case during the review of certain aspects of the regulatory framework for over-the-air television, in 2007, it decided to gradually release the over-the-air broadcasters from all regulatory restraint with respect to the number of minutes it can broadcast in each clock hour. Hence, the incentives that had been adopted in favour of the dramas became null and void for the over-the-air broadcasters.

During this review, the Commission placed particular emphasis on the financial aspects of the over-the-air television sector. It did not modify the provisions that it had adopted in 1999,

which we listed earlier, even though it noted a reduction of Canadian program expenditures in percentage of total programming expenditures, as well as a net decrease of Canadian drama program expenditures between 2001 and 2006 for the English-language over-the-air broadcasters. The Commission deemed that it "does not consider that increasing regulatory obligations is appropriate at a time when the OTA television sector must respond to the ever-increasing challenge of competing with new and largely unregulated sources of audio-visual programming" and simply stated that it intended to discuss these questions during the licence renewal of the English-language over-the-air television networks.

The Commission also did not deem it appropriate to grant a fee-for-carriage to the over-the-air broadcasters during the first (Broadcasting Public Notice CRTC 2007-53) as well as second (Broadcasting Public Notice CRTC 2008-100) process where it studied this question. Lastly, note that the Commission's concerns with respect to Canadian programming are focused more on local programming than on the so-called priority programs broadcast by the major networks – which reflects the fact that the increase from 5% to 6% of their annual gross revenue related to broadcasting that the BDUs must now devote to the creation and financing of Canadian programming, will have to be allocated to a *Local Programming Improvement Fund* (LPIF), instead of to the *Canadian Television Fund* (CTF) or to private funds supporting the production of priority programs.

- ***Impact of this evolution on the Canadian program expenditures and Canadian drama expenditures***

It is becoming more evident that the fears expressed by several during the review of the regulatory framework of over-the-air television in 1999 have been confirmed.

As Table 13 shows, for Canada as a whole, the Canadian program expenditures – which represented 55% of the total program expenditures to be broadcast by over-the-air private broadcasters in 1999 – represented only 50% in 2003 and 46% in 2007. This confirms a continuing reduction of the relative weight of Canadian program expenditures in favour of foreign program expenses.

Table 13

Evolution of the relative weight of Canadian program expenditures (CPE) and non-Canadian program expenses (NCPE) in percentage of total spending of programs telecast by over-the-air private broadcasters from 1999 to 2007

	Canada			Canada excluding Quebec			Quebec		
	1999	2003	2007	1999	2003	2007	1999	2003	2007
CPE	55%	50%	46%	48%	43%	39%	83%	79%	78%
NCPE	45%	50%	54%	52%	57%	61%	17%	21%	22%

Sources: CRTC, Statistical and Financial Summaries, Television

Even though they are all bound by the requirement to broadcast at least 60% Canadian content over the broadcast day (and not less than 50% at night), the Canadian over-the-air private broadcasters today devote as a whole less than 50% of their total program expenditures to be broadcast to Canadian programs.

Once again, there are very significant gaps between the French- and English-language broadcasters.

And this, despite the fact that for the French broadcasters the growth of the relative weight of foreign programs, at the expense of Canadian programs, also occurs; the Canadian program expenditures continue to capture the lion's share of the total programs expenditures to be broadcast: 83% in 1999, 78% in 2007; which represents double the share that the English-language broadcasters devote to Canadian programs (39%).

It is important however to note that this represents a decrease of the *relative weight* of Canadian program expenditures, and not a decrease in absolute terms (dollars). During this period, the Canadian program expenditures continued to grow (except for 2007 versus 2006), as the following Table shows:

Table 14

Evolution of Canadian program expenditures (CPE) and non-Canadian program expenses (NCPE) of over-the-air private broadcasters in millions of dollars from 1999 to 2007

	Canada			Canada excluding Quebec			Quebec		
	1999	**2003**	**2007**	**1999**	**2003**	**2007**	**1999**	**2003**	**2007**
CPE	490.1	536.1	611.2	349.3	372.9	413.0	140.8	163.1	198.2
NCPE	400.4	541.8	718.0	371.3	499.4	662.1	29.1	42.4	56.0

Sources: CRTC, Statistical and Financial Summaries, Television

However, they are growing less quickly than the foreign program expenses:

- For Canada as a whole, the growth of foreign program expenses was 79% between 1999 and 2007, versus 25% for the Canadian program expenditures.

- In Canada excluding Quebec, the growth of foreign program expenses was 78%, versus 18% for the Canadian program expenditures.

- In Quebec, the growth of foreign program expenses was 93%, versus 39% for the Canadian program expenditures.

It is also important to note that this evolution is taking place in a difficult economic context for the over-the-air private broadcasters, particularly over the second half of the period, and that the growth rate of their revenues was equal to or less than that of the Canadian program expenditures:

- For Canada as a whole, the revenue growth of private over-the-air television between 1999 and 2007 was 17%, while that of the Canadian program expenditures was 25%.

- In Canada excluding Quebec, the revenue growth was 18%, i.e. identical to the growth of the Canadian program expenditures (18%).

- In Quebec, the revenue growth was 13%, while that of the Canadian program expenditures was 39%.

Meanwhile, both the English- and French-language Canadian broadcasters clearly decided to favour the foreign program expenses in this context, thus reducing their ability to finance more competitive and attractive Canadian programming for television viewers.

The gap between the revenue growth rate and the growth rate of Canadian and foreign program spending is in favour of the latter, and is especially evident over the second half of the period (from 2003 to 2007). Appendix 6 presents a more detailed analysis of the evolution of revenues and expenditures of over-the-air private broadcasters for the 2003-2007 period.

It is a different story for the Canadian drama program expenditures which have significantly decreased since 2003, in terms of absolute (dollars) as well as relative percentage (of total CPE), in Canada excluding Quebec and also in Canada as a whole, as the following table shows:

Table 15

Evolution of Canadian *drama* program expenditures of over-the-air private broadcasters in millions of dollars and in percentage of total Canadian program expenditures (CPE) from 1999 to 2007

	Canada			Canada excluding Quebec			Quebec		
	1999	**2003**	**2007**	**1999**	**2003**	**2007**	**1999**	**2003**	**2007**
$M	64.6	93.1	74.2	49.1	56.6	36.6	15.5	36.5	37.6
% of CPE	13%	17%	12%	14%	15%	9%	11%	22%	29%

Sources: CRTC, Statistical and Financial Summaries, Television

For Canada as a whole, as well as in both markets, there was a significant increase of Canadian drama program expenditures between 1999 and 2003, followed by, in Canada excluding Quebec, an even more significant decrease between 2003 and 2007.

So much so that in 2007, the Canadian drama program expenditures of over-the-air private broadcasters excluding Quebec is less in dollars as well as in percentage of total CPE, compared to what they were in 1999. In 2007, these expenditures of $36.6M represented only 9% of the total CPE of these broadcasters. Once again, this is in contrast with the Quebec broadcasters, who devoted 29% of their total CPE and a slightly higher dollar amount ($37.6 M versus $36.6M), despite the fact that it only captures 21% of the revenues of over-the-air private television in Canada.

In other words, for Canada excluding Quebec in 2006-07, the Canadian drama program expenditures represented only 2% of the revenues of over-the-air private broadcasters, versus 8% in Quebec. As a whole, they represented 3.4% of the total revenues. Note that in 2004 the Commission had set an overall objective of Canadian drama program expenditures of 6% for the revenues of the Canadian over-the-air private television industry, to be reached over a period of five years.[45] Four years later, we are thus still not there yet – and for good reason.

As found in the detailed tables of the attached Appendix 7, the Canadian drama program expenditures *decreased* in current dollars, between 2003 and 2007, from 20% in Canada as a whole to 35% in Canada excluding Quebec, while they enjoyed a modest increase of 3% in Quebec.

In 2007, for Canada excluding Quebec, the expenditures of Canadian *dramas* (Category 7: $36.6 M) rank much below the expenditures of *News* (Category 1: $260M), and after *Other information* (Categories 2 to 5: $46M) and *General entertainment and human interest* (Category 11: $38.4M). Despite being more sustained in Quebec, the expenditures of *Dramas* ($37.6M) nonetheless rank quite far behind those of *General entertainment and human interest* ($65.1M) which, thanks to reality TV, is slightly in front of – for the first time ever – *News* ($64.8M).

In terms of the relative weight with respect to the foreign program expenses of the same category, the *Canadian* drama expenditures of broadcasters excluding Quebec represent only 7% of their total drama program expenditures in 2007, as shown in the following table. In 2003, it was twice this amount (14%).

Table 16

Canadian (CPE) and non-Canadian (NCPE) breakdown of drama programs of over-the-air private broadcasters from 2003 and 2007

	2003			2007		
	Total	**CPE**	**NCPE**	**TOTAL**	**CPE**	**NCPE**
Canada	$475.2M	$93.1M 20%	$382.1M 80%	$578.8M	$74.2M 13%	$504.7M 87%
Excluding Quebec	$403.6M	$56.6M 14%	$347.1M 86%	$498.3M	$36.6M 7%	$461.8M 93%
Quebec	$71.6M	$36.5M 51%	$35.0M$ 49%	$80.5M	$37.6M 47%	$42.9M 53%

Sources: CRTC, Statistical and Financial Summaries, Television

[45] See BPN APR CRTC 2004-32.

For Quebec in 2007, 47% of the total drama expenditures go to Canadian dramas versus 53% to foreign dramas. In 2003, it was 51% / 49%.

Briefly stated, we see a net decline (in relative terms) of Canadian program expenditures and an even more pronounced decline (in relative and absolute terms) of Canadian *drama* program expenditures among English-language private over-the-air broadcasters.

With respect to the place of expenditures related specifically to fiction feature films meant for theatres (Sub-category 7 d), we are faced with the fact that the Commission does not publish data in this regard for the program sub-categories in general and that it does not make any exception for the theatrical feature films.

However, the analysis of the contribution of the over-the-air broadcasters, within and outside the financial structure, at the financing phase of the feature films supported by the CFFF over the past two years, clearly indicates that the acquisition expenditures of new Canadian theatrical feature films constitute at best an extremely marginal portion of their Canadian drama program expenditures.

In the absence of financial data, we asked the CRTC to provide us with data on the space occupied (in broadcast hours) by the theatrical feature films in general, and the first-run Canadian feature films in particular, on the airwaves of the over-the-air broadcasters in 2006-07.

Table 17

Space occupied by theatrical feature films during peak viewing (7 p.m. to 11 p.m.) on the three major over-the-air English-language television networks in 2006-07

	CBC Network	**CTV CFTO-TV Toronto**	**Global CICT-TV Calgary**
Total number of hours broadcast	1460 :00 00	1 459 :10 :44	1 460 :00 :00
Total hours of dramas (7) In % of total	553 :34 :50 37.92%	897 :06 :54 61.48%	784 :09 :35 53.71%
Including FOR In % of Dramas	204 :52 :00 37.01%	714 :41 :46 79.67%	639 :09 :35 81.51%
Including CDN In % of Dramas	348 :42 :50 62.99%	182 :25 :08 20.33%	145 :00 :00 18.49%
- Including original CDN	111 :30 :00	62 :45 :55	68 :00 :00
Total hours of feature films (7d) In % of total **In % of Dramas**	53 :29 :00 3.66% **9.66%**	06 :59 :15 0.46% **0.78%**	01 :58 :43 0.14% **0.25%**
Including FOR In % of feature films	43 :22 :00 81.08%	06 :59 :15 100%	01 :58 :43 100%
Including CDN In % of feature films	10 :07 :00 18.92%	- -	- -
- Including CDN original	08 :00 :00	-	-

Source: CRTC, Special Request

In Tables 17 and 18, we focus on the peak viewing period (7 p.m. to 11 p.m.), as it is the most likely slot for first-run Canadian original dramas, including feature films shown for a first time on over-the-air television.

Table 17 presents the results obtained for the three major *English-language* networks: CBC, CTV and Global. What emerges is, first, the extremely marginal place that feature films occupy in general during peak viewing of *private* over-the-air broadcasters: less than 1% of the total hours broadcast as well as drama broadcast hours; and, secondly, the complete absence of new release or rebroadcast Canadian feature films.

Once again, the difference is significant among English- and French-language broadcasters.

As shown in Table 18, the theatrical feature films enjoy a substantial portion of the total peak viewing hours and some 50% of the total hours broadcast of the drama programs of the two French-language private television networks, TVA and TQS, on a yearly basis. This is no small matter. Meanwhile, it is the foreign feature films that capture nearly all of this space.

Table 18

Space occupied by theatrical feature films during peak viewing (7 p.m. to 11 p.m.) on the three major over-the-air French-language television networks in 2006-07

	SRC Network	**TVA CFTM-TV Montréal**	**TQS CFJP-TV Montréal**
Total number of hours broadcast	1 460 :00 00	1459 :52 :43	1 338 :16 :17
Total hours of dramas (7) In % of total	524 :00 :07 35.89%	693 :44 :25 47.52%	797 :15 :47 59.57%
Including FOR In % of Dramas	173 :24 :33 33.09%	428 :38 :22 61.79%	569 :24 :08 71.42%
Including CDN In % of Dramas	350 :35 :44 66.91%	265 :06 :03 38.21%	227 :51 :39 28.58%
- Including original CDN	258 :27 :04	161 :09 :48	91 :35 :13
Total hours of feature films (7d) In % of total **In % of Dramas**	126 :25 :09 8.66% **24.12%**	346 :15 :11 23.72% **49.91%**	430 :06 :10 32.14% **53.95%**
Including FOR In % of feature films	79 :18 :16 62.73%	340 :46 :41 98.42%	408 :43 :58 95.03%
Including CDN In % of feature films	47 :06 :53 37.27%	05 :28 :30 1.58%	21 :22 :12 4.97%
- Including CDN original	22 :02 :05	01 :59 :30	07 :56 :30

Source: CRTC, Special Request

In the next section, we will address the situation of the national public broadcaster.

With regard to the English-language private broadcasters, it appears that their lack of interest for new Canadian feature films is part and parcel of their lack of interest for new feature films in general, which no longer constitute a component of any importance whatsoever in filling peak viewing.

As for the French-language private broadcasters, there is still very strong interest for the theatrical feature films, but it is focused over 95% on the foreign feature films.

Problem of the national public broadcaster

The national public broadcaster is obviously not essentially a commercial undertaking, like over-the-air private broadcasters or PPV and VOD pay TV services. As the following table shows, over 70% of the annual revenues of the main radio and television stations of CBC/Radio-Canada (the "Corporation") come from parliamentary appropriations, which are allocated to it to fulfill its public service mission.

Table 19

Parliamentary appropriations, program revenues and expenditures, expenditures from Canadian television programs and Canadian dramas of the main radio and television stations of the CBC / Radio-Canada from 2003-2007 (in $000)

	2003	2004	2005	2006	2007	Growth 2003-2007
Independent revenue	370,870	411, 364	327, 747	429, 643	397, 808	4.45%
Parliamentary appropriations	939,844	923, 540	936, 648	1, 023, 902	956, 536	1.78%
Total	1,310, 714	1, 334, 904	1, 264, 395	1, 453, 545	1, 354, 344	3.33%
Program expenditures (radio and TV)	1, 163,127	1, 338,712	1, 218, 347	1, 352,164	1, 274, 683	9.59%
Telecast Canadian program expenditures	460, 088	529, 358	n.a.	530, 910	495, 307	7.65%
Telecast Canadian drama program expenditures (cat. 7)	102, 271	100, 841	104, 622	116, 809	112, 132	9.64%
In % of telecast Canadian program expenditures	22.23%	19.05%	n.a.	22.0%	22.64%	

Sources: CRTC, Statistical and Financial Summaries, Television, 2003-07; Broadcasting Policy Monitoring Reports 2007, Communications Monitoring Report 2008

The Corporation carries out this mission by financing and broadcasting a wide range of programs, mostly Canadian, whose selection must first and foremost achieve the objectives of the *Canadian Broadcasting Policy*, set out in Section 3(1) of the Act, and more

specifically those set out in Section 3(1)m) which states the Corporation's specific obligations.

With respect to television and more specifically drama programs, it reveals Canadian content broadcast commitments greater than the obligations of the over-the-air private broadcasters, and also in dollar amount (in 2006-07: $112.3M versus $74.2M for all over-the-air private broadcasters) and in percentage (22.6% versus 12%) of the total Canadian program expenditures devoted to drama programming that are much greater than those of over-the-air private broadcasters.

As concerns the English-language network, there is also a much more marked interest for the broadcast of feature films in peak viewing, which capture, on a yearly basis, nearly 10% of the total broadcast hours of the drama programs (between 7 p.m. and 11 p.m.), compared to less than 1 % for CTV and Global. With regard to the French network, even though its interest is smaller than that shown by TVA and TQS, it is still higher, since, on a yearly basis, it devotes 24% of its total broadcast hours of drama programs (between 7 p.m. and 11 p.m.) to theatrical feature films.

The national public broadcaster's interest in the broadcast of theatrical feature films is clearly shown in the period following its last licence renewal. At that time, the CRTC had imposed licence conditions on the two networks that prohibited them from broadcasting foreign blockbusters, defined as films that are "listed within the top 100 films of Variety magazine's list of top grossing films in the United States and Canada, within the 10-year period" following their release in theatres. Meanwhile, the CBC and Radio-Canada refused to respect this licence condition and in 2003 requested that the Commission ratify this refusal and remove this licence condition – which the Commission agreed to do.[46]

Within this context of pronounced interest in the broadcast of theatrical feature films, the nearly total disinvestment of the Corporation's English network toward the Canadian feature films supported by the CFFF in 2006-07 and 2007-08 appears even more difficult to comprehend and accept.[47] All the more so since the French network not only devotes significant amounts to acquire these films, but also promotes them in many ways: by financing and broadcasting in prime time the "making of" of several of them just before their theatrical release[48], by an extended coverage of their launches in its local and regional news

[46] See Broadcasting Decision CRTC 2003-398.

[47] The CBC English network has often stated that its interest in the broadcast of new Canadian feature films could only be revived on the condition that it can broadcast these films at the same time as pay TV. This is an unusual requirement since it is only the non-Canadian feature films that nevertheless occupy nearly 10% of the total drama hours that it broadcasts in peak viewing period; in addition, the CBC French network does not have this requirement, and, to our knowledge, does not have American or European over-the-air broadcasters that operate in a context where new release pay TV services exist.

[48] By way of illustration, consider the presentation of "*Babine : Fabrication,"* which had 721 000 television viewers during its broadcast of Tuesday December 2, 2008; which undoubtedly contributed to the very good performance of this film in theatres during the weeks that followed ($2.7M at the box office after 7 weeks of exhibition).

bulletins, by invitations made to writers, directors and performers to appear in its talk programs and cultural magazine programs, etc.

The lack of equivalent commitments from the English network is undeniably a factor contributing to the difficulty that English-language feature films have in reaching large Canadian audiences and in achieving the objectives established during the adoption of the *Canadian Feature Film Policy.*

As was stated a bit earlier, throughout the world and particularly in Europe, the States have arrived at the conclusion that a healthy development of their national cinema cannot be achieved without the constant, concerted and vocal support of their public service broadcasters. Accordingly, the vast majority of these nations have imposed legal obligations in this respect on their national public broadcaster. And nearly all of those remaining have adopted public policy provisions along these lines or have encouraged their public or private service broadcasters to take on voluntary commitments.

This necessary linking between film and television policies appears increasingly *current*. Even though in certain countries, such as France, legal obligations have been imposed since the birth of television, in recent years greater efforts have been made to better join the film and television policies of the States. In just the past 5 years (2004-2008), a large number of European States have strengthened the obligations of public service broadcasters with respect to cinema, including Germany, Spain, Czech Republic, Sweden, Switzerland, Poland and Romania.

In Great Britain in 2006, the "BBC and UK Film Council announce[d] [a] dynamic new partnership with British films at [the] heart of BBC's film strategy."[49] This strategy includes a 50% increase of the BBC's film budget, a 50% increase (10 to 15 million pound sterling a year) in BBC ONE and BBC TWO's expenses for acquiring British films, film promotion commitments across the BBC's media outlets, an additional commitment to new talent on BBC THREE, etc.

This consultant believes that Canada cannot make an exception to the rule, and that any long-term solution to the difficulties of English-language Canadian cinema in reaching audiences in Canada, inevitably involves a firm and long-term commitment from the national public broadcaster in terms of the financing, acquisition, broadcasting and promotion of Canadian theatrical feature films. The CBC English network must absolutely be called on to develop an overall support strategy, similar to the one introduced by the BBC in Great Britain, or right here by the CBC French network.

[49] BBC press release, February 22, 2006.

Main issues during the licence renewals

In fall 2008, the CRTC finalized its review process for certain aspects of the regulatory framework of over-the-air television. In spring 2009, it will hear licence renewal requests from the CBC French and English networks, as well as from the two major English-language private national networks, CTV and Global, and also from the main French-language private network, TVA.[50]

The processes provide an appropriate framework for proposing measures to better unite Canadian television as well as film policy, and encourage the over-the-air broadcasters to better support Canadian cinema.

Before making suggestions in this matter, it is important to establish the economic and regulatory context in which these renewals will be done.

- ***Economic and regulatory context of the renewals***

The fiscal position of the over-the-air private broadcasters is not especially satisfactory with regard to the expectations of their owners and shareholders. In 2007, the PBIT margin for Canadian broadcasters as a whole was 5.20% – a strong decline compared to 2003 (14.57%). In Quebec, this margin was 5.07%: also a decrease in comparison to 2003 (12.85%).

The over-the-air broadcasters did not obtain the authorization – that they so desired – to receive a monthly wholesale fee in exchange for their distribution by the broadcasting distribution undertakings (BDU). Despite the fact that the CRTC had authorized them to refuse to grant the BDUs permission to distribute their signal outside their service area (distant signals) – unless they obtain a financial compensation that they deem satisfactory – they will have to appear before the Commission with financial projections showing low profitability, even possibly negative in certain years, for the next licence period. Especially given:

- The international, North-American and national economic situation being what it is, and the fact that most analysts specializing in this field expect a significant decrease of advertising revenue from sponsors in 2009, but have different opinions as to when things will turn around (end 2009, 2010, 2011?). As the over-the-air private broadcasters draw the bulk of their revenue from advertising, this should affect them more than the discretionary programming services or than CBC/Radio-Canada which draws a substantial portion of their revenue from subscribers or parliamentary appropriations.

[50] At the time of the transfer of ownership of TQS, the Commission renewed the licence of the network and those of its stations in exclusive property for a period of 7 years, but it required that TQS agree to return before the Commission in spring 2011, to discuss in particular the broadcasting of news. Thus, this network will not be renewed at the same time as the others, as initially planned.

- They will probably argue that, over a period of 7 years, the audience fragmentation should continue within the regulated broadcasting system, and that the competition brought by alternative and currently unregulated forms of access to television content, particularly via high-speed and broadband Internet, will intensify.

- They will very likely point out that the access to the resources that the Commission intends to make available to them through the *Local Programming Improvement Fund* (LPIF) is conditional upon the commitment of additional expenditures in terms of local programming on their behalf.

- Lastly, they will have to invest significant amounts to ensure the transition to digital terrestrial transmission by 2011.

In brief, the economic context, at the time of the licence renewal of the over-the-air private networks, will not lend itself *very naturally* to increasing their obligations with respect to Canadian program expenditures.

Moreover, it can be observed that during the two processes required to complete the review of their regulatory framework, there was, by and large, very little question about the priority programs in general and the dramas in particular. Over the course of these processes, as during the licence renewal of TQS, the Commission above all stated its concerns regarding the broadcast of local programming, in particular that of the news. As well, the incentives that the Commission had introduced in 2005 to foster the financing and broadcast of quality and high-budget Canadian dramas – at the end of a process that received strong media coverage and that rallied tremendous efforts – have become ineffective some years later due to an almost total indifference.

That said, the Commission clearly stated in Broadcasting Notice of Public Hearing CRTC 2007-53, *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, that it was concerned by the decline in the relative weight of the Canadian program expenditures of the English-language broadcasters, in favour of foreign programming, and the net decrease (as percentage of their revenue) of their Canadian drama program expenditures. Furthermore, the Commission said that it intended to reconsider these questions as part of the licence renewals of the major English-language over-the-air television networks.

However, the Commission is satisfied with the performances of the French-language private broadcasters, and says as much in its *Communications Monitoring Report 2008*.

- ***Proposals***

In this context, it appears to us that the Canadian production industry should focus and target its interventions, rather than drafting a long list of requests vaguely intended for all the over-the-air broadcasters, regardless of their language or status (private/public).

With regard to the *English-language private* over-the-air broadcasters, it seems to us that the emphasis should be put on increasing the Canadian drama program expenditures in general, and first and foremost the expenditures related to the program categories that are specific to television and mostly the domain of the over-the-air broadcasters, i.e. comedies (7a), dramas (7b), mini-series and made for pay (7c).

The drama programs are largely dependent on over-the-air television – particularly in the case of serious drama. Few specialty services are able to yearly finance a significant number of original Canadian programs coming from these categories, with the exception of children's programs. And there are surely limits to what pay TV is prepared to allow to fill the void.

It should be noted that in 2004 the Commission had stated that the general objective of the Canadian drama program expenditures to be reached by the Canadian over-the-air broadcasters was 6% of the total industry box office over a period of five years.[51] In 2005, it stressed that this objective was still valid and that the three major proprietary groups of the English-language networks then in operation (CTV, Global and CHUM) could reach this objective by yearly increasing their expenditures by a little more than a half percentage point.[52] Meanwhile, as was seen earlier, this objective was not achieved. The Canadian drama program telecast expenditures for all Canadian over-the-air broadcasters excluding Quebec in fact decreased between 2003 and 2007 and only represented 2% of their annual revenue in 2007.

It would thus be a good idea to reaffirm the relevance and merit of the Commission's objective and *impose on the English-language over-the-air private networks, by condition of licence, the obligation of attaining over the first five years of the new licence period the objective of devoting at least 6% of the gross annual revenue earned over the previous year to the Canadian drama program expenditures.*[53]

The theatrical feature films are an integral part of the Dramas category and could benefit from an increase of the drama program expenditures of over-the-air broadcasters. However, placing emphasis on recommendations that specifically concern the financing and broadcasting of new Canadian theatrical feature films (7d) would, in our opinion, take away from the main objective (i.e. series and mini-series). This is all the more so since the

[51] Broadcasting Notice of Public Hearing CRTC 2004-32, paragraph 86.
[52] Broadcasting Notice of Public Hearing CRTC 2005-81, paragraph 22.
[53] The consultant believes that in light of the fragile fiscal position of these networks, the contributions of the CTF should be included in the calculation of eligible expenditures for purposes of this obligation such as set out during the creation of the Production Fund in 1994.

theatrical feature films in general represent less than 1% of the broadcast time of dramas on the airwaves of CTV and Global, during peak viewing. It is thus a clearly marginal component of their programming.

The recommendations concerning the feature films should instead be directed toward other categories of private sector broadcasters; namely those for which the first broadcast of new feature films represents an important, if not central, programming element: pay TV, pay per view and especially video on demand, given the importance that this last category is called on to take. (See the suggestions from previous sections).

With respect to the *French-language private* over-the-air broadcasters, they already devote to the Canadian drama program telecast expenditures a percentage of their gross annual revenue (8%) that is greater than the objective set by the Commission (6%). In the current economic context, it appears difficult to justify imposing an increase of this percentage on them.

However, given that they devote 50% or more of their total drama broadcast hours in peak viewing (7 p.m. / 11 p.m.) to theatrical feature films (category 7 d), it would not be unreasonable to *establish for them objectives to reach over five years with regard to the percentage of their total acquisition expenditures of theatrical feature films that must be devoted to the acquisition of Canadian feature films.*

With regard to the over-the-air *public broadcasters*, specifically CBC/Radio-Canada, we believe on the contrary that the main concern should be to get each of the networks to respectively commit to renewing (French network) and implementing (English strategy) an overall and comprehensive strategy for supporting Canadian cinema, including clearly stated development, financing, acquisition, broadcast and promotion sections.

The reasons that argue in favour of such a concern are numerous: it is a method that most countries interested in developing their national cinema recognize as indispensable; the national public broadcaster demonstrates through its programming a manifest importance for the broadcast of new theatrical feature films in peaking viewing; this plays an undeniable role in its public service mission and would foster achieving several of the objectives assigned to it by the Act, including that of offering programming which should "*be predominantly and distinctively Canadian*," "*actively contribute to the flow and exchange of cultural expression,*" "*strive to be of equivalent quality in English and in French*" and "*contribute to shared national consciousness and identity*" [excerpts from section 3(1)m) which describe what the programming provided by the Corporation should be].

Moreover, as has been seen, the two networks are already significant contributors to the financing and broadcasting of Canadian drama series and mini-series.

- The French CBC network devotes 76% of its broadcast time of dramas other than feature films, in peak viewing, to Canadian programs, versus 37% of its broadcast time of feature films to Canadian features.

- As for the English network, it devotes 68% of its broadcast time of dramas other than feature films, in peak viewing, to Canadian programs, but only 18% of its broadcast time of feature films to Canadian features.

Within the Drama category, it is unquestionably on the feature film side that the English CBC does not live up to the requirement of offering a programming that is "*predominantly and distinctively Canadian.*"

It is evident that, unless CBC/Radio-Canada comes up with such an overall and comprehensive strategy itself, it is very unlikely that the CRTC will impose one on it. Concerted efforts in the industry by Canadian Heritage, CBC/Radio-Canada and the CRTC could be taken to try, on the one hand, to convince the Corporation of the relevant need to deploy such a strategy and to attempt, on the other hand, to make use of each party's resources and expertise to make the strategy as effective as possible, if it is implemented.

8. Notes Concerning Subsequent Exhibition Cycles

In this study, we have placed the emphasis on the broadcast windows on which the new Canadian theatrical feature films are exhibited for their first broadcast, from VOD to over-the-air television.

However, it is important to note that the theatrical feature films are the audio-visual products with the longest life span and that their career on television is far from over with their first broadcast on over-the-air television. On the one hand, the over-the-air broadcasters often acquire the exclusive broadcast rights of these films for a period of 3 to 5 years that is usually renewable. On the other hand, once this exclusivity period has passed (or if no over-the-air broadcaster has acquired the rights on this window), a slew of other broadcaster categories step in, including rerun pay TV, specialty services and provincial education television.

In this way, a feature film can be exhibited without interruption (i.e. have the broadcast rights transferred to at least one Canadian television programming service) during several decades and thus generate impressive audience numbers. This is especially so today where several rerun pay TV services are in operation (*Mpix, Encore Ave, CinéPop*) and also because of a multitude of specialty services for which a large part of the programming is devoted to feature films of all genres and from all eras: from *Silver Screen* to *Showcase*, *Showcase Action* and *Showcase Diva*, and including *IFC*, *Drive-In*, *Space*, *Mystery* or *Scream*.

A study that we conducted in 2004[54] revealed that, for example, over the three previous years, almost one third of all original French-language Canadian feature films produced in Quebec from 1940 to 1995 underwent an acquisition transaction by a French-language Canadian programming service, whether it be an over-the-air television service (19% of

[54] "Commercialisation du patrimoine audiovisuel québécois, État des lieux". Study conducted by Michel Houle, consultant, industries culturelles et communications, for SODEC, March 2004.

transactions), educational television (32%) or a specialty service (49%). And this, despite the fact that there is a much more limited number of French-language Canadian specialty services (than English language) that are devoted mainly to broadcasting feature films. As well, when the study was carried out, the French-language rerun pay TV service, *CinéPop*, was still not in operation.

This study also indicated that 12% of these transactions involved films that were produced more than 30 years before the transaction took place (i.e. in 1970 or earlier) and that 44% of these transactions involved films that were produced more than 20 years before the transaction took place (i.e. in 1980 or earlier). This speaks volumes about the career longevity of Canadian feature films on television as well as their ability to reach and affect a significant number of Canadian viewers a long time after their theatrical release. During the 50th anniversary of the *Wizard of Oz* in 1989, an American study had concluded that the film reached in *that year alone* more television viewers in just the United States than the number of viewers it reached worldwide at the time of its release in 1939.

The exhibition of Canadian feature films on television over the decades following the first exhibition cycle has the potential to generate – for the cumulative total of all acquired broadcasts – considerable audiences. As well, it contributes to generating revenues, that are usually modest per transaction, but which cumulatively make a significant contribution to the financial well-being of Canadian distributors, producers and right-holders.

It would therefore be important, during the licence renewal of the Canadian rerun pay TV services and Canadian specialty services that devote a large part of their programming to theatrical feature films, to ensure that each one makes an appropriate contribution – given their respective situation and particular genre – to support Canadian feature films, with respect to both broadcast hours and Canadian program expenditures.

9. Publication of Financial and Audience Data

Introduction

Throughout this study, we were faced with the fact that the statistical and financial data as well as the audience data published by the CRTC in its Statistical and Financial Summaries and in its Monitoring Reports do not provide any information on theatrical feature films (Category 7d).

This stems from the fact that the Commission publishes a breakdown of such data by program category ("News," "Sports," "Dramas," "Game shows," etc.) or by group of program categories (e.g. Categories 2 to 5 are grouped under the general heading of "Other information") but not by sub-category. It is therefore impossible to determine what portion of their drama program expenditures the different programming service categories devote to the feature films intended for theatrical release (Sub-category 7 d); it is the same thing for the listenership of Canadian dramas that is devoted to these feature films.

There is however an exception to this rule: in the case of the audience data published in its *Broadcasting Policy Monitoring Reports* or in its *Communications Monitoring Report*, the Commission separates the Long-Form Documentaries (Sub-category 2 b) from the other components of the large "Other information" category and also provides helpful information on the listenership of the Canadian documentaries broadcast by the different broadcaster categories.

Moreover, in the case of children's programs, which are defined by their target audience and not by their genre, and which can thus belong to several categories, the Commission publishes, in its Statistical and Financial Summaries, the amounts of Canadian program expenditures that the licensees (collectively considered by undertaking category: over-the-air television, specialty television – including category 1 and category 2 analogs – pay TV) devote to children's programs.

As mentioned in the introduction, *Canadian Heritage* is currently working on implementing or improving the audience measurement systems for the Canadian feature films, particularly on the broadcast windows preceding release on conventional television: theatres and home video. *The Commission would be providing a helpful service and would contribute to the collective effort of improving the understanding of audiences reached by their broadcast and the contribution made by the broadcasting undertakings to the financing and broadcast of Canadian feature films, if it modified the way of presenting the data on the Canadian program expenditures and audiences of Canadian programs, so as to separate the theatrical feature films.*

We are including on the pages that follow a certain number of proposals in this regard, which could be implemented at the same time as the new provisions regarding the disclosure of financial data that the Commission set out in Broadcasting Public Notice CRTC 2008-97 from last October 27 (such as amended by the BPN CRTC 2008-97-1 of January 23, 2009).

Proposals

- ***Statistical and financial summaries***

A first modification could be added in the section that identifies certain particular expenses – a) Close caption b) Dubbing, c) Program development, d) Children's program, e) Ownership transfer tangible benefits and f) Described video) – that are already included in the program telecast Canadian program expenditures, an item g) Feature films of Category 7 d).

This would allow knowing the Canadian program expenditures that each broadcaster category devotes to the theatrical feature films (7 d), and thus better determine how they evolve over time, in absolute terms (dollars) as well as relative terms (in percentage of total expenditures of Canadian drama programs).

The Commission could also add in the section that identifies particular expenses – a) Dubbing – which are already included in the program telecast *non-Canadian* program

expenses, an item b) Feature films of Category 7 d). This would establish a breakdown of program telecast expenditures that, individually and as a whole, each broadcaster category devotes to the theatrical feature films among expenses allocated to Canadian features films and non-Canadian feature films.

The adoption of these provisions would provide the Canadian film sector, the CRTC itself, as well as the departments and agencies in charge of developing or contributing to the implementation of the *Canadian Feature Film Policy*, such as Canadian Heritage and Telefilm Canada, with very useful information. These new data would also provide pertinent information and a basis for comparison in the adoption of regulatory frameworks or policy statements affecting certain broadcaster categories, as well as during the licence renewal of individual services.

To cite the words used by the Commission in BPN 2008-97, we believe that the additional information gathered "*will improve the quality of the applications submitted by the public to the hearings of the Commission, which will finally allow taking more enlightened and better-informed decisions.*"

- ***Communications monitoring report***

Until very recently, the CRTC published separately a *Broadcasting Policy Monitoring Report* and a *CRTC Telecom Monitoring Report*. In 2008, it merged the two reports by publishing a *Communications Monitoring Report 2008*.

In this new report – as in previous monitoring reports on the Canadian broadcasting policy – the Commission publishes data on the breakdown of listenership according to the program category, on the airwaves of Over-the-Air Private Broadcasters, CBC/Société Radio-Canada and Pay and Specialty Services, by linguistic market.

These data allow determining, for example, what share of total listenership of Canadian dramas on Canadian television (French and English language) is captured by each of the broadcaster categories surveyed or what share of the total listenership of dramas will respectively go to the Canadian and non-Canadian dramas for each broadcaster category and as a group.

Once again, the Commission would be providing a useful service and would help Canadian Heritage achieve its objectives, if it added, to the number of program categories for which the information is provided, the Feature films of sub-category 7 d), like it does for the Long-form documentaries of sub-category 2b).

It would also be helpful if the Commission provides separate information for the specialty services and for the pay TV services which, currently, are combined. In light of the exceptional role that pay TV is exerting – and particularly new release pay TV – with regard to the linear broadcast of *new* Canadian theatrical feature films, this distinction among specialty services (that are normally involved more at the second exhibition cycle of feature films on television, i.e. after over-the-air television) and new release pay TV services (by

ideally separating them from other pay TV services) would bring valuable information about the listenership of feature films on television during the first exhibition cycle and the respective shares enjoyed by pay TV and over-the-air television.

- ***Video on demand***

Currently, the Commission publishes data on the revenues, overall expenses and the average profitability for all categories of Canadian programming services, but it does not publish data on the Canadian program expenditures and the non-Canadian program expenses by program category for the over-the-air television services, the specialty television services – broken down among the category 1 and category 2 analogs – and the pay TV services. It does not publish such data for the PPV and VOD services.

Given the importance that "on demand" consumption is called upon to take in the exhibition of new feature films shown on television, it would be increasingly helpful and important to know the contribution that the VOD services make to financing Canadian feature films.

Moreover, it is regrettable that in the discussion that has started on the review of their regulatory framework, the public and stakeholders from the industry do not have any reliable factual data that establishes what is the size of the 5% contribution to the independent Canadian program production funds that the VOD sector has paid over the years and the purposes that these amounts have served, or even what share of the total revenues of the VOD (or pay TV) service transactions come from transactions related to the theatrical feature films, and to the Canadian and foreign feature films respectively.

In the BPN CRTC 2008-101, the CRTC indicates that it would like to require the VOD services to provide more detailed information on the available inventory of films and programs for each server, including the origin (Canadian/non-Canadian), key figures, broadcast language, etc. We propose that the information requested of the VOD services by the Commission should be of such a nature that they allow it to then publish data on the following aspects:

- Share of the revenues of TVOD activities that is attributable to the transactions related to the theatrical feature films of Category 7 d), broken down based on new theatrical feature films (i.e. offered less than a year after their theatrical release) or based on rerun feature films, and, for each of these subdivisions, among Canadian and non-Canadian feature films

- Total amounts remitted to the providers of new feature films of Category 7 d) by the service (including the share which the service gives up if this provision remains), broken down among Canadian and foreign feature films

- Amounts of the yearly contribution in percentage of total gross revenues that have been paid to the independent Canadian program production funds by the VOD services

Moreover, this information should annually provide the Commission with a breakdown of the use that was made of these amounts based on the program categories supported – data which the Commission should publish in a cumulative form for all the funds.

Part III

Recommendations

10. Introduction

In this Part, we present some recommendations for government and regulatory action, based on the findings made in Parts I and II. As will be seen, we draw upon successful models in other countries to recommend that Canada adopt some new policies to address the central reality of technology – the need for Canadian feature films to be accessible on multiple platforms in order to reach wider audiences.

In November 2005, the Report of the Standing Committee on Canadian Heritage, *Scripts, Screens and Audiences: A New Feature Film Policy for the 21st Century,* was released.[55] That 247-page report was the culmination of an intensive study of the Canadian feature film industry. The Committee heard from more than 180 witnesses at hearings in five cities. Although the government changed shortly after its publication, the work that went into that report deserves note, and the recommendations made in the report are still relevant today.

As we have noted in the introduction, however, while the report did examine film support programs in a number of foreign countries, it did not note the impact of broadcaster support in those countries. That support became evident when the European Audiovisual Observatory published its study entitled *Broadcasters' Obligations to Invest in Cinematographic Production*, in February 2006.

In this study, we have focused on the importance of enlisting other platforms to support our domestic film industry – including conventional television, pay television, video on demand and the internet.

In that connection, we should note that Recommendations 12, 13 and 14 of the Report of the Standing Committee on Canadian Heritage address this issue in part. These recommendations read as follows:

> "RECOMMENDATION 12
>
> The Committee recommends that the Department of Canadian Heritage, in collaboration with film and television industry stakeholders, develop a new policy for the exhibition of priority programming on Canadian television.

[55] *Scripts, Screens and Audiences: A New Feature Film Policy for the 21st Century*, Report of the Standing Committee on Canadian Heritage (Ottawa: Government of Canada, November 2005), at pp.162-163.

RECOMMENDATION 13

The Committee recommends that the Government of Canada direct the CRTC to develop a policy that supports the promotion as well as the viewing of Canadian feature films, long-form documentaries, and drama.

RECOMMENDATION 14

The Committee recommends that the CBC/Radio-Canada develop a long term plan to incrementally increase the number of hours of Canadian feature film and long-form documentaries broadcast on its English and French-language networks. The Corporation should deliver this plan to the Standing Committee on Canadian Heritage within six months of the tabling of this report."

Shortly after the Committee's report was tabled, however, the government changed, and these recommendations have not been implemented.

Looking at this issue three years later, we have concluded that the general direction of these particular recommendations was well warranted. However, in light of developments since then, including our findings in Parts I and II of this study, we can reformulate the recommendations. We can also expand them to take account of new technology.

The key point to make is that if our feature film policy is to succeed, it needs the support of all relevant platforms, not just movie theatres. As the UK Film Council noted last year, "[w]hile most media attention is paid to the cinema release of films, it is via television that people watch most of the films they see." However, unlike the situation in Europe, the Canadian broadcasting system has not supported Canadian filmmakers to the degree that is necessary. In that sense, the government's feature film policy is operating in a silo of its own, instead of being integrated with and supported by our broadcasting system. This needs to change.

11. Conclusions and Recommendations

Accordingly, we have concluded that the following recommendations would be in the public interest.

English and French Markets

In the area of cinema, there is a significant distinction between the English and French language markets in Canada. The Report of the Standing Committee on Canadian Heritage recognized this and recommended in 2005 that "a revised feature film policy and related support programs and measures recognize that Canada's English and French-language film markets are different." The same situation applies in broadcasting, and this is reflected in section 3(1)(c) of the *Broadcasting Act* which states that "English and French language

broadcasting, while sharing common aspects, operate under different conditions and may have different requirements."

Our first recommendation underlines this reality.

RECOMMENDATION 1

The level of required support by Canadian broadcasters for Canadian feature film should be tailored to the circumstances and should recognize the difference between the English and French-language markets.

Establishing a Working Committee

In order to promote the exchange of information and maximize cooperation between relevant government agencies, it would be useful to establish a specific mechanism to achieve this. A precedent exists in the new media field, where the CRTC set up an advisory group in 2008 which included representatives from the Department of Canadian Heritage, Industry Canada, Telefilm Canada, the NFB, the Competition Bureau, and the Copyright Board. That group met on numerous occasions to discuss issues and information relating to new media, and although it is no longer active, it played a useful role.

We think a similar mechanism could make a useful contribution to integrate the actions of the various government agencies in regard to feature film policy, and to avoid situations where the agencies might be working at cross-purposes. Accordingly, we make the following recommendations:

RECOMMENDATION 2

Telefilm Canada should approach the CRTC, the Department of Canadian Heritage and other interested agencies so as to establish an inter-agency working group on Feature Film Policy, which can meet regularly.

RECOMMENDATION 3

Among other matters, the working group noted above should determine how each of the agencies can best contribute to the collection, processing and publication of data. Such data should include (a) statistics on the number of viewers for Canadian feature film in each window, and (b) the financial or other contribution made by each category of Canadian broadcaster to support new Canadian feature films.

Video on Demand

As indicated in Part II of this study, the video on demand platform is becoming increasingly important for the distribution of feature films. The CRTC has called for a proceeding to determine what adjustments are necessary or appropriate to its current policies on VOD. We

believe that Telefilm Canada and members of the CFFF Working Groups should take an active part in this proceeding.

RECOMMENDATION 4

Telefilm Canada and members of the CFFF Working Groups should intervene in the CRTC proceeding on video on demand. In that connection, it should urge the CRTC to (a) update the percentages of new Canadian feature films required to be offered; (b) maintain the requirement that VOD licensees include all available and suitable new Canadian feature films; (c) increase the contribution of VOD services to fund independent Canadian programming, with a specific obligation in regard to feature films; (d) consider adopting a provision requiring that blocks of programming from Canadian broadcasters offered on a subscription basis contain at least the same percentage of Canadian content; (e) adjust upwards the percentage of Canadian content programming (other than new feature films) to be available; (f) address the need to include the trailers of new Canadian feature films as part of the menu of VOD services.

RECOMMENDATION 5

Telefilm Canada and members of the CFFF Working Groups should also intervene with respect to renewal hearings for pay per view services but should oppose proposals to make policies for VOD and PPV identical. Considering the differences between DTH and terrestrial PPV licences, the Commission should impose obligations on a case by case basis, taking into account their particular circumstances.

Pay Television Services

The pay television services in Canada have historically been the largest broadcast contributor to the financing and exhibition of Canadian feature film. As some of the pay services have focused more on original series and mini-series, however, there needs to be a renewed commitment to support Canadian feature films, not only in their multiplexed channels but in their subscription VOD services.

RECOMMENDATION 6

Telefilm Canada and members of the CFFF Working Groups should intervene at the CRTC renewal hearings of the pay television services to provide information and to urge that their mandate be more expressly tied to drama programming, with a special focus on feature films. The new conditions of licence should better reflect the fact that they are no longer "general interest" services but are clearly drama-centered services.

CBC/Radio-Canada

As is evident in our review of the European situation, public broadcasters have a special role to play in supporting domestic feature film. Such support is particularly significant in Germany, the United Kingdom and France, but is also evident in many other countries. In

the case of the United Kingdom, as we have noted in Part I, the UK Film Council entered into a Memorandum of Understanding with the BBC in February 2006 which was directed to "unlocking the power of partnership for Film and Broadcasting." (A copy of the Memorandum is attached as Appendix 3.)

We see the same imperative in Canada. Although the CBC/Radio-Canada has a smaller budget than a number of European public broadcasters, it can still play a valuable role in regard to the support of Canadian feature film, and this should be one of its strategic objectives.

RECOMMENDATION 7

Telefilm Canada should intervene with the Department of Canadian Heritage and with CBC/Radio-Canada with a view to developing a Memorandum of Understanding relating to the role of the CBC/Radio-Canada in regard to the development, financing, acquisition and promotion of Canadian feature films on all platforms controlled by the Corporation, including its Internet sites. Telefilm Canada and members of the CFFF Working Groups should also intervene at the CRTC renewal hearings for the CBC/Radio-Canada TV network licence to address the same matter.

Private Over-the-Air (OTA) Broadcasters

We are well aware that these are troubling economic times for the private over-the-air TV broadcasters. However, it is clear that in the English market in particular, the broadcasters have significantly reduced their spending on Canadian drama while overspending on foreign drama and other programming. Even in a scenario where advertising revenues are declining, that imbalance needs to be addressed if the objects of the *Broadcasting Act* are to be achieved.

The private English-language over-the-air TV broadcasters have largely abandoned the exhibition of feature film in English Canada. However, they could be an important part of the overall strategy to increase audiences for Canadian feature film, both through promotion on their entertainment magazine shows, and through funding and exhibition. While the private broadcasters in Canada may not be able to contribute as much to domestic feature films as private broadcasters do in France, Italy, Spain and many other countries, the support of feature films should be a part of a broader support required to be made by Canadian OTA broadcasters to original Canadian drama.

RECOMMENDATION 8

Telefilm Canada and members of the CFFF Working Groups should intervene at the renewal hearings for the over-the-air TV broadcasters at the CRTC to provide information and to press for increases in the financial support of Canadian drama by those licensees, to be reflected in licence conditions that are tied to revenues. In that connection, Telefilm Canada and members of the CFFF Working Groups should also seek to have the CRTC include expectations for each over-the-air TV broadcaster, customized to their circumstances, in

regard to their support for Canadian feature films. This support should also apply to their other platforms, including their Internet sites.

Specialty Programming Services

A number of the Canadian specialty programming services include movies in their schedule, and they have also provided significant support for Canadian drama. We believe that those services that include feature films in their schedule should also make an effort to provide viewing opportunities for Canadian films.

RECOMMENDATION 9

Telefilm Canada and members of the CFFF Working Groups should intervene at the renewal hearings for Canadian specialty services that include movies in their schedule to provide information and to urge that their mandate include an adequate contribution to the acquisition and scheduling of Canadian feature film. ux 1

Relationship of the Government to the CRTC

Section 3 of the *Broadcasting Act* sets out the "Broadcasting Policy for Canada," which includes a number of objectives. Of particular relevance are the following:

> "(*d*) the Canadian broadcasting system should…. (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, [and] by displaying Canadian talent in entertainment programming…
>
> (*i*) the programming provided by the Canadian broadcasting system should (i) be varied and comprehensive… and (v) include a significant contribution from the Canadian independent production sector."

Based on the foregoing, it is clear that to the extent that Canadian broadcasters support and schedule more Canadian drama programming, including Canadian feature films, they will contribute to these objectives. Thus we believe that the *Broadcasting Act* already provides a strong basis for the CRTC to require broadcasters to increase their support for Canadian feature film.

However, unless the CRTC regulates the matter, it is unlikely that broadcasters will change their current approach. By doing so, the CRTC would be furthering the objectives noted above. It would also be furthering the government's feature film policy, by increasing the support and the audience for our filmmakers.

Under section 7 of the *Broadcasting Act*, the government is able to issue to the CRTC "policy directions of general application on broad policy matters with respect to any of the objectives of the broadcasting policy set out in subsection 3(1)." In its 2005 report, the

Standing Committee recommended that "the Government of Canada direct the CRTC to develop a policy that supports the promotion as well as the viewing of Canadian feature films, long-form documentaries, and drama."

We have considered whether it would be appropriate for the government to issue such a direction. In our view, however, a better approach would be to address the issue through the inter-agency working group proposed in Recommendation 2.

RECOMMENDATION 10

The Government should work through the inter-agency working group to seek to have the objectives of the government's feature film policy better taken into account in the implementation of the broadcasting policy set out in the Broadcasting Act.

Appendix 1

Average Cost and Box Office Market Share of Canadian Feature Films

In 2000, as part of its Canadian Feature Film Policy, the government made the following statement:[56]

"The Government's target goal is to capture 5% of the domestic box office in five years and to increase audiences for Canadian feature films abroad. To meet this goal, the new Canadian Feature Film Policy aims to:

- improve the quality of Canadian feature films by fostering an increase in average production budgets to at least $5 million; and
- encourage more comprehensive national and international marketing strategies by promoting an increase in average marketing budgets to at least $500,000."

The following table sets out the average cost of Canadian feature films (fiction genre only), in the period from 2001 to 2008. As will be seen, average production budgets have generally been well below C$5 million. This contrasts with average film production costs in Europe, which in 2007 were €5.4 million, or about C$7.8 million. (See Table 3 in the main study.)

	2001/02	*2002/03*	*2003/04*	*2004/05*	*2005/06*	*2006/07*	*2007/08*
English	4.3	4.4	5.0	2.9	5.3	3.3	3.8
French	2.3	2.7	3.0	3.4	2.3	3.4	2.8
All languages	3.5	3.9	4.6	3.0	4.5	3.2	3.4

Source: CFTPA and APFTQ, 2009 Profile: An Economic Report on the Canadian Film and Television Production Industry, at Exhibit 2.74

The following table shows the box office market share (% of admissions) of Canadian films in Canada, 2000 to 2008:

Presented in	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*
English	1.4	0.2	1.1	0.8	1.6	1.2	1.8	0.9	1.1
French	5.8	9.8	12.5	18.3	21.2	27.0	17.0	16.2	13.8
Total	2.0	1.4	2.6	3.5	4.6	5.5	4.2	3.2	2.8

Source: Telefilm Canada

[56] *From Script to Screen: New Policy Directions for Canadian Feature Film* (Ottawa: October 5, 2000) at p.6.

Appendix 2

Per-Capita Funding of Public Broadcasters

The numbers comparing the per-capita funding for public broadcasters at p.18 were based on a report entitled *Analysis of Government Support for Public Broadcasting and Other Culture in Canada,* with numbers updated to 2007. This report was originally prepared for the Canadian Broadcasting Corporation by Nordicity Group Ltd. in June 2006 and is available on the CBC website at http://cbc-radio-canada.ca/submissions/crtc/2006/BNPH_2006-5_CBC_RC_Public_Broadcaster_ Comparison.pdf. The original report used 2004 numbers. However, Nordicity has recently updated the numbers and the 2007 numbers are presented below.

The key elements of the actual calculations made by Nordicity can be described as follows. To construct the comparison of per-capita funding for public broadcasters, the amounts of public funding in 2007 for each country's public broadcasters was collected and totalled. All types of funding that are determined by some branch of the government were included, including television/radio licence fees and any forms of direct government aid or grants. The public-funding amounts were then converted to Canadian dollars using the average exchange rate for 2007, except in the case of the U.S. data, which were for 2006. This Canadian dollar amount was then divided by the population of each country. This process yielded a per-capita comparison of the level of public funding for public broadcasters in the 18 countries. The data and calculations for this exercise can be found in the tables below.

In reviewing these numbers, it should be noted that on January 5, 2009, the French government banned advertising in prime-time on France's public broadcasters (France 2 and France 3), with all advertising to be banned by the end of 2011. The government indicated that it would make up the loss of €450 million a year by applying a levy of 3% against the ad revenue of the private TV channels and a levy on mobile phone calls and internet service providers. Other means of recouping the difference have also been discussed. If €450 million is added to the budget of France's public broadcasters, their support would rise from C$65.07 per capita to C$75.78 per capita.

Table 1 Data for public funding of public broadcasters

	Government Appropriation (000 000s)	Licence Fees (000 000s)	Government Aid or Grants (000 000s)	Other Public Income (000 000s)	Total Public Funding, 2007 (000 000s)
Australia	A$1,018.8	--	--	--	A$1,018.8
Austria	--	€450.1	--	--	€450.1
Belgium	--	--	€447.9	--	€447.9
Canada - CBC	C$1,114.0	--	--	--	C$1,114.0
Denmark	--	Kr 3,784.0	--	--	Kr 3,784.0
Finland	--	€385.4	--	--	€385.4
France	--	--	€2,733.0	--	€2,733.0
Germany	--	€7,298.0	--	--	€7,298.0
Ireland	--	€195.7	--	--	€195.7
Italy	--	€1,588.0	--	--	€1,588.0
Japan	--	¥664,400.0	--	--	¥664,400.0
New Zealand	--	--	NZ$51.4	--	NZ$51.4
Norway	--	Kr 3,739.0	--	--	Kr 3,739.0
Spain (2006)	--	--	--	€900.0	€900.0
Sweden	--	Kr 6,217.9	--	--	Kr 6,217.9
Switzerland	--	SFr. 1,122.1	--	--	SFr. 1,122.1
U.K.	--	£3,242.9	--	--	£3,242.9
U.S. (2006)	US$1,070.2	--	--	--	US$1,070.2

Sources: See Table 3 for list of data sources

Table 2 Calculation of per-capita public funding levels

	Total Public Funding (000 000s)	Exchange Rate (C$ per foreign currency)	Total Public Funding in C$ (000 000s)	Population	Public Funding Per Capita 2007 (C$)
Australia	A$1,018.8	0.8982	$915.1	21,000,000	$43.58
Austria	€450.1	1.4691	$661.3	8,300,000	$79.67
Belgium	€447.9	1.4691	$635.5	10,600,000	$62.08
Canada - CBC	C$1,114.0	1	$1,114.0	32,976,026	$33.78
Denmark	Kr 3,784.0	0.1972	$746.2	5,500,000	$135.67
Finland	€385.4	1.4691	$566.2	5,300,000	$106.83
France	€2,733.0	1.4691	$4,015.1	61,700,000	$65.07
Germany	€7,298.0	1.4691	$10,722.8	82,300,000	$130.29
Ireland	€195.7	1.4691	$287.5	4,400,000	$65.34
Italy	€1,588.0	1.4691	$2,332.9	59,300,000	$39.34
Japan	¥664,400.0	0.009121	$6,060.0	127,700,000	$47.45
New Zealand	NZ$51.4	0.7892	$40,.5	4,035,461	$10.05
Norway	Kr 3,739.0	0.1832	$685.0	4,700,000	$145.74
Spain	€950.8	1.4237	$1,281.3	45,300,000	$28.29
Sweden	Kr 6,217.9	0.1589	$988.0	9,100,000	$108.57
Switzerland	SFr. 1,122.1	0.8946	$1,003.8	7,500,000	$133.84
U.K.	£3,242.9	2.149	$7,541.1	61,000,000	$123.62
U.S.	US$1,070.2	1.134	$1,213.6	302,200,000	$4.02
				Average	**$75.79**

Sources: Public funding data obtained from various sources; see Table 3 for list of data sources; exchange rates from Bank of Canada; population data from Population Reference Bureau.

Notes:

Australia includes funding for ABC and SBS

Belgium includes funding for Flemish-language public broadcaster (VRT) and French-language public broadcaster (RTBF)

Germany includes public funding for ZDF and ARD

Spain includes public funding for RTE and estimates for public funding of public broadcasters for the autonomous regions

Table 3 Data sources for international comparison

Country	Data Sources
Australia	Australian Broadcasting Corporation, *Annual Report 2006/07* Special Broadcasting Service, *Annual Report 2006/07*
Austria	Wikipedia
Belgium	VRT - http://www.vrt.be/vrt_master/over/vrt_aboutvrt_financing/index.shtml RTBF- RTBF 2006 Annual Report and contract with Belgian government
Canadian	CBC
Denmark	Nordicity calculations based on data from Denmark Ministry of Culture (Danish Public Service Broadcasting Contract) and Danish Radio.
Finland	http://www.yle.fi/fbc/YLE_vsk_englanti07.pdf
France	France National Assembly « *loi de finances pur 2007* »
Germany	http://www.gez.de/
Ireland	RTE, *Annual Report,* 2007
Italy	http://www.bilancio2007.rai.it/uk/bilancio/cons02.htm
Japan	NHK Annual Report 2008
New Zealand	http://www.nzonair.govt.nz/the_organisation.php
Norway	http://www.medienorge.uib.no/english/?cat=statistikk&medium=tv&queryID=237
Spain	Estimate derived from European Audiovisual Observatory report: André Lange, *Comparative analysis of the financing of public audiovisual sector in the European Union*, July 2008.
Sweden	Nordicity calculation based on 90% of households with licence fee and rates found at http://www.radiotjanst.se/
Switzerland	http://www.srg-ssr.ch/fileadmin/pdfs/ZDF_2008_e.pdf
United Kingdom	BBC, *Annual Report 2006/07*
United States	Corporation for Public Broadcasting http://www.cpb.org

Appendix 3

BBC – UK Film Council

Memorandum of Understanding – February 2006

BBC

UK FILM COUNCIL
LOTTERY FUNDED

MEMORANDUM OF UNDERSTANDING - February 2006

UK FILM COUNCIL – BBC
Unlocking the power of partnership for Film and Broadcasting

1. Background

The BBC and the UK Film Council represent two of the biggest stakeholders in UK film. We have a shared objective to support film and filmmaking in the UK as articulated in the UK Film Council's *Our Second Three Year Plan (April 2004 to March 2007)* and the BBC's emerging five point film strategy and *Building Public Value*.

The UK Film Council's aim is to stimulate a competitive, successful and vibrant British film industry and culture, and to promote the widest possible enjoyment and understanding of cinema throughout the nations and regions of the UK. Its priorities are fourfold:

- More audience choice.
- Developing and supporting creativity.
- Encouraging public participation and increasing opportunities for learning.
- Promoting the UK in the wider world.

The BBC has a core public purpose defined as "stimulating creativity and cultural excellence", with three key elements: showcasing excellence, fostering creativity and nurturing talent, and promoting engagement and participation in cultural activity[1].

To meet this purpose, specifically for film, the BBC is currently devising a new Film Strategy to guide its activities into the next charter, highlighted by a five point plan of activity[2]:

1. Increase BBC TV channel support for British films through launch of a new BBC channel strategy for film; including extra commitment to new talent on BBC Three,
2. Increase the proportion of acquisition spend directed to British film for feature films that could play on BBC ONE and TWO. The BBC will aim to invest up to an additional £50 million over the next charter period for this purpose;

[1] DCMS review of the BBC's Royal Charter (Green Paper) March 2005
[2] All financial commitments are contingent on the BBC receiving a favourable licence fee settlement

3. Help stimulate indigenous British feature film production through a minimum 50% increase to BBC Film's budget;
4. Continue to drive innovation and awareness of film across the BBC's media outlets;
5. With the BBC's partners, continue to support British talent training and development.[3]

The BBC and the UK Film Council have considered how they could work together more effectively by establishing a partnership to deliver these complementary objectives for the development of film and filmmaking across the UK. This Memorandum of Understanding outlines the scope of the proposed partnership, sets out the goals that both parties wish to achieve, and identifies some specific projects on which the parties will collaborate over the medium term.

2. Aims and principles of the partnership

Recognising shared objectives, the partnership between the BBC and the UK Film Council will be governed in particular by two high-level aims:

- To build enthusiasm and awareness for film, in all its diversity, across the UK, delivering enhanced public value to communities and to individuals as citizens and consumers; and

- To maximise the contribution that film can make to the UK's creative economy and culture.

Creating a robust partnership between our two organisations, for the greater benefit of the film industry and audiences across the UK will assist both parties to deliver to our purposes and objectives. The eight principles underpinning this partnership are:

- To embed audience awareness throughout film development and production
- To share resources and expertise where appropriate
- To utilise existing networks to mutual advantage and benefit
- To seek to work together in an environment of trust and transparency
- To seek integration of related activities where appropriate
- To share knowledge and ideas in order to develop new programmes, initiatives and activities
- To capitalise on the status, experience and credibility of both organisations
- To help develop digital services to the benefit of all UK citizens

3. Duration

The partnership is intended to be ongoing, though with specific timetables in relation to individual projects. The partnership as a whole will be reviewed on a biennial basis to ensure that both parties are satisfied with the partnership and that our shared objectives are being met.

[3] When appropriate, the BBC will share its formal film strategy with the UKFC and industry in 2006

4. Scope of the partnership

This Memorandum of Understanding refers to film across all relevant BBC services including:

- BBC TV
- BBC Radio
- BBCi

And, across all UK Film Council funding and policy priorities, including the:

- Production and Development funds
- Distribution and Exhibition Department funds
- British Film Institute (*bfi*)
- UK Film Council/Skillset Film Skills Strategy

Hence, this protocol *inter alia* refers to film:

- Acquisition
- Production[4]
- Transmission/scheduling
- Distribution and promotion

Within this broad scope, the parties will seek ways of collaborating wherever appropriate to deliver greater value, and in particular, the UK Film Council will focus its efforts in raising industry awareness of audience needs. Without prejudice to this generality, we wish to collaborate across a wide range of projects and to that end we have identified the following projects as priorities for collaboration[5]:

- The Digital Screen Network
- UK Film Skills strategy in partnership with Skillset Sector Skills Council
- The Film Network
- Charter for Media Literacy
- Equalities Charter for Film
- Creative Archive Licence Group in partnership with the *bfi*
- First Light and related community access initiatives

[4] This partnership MOU between the BBC and the UKFC does not cover the BBC's or the UKFC's editorial or financial management

5 *KPIs to be agreed for each

5. Roles and responsibilities

The partnership is sponsored by Alan Yentob and Jana Bennett at the BBC and John Woodward at the UK Film Council. Together, they are responsible for the development and oversight of the partnership.

6. Heads of agreement

Both the UK Film Council and the BBC acknowledge that this Memorandum and its schedules comprise heads of agreement which are non-binding in all respects. Individual projects will where appropriate be carried out under mutually agreed signed contractual terms which will set out the aims and structure of each project, the BBC and UK Film Council's respective obligations and liabilities and the circumstances in which a project may be terminated and any applicable redress.

Signed by

.....	.....	.....
John Woodward	Jana Bennett	Alan Yentob
Chief Executive	Director, Television	Director, DEC
UK Film Council	BBC	BBC

22 February 2006

Appendix 4

MARKET SHARE OF CANADIAN FEATURE FILMS IN THEATRES (2002/2007)

SHARE OF FILM OFFERINGS (NUMBER OF TITLES) CAPTURED BY CANADIAN FEATURE FILMS IN CANADA BASED ON LANGUAGE OF OPERATION

Number of Titles *

A) French-language films

FR	2002	2003	2004	2005	2006	2007	Total
CDN	52	68	86	80	79	84	449
FOR	262	289	298	302	344	328	1 823
TOTAL	**314**	**357**	**384**	**382**	**423**	**412**	**2 272**

B) English-language films

ENG	2002	2003	2004	2005	2006	2007	Total
CDN	60	56	67	62	57	63	365
FOR	395	362	377	388	413	438	2 373
TOTAL	**455**	**418**	**444**	**450**	**470**	**501**	**2 738**

Percentages

	2002	2003	2004	2005	2006	2007	Average
FR	16.6%	19.1%	22.4%	20.9%	18.7%	20.4%	19.8%
ENG	13.2%	13.4%	15.1%	13.8%	12.1%	12.6%	13.3%
TOTAL	**15.8%**	**18.7%**	**20.0%**	**18.6%**	**16.2%**	**17.8%**	

Sources: Profile, An Economic Report on the Canadian Film and Television Production Industry, 2006 and 2008 editions. Original data source: Motion Picture Theatre Association of Canada

* Made up respectively of a) the share of film offerings captured by Canadian feature films released in theatres in French version (original, dubbed or sub-titled) of the total feature films released in French version (original, dubbed or sub-titled) in Canada, and b) the share of film offerings captured by Canadian feature films released in theatres in English version (original, dubbed or sub-titled) of the total feature films released in English version (original, dubbed or sub-titled) in Canada.

MARKET SHARE (BOX-OFFICE RECEIPTS) CAPTURED BY CANADIAN FEATURE FILMS IN CANADA BASED ON LANGUAGE OF OPERATION

Millions of dollars *

A) French-language films

FR	2002	2003	2004	2005	2006	2007	Total
CDN	15.2	26.5	30.0	37.4	22.3	20.8	152.2
FOR	107.0	118.0	106.7	101.1	108.1	107.6	648.5
TOTAL	**122.2**	**144.5**	**136.7**	**138.5**	**130.4**	**128.5**	**800.7**

B) English-language films

ENG	2002	2003	2004	2005	2006	2007	Total
CDN	8.9	6.8	12.1	8.1	12.5	6.9	55.3
FOR	814.0	805.4	754.1	687.4	703.2	722.2	4 486.3
TOTAL	**822.9**	**812.2**	**766.2**	**695.5**	**715.7**	**729.1**	**4 541.6**

Percentages

	2002	2003	2004	2005	2006	2007	Average
FR	12.5%	18.3%	21.2%	27.0%	17.1%	16.2%	19.0%
ENG	1.1%	0.8%	1.6%	1.2%	1,7%	0.9%	1.2%
TOTAL	**2.6%**	**3.5%**	**4.6%**	**5.5%**	**4.2%**	**3.2%**	**3.9%**

Sources: Profile, An Economic Report on the Canadian Film and Television Production Industry, 2006 and 2008 editions. Original data source: Motion Picture Theatre Association of Canada

* Made up respectively of a) the share of box-office receipts captured by Canadian feature films released in theatres in French version (original, dubbed or sub-titled) of the total box-office receipts of feature films released in French version (original, dubbed or sub-titled) in Canada, and b) the share of box-office receipts captured by Canadian feature films released in theatres in English version (original, dubbed or sub-titled) of the total box-office receipts of feature films released in English version (original, dubbed or sub-titled) in Canada.

Appendix 5

DATA ON REVENUES AND PBIT FROM THE PAY TV SECTOR

PBIT margin from analog pay TV in 2007

Services	Revenues	P.B.I.T	PBIT Margin
Encore Avenue	14, 997, 228	9, 877, 816	65.86%
Family	50, 376, 135	17, 166, 500	34.08%
Movie Central	86, 354, 669	18, 531, 719	21.46%
MPix	22, 551, 998	10, 599, 999	47.00 %
Super Écran	55, 012, 920	18, 466, 853	33.57%
TMN	115, 994, 799	23, 155, 203	19.96%
Total / Average	**345, 287, 749**	**97, 798, 090**	**28.32%**

History of PBIT margin of 3 leading pay TV services

TMN

Years	Revenues	P.B.I.T	PBIT Margin
2001	69, 518, 558	13, 576, 935	21.40%
2002	77, 028, 090	16, 934, 403	21.98%
2003	89, 427, 140	18, 686, 409	20.90%
2004	99, 730, 918	18, 431, 663	18.48%
2005	100, 873, 633	22, 143, 453	22.22%
2006	109, 820, 244	25, 836, 133	23.53%
2007	115, 994, 799	23, 155, 203	19.96%
Total / Average	**662, 393, 382**	**138, 764, 199**	**20.95%**

Super Écran

Years	Revenues	P.B.I.T	PBIT Margin
2001	35, 617, 049	9, 456, 852	26.35%
2002	39, 245, 111	9, 946, 609	25.34%
2003	45, 558, 058	13, 105, 537	28.77%
2004	48, 017, 315	13, 846, 911	28.84%
2005	47, 422, 606	12, 557, 700	26.48%
2006	51, 492, 359	15, 453, 050	30.01%
2007	55, 012, 920	18, 466, 853	33.57%
Total / Average	**322, 365, 418**	**92, 833, 512**	**28.80%**

Movie Central

Years	Revenue	P.B.I.T	PBIT Margin
2001	45, 260, 489	9, 791, 867	22.33%
2002	61, 445, 628	14, 609, 254	23.78%
2003	62, 891, 095	20, 848, 684	33.15%
2004	69, 086, 593	17, 695, 537	25.61%
2005	74, 661, 667	26, 177, 506	35.06%
2006	82, 616, 075	22, 427, 069	27.15%
2007	86, 354, 669	18, 531, 719	21.46%
Total / Average	**482, 316, 216**	**129, 541, 636**	**26.86%**

Appendix 6

EVOLUTION OF PROGRAMMING REVENUES AND EXPENDITURES OF OVER-THE-AIR PRIVATE BROADCASTERS FROM 2003 TO 2007

Expenditure trend of Canadian/non-Canadian programs
Conventional private broadcasters 2003-2007

A) All of Canada

	2003	2004	2005	2006	2007	Growth 2003-2007
Revenues	2, 049, 978,339	2, 066, 207,724	2, 146, 242,974	2, 142,729,817	2, 170,844,770	5.90%
CPE	536, 050,055	569, 050,843	581, 340,288	618, 520,399	611, 217,332	14.02%
NCPE	541, 845,714	567, 380,589	611, 959,607	685, 480, 257	718, 048,141	31.52%
Total Programs Telecast	1, 077, 895,769	1, 136, 431,434	1, 193, 299,895	1, 303,980,856	1, 329,265,473	23.32%

FINDINGS:

- The Total Programs Telecast are growing at a much more sustained rate (23%) than the revenues (6%)
- The foreign program expenses are growing at twice the rate (32%) of the Canadian program expenditures (14%)
    - In 2007, the CPEs experience a decrease for the first time compared to the previous year while the foreign program expenses continue their growth.
    - In 2003, the CPEs represented nearly 50% of the Total Programs Telecast; in 2007 it was below 46%.
    - In 2003, the conventional private broadcasters devoted $5M more to the foreign program expenses (compared to the CPEs); in 2007, it is $107M more.

Expenditure trend of Canadian/non-Canadian programs
Conventional private broadcasters 2003-2007

B) Canada excluding Quebec

	2003	2004	2005	2006	2007	Growth 2003-2007
Revenues	1, 601,526,574	1,610,036,524	1,676,733,947	1,668,491,162	1,709,214,375	6.72%
CPE	372,910,126	390,498,907	396,121,910	417,218,312	413,001,835	10.75%
NCPE	499,398,004	524,071,367	562,525,212	632,471,171	662,071,201	32.57%
Total Programs Telecast	872,308,130	914,570,274	958,647,122	1,049,660,673	1,075,073,036	23.34%

FINDINGS:

- The Total Programs Telecast are growing at a much more sustained rate (23%) than the revenue (7%)

- The foreign program expenses are growing at three times the rate (33%) of the Canadian program expenditures (11%)

    - In 2007, the CPEs experience a decrease for the first time compared to the previous year while the foreign program expenses continue their growth.

    - In 2003, the CPEs represented 43% of the Total Programs Telecast; in 2007: 39%.

    - In 2003, the conventional private broadcasters outside Quebec devoted $127M more to the foreign program expenses (compared to the CPEs); in 2007, it is $249M more.

Expenditure trend of Canadian/non-Canadian programs
Conventional private broadcasters 2003-2007

C) Quebec

	2003	2004	2005	2006	2007	Growth 2003-2007
Revenues	448,451,765	456,171,200	469,509,027	474,238,655	461,670,395	2.95%
CPE	163,139,929	178,551,936	185,218,378	201,302,097	198,215,497	21.50%
NCPE	42,447,710	43,309,222	49,433,855	53,009,086	55,976,940	31.87%
Total Programs Telecast	205,587,639	221,861,158	234,652,233	254,311,183	254,192,437	23.64%

FINDINGS:

- The Total Programs Telecast are growing at a much more sustained rate (24%) than the revenues (3%)

- The foreign program expenses are growing at a 50% more sustained rate (32%) than the Canadian program expenditures (22%)

    - In 2007, the CPEs experience a decrease for the first time compared to the previous year while the foreign program expenses continue their growth.

- The fundamental difference between Quebec television and Canadian television outside Quebec is the proportion of total expenditures from television programs that go to the CPEs (78% in Quebec; 39% outside Quebec)

Appendix 7

EXPENDITURE TREND OF CANADIAN PROGRAMS OF OVER-THE-AIR PRIVATE BROADCASTERS BY PROGRAM CATEGORY FROM 2003 TO 2007

A) All of Canada

	2003	2004	2005	2006	2007	Growth 2003-2007
News (Cat. 1)	**300,141,375**				**324,772,110**	**8.21%**
Including independent prod.	*46,670*				*23,780*	
Information Other (Cat. 2 to 5)	**54,688,394**				**60,596,430**	**10.80%**
Including independent prod.	*11,993,543*				*16,730,930*	
Sports (Cat. 6)	**19,123,564**				**8,600,023**	**- 55.03%**
Including independent prod.	*1,971,984*				*795,384*	
Drama (Cat. 7)	**93,114,906**	**81, 907,982**	**82,226,776**	**70,918,605**	**74,155,510**	**- 20.36%**
Including independent prod.	*79, 570,415*	*66,278,423*	*71,647,859*	*58,755,844*	*62,569,988*	*- 21.37%*
Music/Variety (Cat. 8-9)	**10,982,871**				**23,814,282**	**117%**
Including independent prod.	*7,440,660*				*21,786,856*	
Game shows (Cat.10)	**4,258,583**				**12,189,555**	**186%**
Including independent prod.	*1,997,066*				*3,798,697*	
Human interest (Cat. 11)	**51,396,775**				**103,476,465**	**101%**
Including independent prod.	*18,830,322*				*37,420,753*	
Other (Cat. 12 to 15)	**2,343,586**				**3,612,957**	**54%**
Including independent prod.	*6,088*				*364,966*	
Total (Cat. 1 to 15)	**536,050,055**				**611,217,332**	**14.02%**
Including independent prod.	*121,856,728*				*143,491,804*	*17.75%*
In % of total	***22.73%***				***23,48%***	
Script development	4,905,981				3,228,640	
CTF credit	18,948,150				10,590,799	

B) Canada excluding Quebec

	2003	2004	2005	2006	2007	Growth 2003-2007
News (Cat. 1)	**240,702,820**				**259,967,041**	**8.00%**
Including independent prod.	*26,000*				*nil*	-
Information Other (Cat. 2 to 5)	**36,520,544**				**46,034,679**	**26.05%**
Including independent prod.	*6,428,079*				*13,900,149*	*116%*
Sports (Cat. 6)	**15,588,610**				**7,352,028**	**- 52.84%**
Including independent prod.	*739,204*				*235,495*	*-68.14%*
Drama (Cat. 7)	**56,600,358**	**48,138,755**	**48,353,576**	**36,063,991**	**36,575,634**	**- 35.38%**
Including independent prod.	*52,495,292*	*40,464,379*	*43,426,520*	*34,732,381*	*35,575,407*	*- 32.232%*
Music/Variety (Cat. 8-9)	**1,385,845**				**19,884,725**	**1 335%**
Including independent prod.	*222,963*				*18,128,839*	*78 850%*
Game shows (Cat.10)	**75,275**				**2,144,328**	**2 749%**
Including independent prod.	*nil*				*20,035*	-
Human interest (Cat. 11)	**19,606,737**				**38,375,628**	**95,73%**
Including independent prod.	*3,453,821*				*8 ,731,046*	*153%*
Other (Cat. 12 to 15)	**2,339,936**				**3,027,772**	**29.40%**
Including independent prod.	*3,000*				*82,200*	*2640%*
Total (Cat. 1 to 15)	**372,910,026**				**413,001,835**	**10.75%**
Including independent prod.	*63,279,339*				*76,703,621*	*21.21%*
In % of total	***16.97%***				***18.57%***	
Script development	4,431,104				2,915,711	
CTF credit	17,465,903				9, 859,488	

C) Quebec

	2003	2004	2005	2006	2007	Growth 2003-2007
News (Cat. 1)	**59,438,555**				**64,805,069**	**9,03%**
Including independent prod.	*20,670*				*23,780*	*15.05%*
Information Other (Cat. 2 to 5)	**18,167,850**				**14,921,751**	**- 17.87%**
Including independent prod.	*5,564,464*				*2,830,781*	*- 49.13%*
Sports (Cat. 6)	**3,534,954**				**1,247,995**	**- 64.70%**
Including independent prod.	*1,232,780*				*529,889*	*- 57,02%*
Drama (Cat. 7)	**36,514,548**	**33,769,227**	**33,873,200**	**34,854,614**	**37,579,876**	**2.92%**
Including independent prod.	*27,165,123*	*25,814,044*	*28,221,339*	*24,023,463*	*26,994,581*	*- 0.63%*
Music/Variety (Cat. 8-9)	**9,597,026**				**3,929,557**	**- 59.05%**
Including independent prod.	*7,217,697*				*3,658,017*	*- 49.32%*
Game shows (Cat.10)	**4,183,308**				**10,045,227**	**140%**
Including independent prod.	*1,997,066*				*3,778,662*	*89.21%*
Human interest (Cat. 11)	**31,790,038**				**65,100,837**	**105%**
Including independent prod.	*15,376,501*				*28,689,707*	*86.58%*
Other (Cat. 12 to 15)	**3,650**				**585,185**	**16 000%**
Including independent prod.	*3,088*				*282,766*	*9 157%*
Total (Cat. 1 to 15)	**163,139,929**				**198,215,497**	**21,50%**
Including independent prod.	*58,577,389*				*66,788,183*	*14.02%*
In % of total	***35.91%***				***33.69%***	
Script development	474,877				312,929	
CTF credit	*1,482,247*				*731,311*	

FINDINGS:

Preferred categories

- In Canada excluding Quebec, and in Quebec like all of Canada, the four main categories of Canadian programs, in terms of total CPE percentage, are *News* (Cat. 1), *Human interest and entertainment* (Cat. 11), *Drama* (Cat. 7) and *Other information* (Cat. 2 to 5)
    - All together, these four major categories account for over 90% of the total CPEs in 2007, in each market and when combined.

COMPARISON OF THE EVOLUTION OF THE
4 LARGEST PROGRAM CATEGORIES
IN TOTAL CPE PERCENTAGE

	CANADA		Canada excluding Quebec		Quebec	
	2003	2007	2003	2007	2003	2007
Cat. 1 News	56%	53%	65%	63%	36%	33%
Cat. 2 to 5 Other information	10%	10%	10%	11%	11%	8%
Cat. 7 Drama	17%	12%	15%	9%	22%	19%
Cat. 11 Human interest	10%	17%	5%	9%	19%	33%
Total of these categories	93%	92%	95%	92%	88%	93%

- Meanwhile, the distribution of expenditure among these four categories varies greatly depending on the market:

    - In Canada excluding Quebec, the broadcasters' priority is clearly on *News* which captures 63% of the total CPEs in 2007 and *Other information* (11%), for a total of 74%; *Human interest and entertainment* and *Drama* lag far behind with 9% each.

    - In Quebec, the broadcasters focus a lot less on *News*, which only captures 33% of the total CPEs in 2007; this category thus comes in second slightly behind *Human interest and entertainment* (also 33% in rounded percentage); followed by *Drama* (19%) and *Other information* (8%)

- With respect to the five-year evolution of expenditures for these main program categories:

    - The *Human interest and entertainment* programs are strongly on the rise: Canada: 101%; Canada excluding Quebec: 96%; Quebec: 105%

    - *News* is enjoying a much more modest increase (and less than the overall growth of the CPEs): Canada: 8%; Canada excluding Quebec: 8%; Quebec: 9%

    - The *Drama* programs are markedly on the decline except in Quebec where they enjoy a very modest growth: Canada: -20%; Canada excluding Quebec: -35%; Quebec: 3%

        - Which means that in 2007 the Quebec broadcasters devoted almost the same resources to Canadian dramas ($37.6M) as the broadcasters outside Quebec ($36.6 M$), despite revenues that are 3.7 times less.

    - The *Other information* programs are on the rise in Canada excluding Quebec (26%) and on the decline in Quebec (-18%), for an average increase of 11% throughout Canada.

"Priority" entertainment programs

- The expenditures for *Music/Variety* are very strongly on the rise in Canada excluding Quebec (1 335%) – which is undoubtedly due to shows such as *Canadian Idol* – and are experiencing a significant decrease in Quebec (-59%), with the result being a substantial increase (117%) for Canada as a whole.

- If the entertainment programs which the Commission and the CTF deem more of a "priority" are considered, namely *Drama* and *Music/Variety*, things appear to be going in opposite directions according to the markets:

    - In Canada excluding Quebec, the broadcasters seem to be abandoning *Drama* (-35%) in favour of *Music/Variety* (1 135%); to such an extent that the expenditure ratio of these two categories in 2007 was: 65% *Drama* / 35% *Music/Variety*, compared to 98% / 2% in 2003.

    - In Quebec, the broadcasters instead maintain the level of expenditures allotted to *Drama* (+3%) while markedly reducing the amount given to *Music/Variety* (-59%); to such an extent that the expenditure ratio of these two categories in 2007 was: 90% *Drama* / 10% *Music/Variety*, compared to 79% / 21% in 2003.

Non "priority" entertainment programs

- The expenditures for *Game shows* are greatly on the rise in Canada (186%) as well as in both markets: In Canada excluding Quebec: 2 749%; in Quebec: 140%.

- If the entertainment programs which the Commission and the CTF do not deem a "priority" are considered, namely *Game shows* and *Human interest and entertainment*, these two categories appear to enjoy very strong growth while the expenditures of entertainment programs generally considered a "priority" diminish:

    - In all of Canada, the programs from Category 10 and 11 enjoy a combined growth of 108% between 2003 and 2007 where they capture 19% of the total CPEs; while the programs from Category 7, 8 and 9 experience a decline of 6% between 2003 and 2007 where they capture 16% of the total CPEs.

- In Canada excluding Quebec, the programs from Category 10 and 11 enjoy a combined growth of 107% between 2003 and 2007 where capture 10% of the total CPEs; while the programs from Category 7, 8 and 9 experience a decline of 3% between 2003 and 2007 where they capture 14% of the total CPEs.

- In Quebec, the programs from Category 10 and 11 enjoy a combined growth of 109% between 2003 and 2007 where they capture 38% of the total CPEs; while the programs from Category 7, 8 and 9 experience a decline of 10% between 2003 and 2007 where they capture 21% of the total CPEs.

Sports programs

- Between 2003 and 2007, the expenditures for Sports decreased significantly: Canada: -55%; Canada excluding Quebec: -53%; Quebec: - 65%

Independent programs

- In 2007, the share of total CPEs allocated to programs acquired from independent producers breaks down as follows: Canada: 23.48%; Canada excluding Quebec: 18.57%; Quebec: 33.69%.

- The significant gap between Quebec and Canada excluding Quebec is partly explained by the much larger relative weight of News (63%) in the total CPEs of Canadian broadcasters outside Quebec versus Quebec broadcasters (33%).

  - If the expenditures other than those for News, Other information and Sports are considered, the expenditures of independent programs in 2007 represent:
    - 76.63% of other CPEs in Canada excluding Quebec
    - 54.08% of other CPEs in Quebec

- With respect to the five-year evolution for all of Canada, the expenditures of independent programs are increasing a bit more (18%) than the total CPEs (14%).

  - In Canada excluding Quebec, this gap is wider: Expenses of independent programs: 21%; total CPEs: 11%

  - In Quebec, it's the opposite: the expenses of independent programs are progressing less rapidly (14%) than the total CPEs (22%)

- This confirms that the Quebec broadcasters produce more entertainment programs inside the province than their counterparts from English Canada and that this trend has increased over five years.

Appendix 8

About the Authors

Peter S. Grant

Peter S. Grant is Counsel at McCarthy Tétrault LLP, one of Canada's largest law firms, and past chair of its Technology, Communications and Intellectual Property Group. He is also Adjunct Professor at the Faculty of Law, University of Toronto.

Mr. Grant is an expert on communications law, copyright law, and cultural and trade policy. He has pioneered the field of communications law in Canada, and his practice is substantially devoted to this field, including broadcasting and cable television, pay and specialty programming services, new media, copyright collectives, and cultural industries, both in Canada and abroad. He is an experienced copyright lawyer, with multiple appearances before the Copyright Board of Canada. He has also acted on matters affecting book and magazine publishing policy, film and television production and the music industries.

Mr. Grant is the author of numerous articles and publications, including the *Canadian Broadcasting Regulatory Handbook*, the ninth edition of which was published in April 2008. The handbook is the standard reference in Canada on the *Broadcasting Act* (Canada) and the regulations and policies of the Canadian Radio-television and Telecommunications Commission (CRTC).

In February 2004, Douglas & McIntyre published *Blockbusters and Trade Wars: Popular Culture in a Globalized World*, a book co-authored by Mr. Grant and Chris Wood. The book focuses on the economics of popular culture, the efforts to provide diversity of expression around the world and the impact of technology and trade law on the dissemination of cultural products. The book has been called "brilliant and sweeping" by the *Toronto Star*. It was short-listed for the Donner Prize, awarded to the best book on public policy published in Canada. A paperback edition of the book was published in 2005. A French-language edition of the book was simultaneously published in 2004 by Les Éditions du Boréal, under the title, *Le Marché des étoiles: culture populaire et mondialisation*.

In the period from 1974 to 1978, Mr. Grant was loaned by McCarthy Tétrault to the CRTC under an Executive Exchange Agreement. During this period, Mr. Grant acted as a Special Counsel to the Commission and performed duties as counsel in numerous broadcasting and telecommunications regulatory proceedings. Mr. Grant returned full-time to private practice in 1978. Mr. Grant has acted as a consultant to UNESCO, Paris, on the Declaration on the Role of the Mass Media and was a member of the Canadian delegation to UNESCO, Paris in 1974, and to the G-7 conference on the Information Society in Brussels in 1995.

Since 1993, Mr. Grant has acted as the Broadcasting Arbitrator for Canada under the *Canada Elections Act*, having been appointed to this post by the Chief Electoral Officer, following unanimous agreement of the parties in the House of Commons. As the Broadcasting Arbitrator, his responsibilities included the allocation of paid and free time to political parties in federal general elections.

Mr. Grant was a long-time member of the Sectoral Advisory Group on International Trade (SAGIT) for Cultural Industries, which advised the Canadian Minister of International Trade. In that capacity, he co-authored a report in 1999 entitled "Canadian Culture in a Global World: New Strategies for Culture and Trade." This report was the first to recommend the creation of a new international convention on cultural diversity. Support for this idea eventually led to the adoption of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* by UNESCO in 2005. The convention has now been ratified by 93 countries around the world.

Mr. Grant is an expert on cultural industries and international trade policy, and has spoken widely on cultural policy issues in conferences around the world, including London, Brussels, Rabat, Cape Town, Valencia,

Berlin, Montego Bay, Washington, Port of Spain, Hong Kong, Sydney and Auckland. He has also advised a number of foreign governments and public broadcasters on broadcast matters, including the BBC (Britain) and RAI (Italy). In 1999, he was retained by the Government of Sri Lanka to recommend the form of new broadcasting legislation in that country. His report was tabled in August 1999.

Mr. Grant appears in the 2008 edition of *Chambers Global: The World's Leading Lawyers for Business* as a leading lawyer in the area of telecommunications and broadcasting law as well as appearing in the 2007 edition in the area of technology, media and telecommunications.

Michel Houle

Michel Houle has been active in the cultural industries sector for some 30 years. He started out at the Cinémathèque québécoise and the Conseil québécois pour la diffusion du cinéma, before becoming a film professor and critic and co-writing the first *Dictionnaire du cinéma québécois* as well as monographs on Denys Arcand, Gilles Carle and Fernand Dansereau. He was also a founding member of the magazines *Champ Libre* and *Format Cinéma*. After serving as an adviser to the Cultural Affairs Minister prior to the passage of the Quebec *Cinema Act* in 1983, he was appointed deputy director general of the Société générale du cinéma (now SODEC).

Since 1985, he has worked as a consultant in the cultural industries and communications, publishing numerous studies on film production, distribution and exhibition, on production funding for television, on different aspects of the Canadian broadcasting system and on the music and radio industries.

He has worked as an adviser for the preparation and/or writing of reports by numerous task forces, committees and commissions, including the Commission d'étude sur le cinéma et l'audiovisuel, the Task Force on the Canadian Film Industry, the Groupe de réflexion et d'action sur les enjeux de la Francophonie, the Federal-Provincial Committee on the Future of French-language Television, the Cultural Industries Sectoral Advisory Group on International Trade, the Direct-to-Home Satellite Policy Review Panel, the Mandate Review Committee – CBC, NFB, Telefilm, the Task Force on the Future of the Canadian Music Industry, the Groupe de travail sur la chanson québécoise, the Review of Canadian Content in the 21st Century in Film and Television Productions, the Groupe de travail chargé de l'examen de Télé-Québec, the APFTQ's Comité sur la nouvelle économie des droits and the Groupe de travail sur l'accroissement des contributions canadiennes et internationales au financement du cinéma québécois.

He regularly collaborates on the preparation of briefs on political or regulatory issues for submission to the CRTC, the Copyright Board, parliamentary committees or government departments by different broadcasters (Astral Media, TV5 Québec Canada, Télé-Québec) or professional associations in the production and broadcasting sectors, such as the Association des producteurs de films et de télévision du Québec (APFTQ), the Canadian Association of Broadcasters (CAB) and the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), as well as ad hoc groups created by associations of broadcasters, producers and/or artists working in French-language production and broadcasting.

He has worked as a consultant for preparing new licence applications for several Canadian broadcasting programming and distribution services as well as numerous licence renewal or change of ownership applications. He acts as an adviser for drawing up corporate strategic development plans. He also conducts studies or works on developing policies for the Department of Canadian Heritage and the Quebec Ministère de la Culture et des Communications and their portfolio agencies, such as Telefilm Canada, SODEC, the Régie du cinéma du Québec and the National Film Board of Canada, as well as for cultural institutions like the Cinémathèque québécoise and the Institut national de l'image et du son (INIS).

He was a member of the National Advisory Committee on Culture Statistics from 1993 to 1997, and sat on the board of directors of the Cinémathèque québécoise for seven years, two of them as its chair. He is currently a member of the board of directors of the Harold Greenberg Fund and an independent member of the APFTQ's disciplinary committee in charge of handling complaints regarding derogatory conduct or violations of the Association's code of ethics.