AN ASSESSMENT OF MEASURES TO STIMULATE GROWTH OF THE DOMESTIC PROGRAM PRODUCTION INDUSTRY FOR TELEVISION, WITH RESPECT TO THE FEDERAL BROADCASTING OBJECTIVES AND A COMPREHENSIVE POLICY FOR CANADIAN TELEVISION

A Report Prepared for the

Broadcasting Policy Division

Department of Communications

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1. Definition of Measures and Goals

The original purpose of the research reported here was to investigate the feasibility of a number of policy initiatives intended to stimulate investment in television program production and thus stimulate growth of the television production industry. In an early paper which explored the idea of developing a more "mature" production industry, a departmental analyst maintained that two long-standing federal instruments for the development of the domestic program production industry - the national broadcasting service provided by the CBC and the licensing and regulatory process administered by the CRTC - had largely failed in their mission. Citing changes in distribution technologies and the popularity of U.S. programming as the most important factors working against Canadian goals, he went on to argue that it was now most appropriate for the government to consider a program of fiscal incentives and possibly direct subsidies to the industry, whose purpose would be, in effect, to increase the supply of domestically produced television programs. The three principal measures described were: adjustments to the 100% capital cost allowance (CCA) regulations under the Income Tax Act as they affect production for television; clarification of Canadian Film Development Corporation (CFDC) responsibilities in television production investment; and increased availability of funds to producers from the Federal Business Development Bank (FBDB). The immediate rationale of this series of policies was seen as falling within a "framework of industrial and economic strategies" relating to increased producer prosperity, increased employment opportunities and increased tax revenues. There was, however, another and even more significant rationale which was hinted at in the concept of a "mature" production indusry and then made explicit in the body of the paper: this concerned the realization of "national cultural objectives" and a Canadian "cultural identity". While this notion was not immediately elaborated upon, it was clear that the objectives in question included, in part if not in whole, the federal broadcasting objectives enshrined in section 3 of the 1968 Broadcasting Act, as well as in the proposed Telecommunications Act.

The mandate of the research therefore embraced three different kinds of policy measures and two distinct, if not quite separate, goals. The kinds of measures under consideration included: (1) direct fiscal (i.e. investment) incentives to the production sector; (2) direct subsidies and other forms of assistance to producers (trade shows, marketing, export), which could be tied to the creation of a production fund through a levy on the profits of Canadian cable and broadcasting companies; and (3) indirect or "true broadcasting" incentives involving especially broadcaster regulatory policy and CBC procurement and scheduling policy. The two kinds of goals just described, the one industrial, the other politico-cultural, have their own very particular imperatives, and it was not clear at the outset whether they could be regarded as mutually consistent. It was not clear, in other words, that under the single policy rubric of a more mature television production industry[1] one could square the profit motives of private investors with the lofty and notoriously abstract objectives of the Broadcasting Act. To pose the problem in yet another way, could fiscal incentives such as that provided for by the 100% CCA regulations governing production investment be expected both to stimulate industry growth and thus increase program supply, and aid directly or indirectly in the realization of federal cultural objectives?

The answer to this question depends of course on the particular merits of the incentives proposed, as well as on the manner in which the goals are defined and their successful attainment measured. But before proceeding to more detailed considerations, we may begin by drawing an important distinction, and venturing a preliminary conclusion. First of all, even if policy initiatives of the type proposed here were to prove successful in industrial and general public policy terms (a point about which fairly reliable projections can be made), they would provide no guarantee of success in broadcasting policy terms, where these terms are defined in relation to the traditional objectives of "varied and comprehensive" programming of "high standard", a "balanced" national broadcasting service which contributes

1. No distinction has been drawn thus far between independent producers and integrated broadcasters, i.e., broadcast licensees who operate vertically affiliated production houses. For a few remarks on independent producer relations with the integrated broadcasters, see Annex A (Edmunds report).

to "national unity" and a "continuing expression of Canadian identity", and so on. Nothing emerging from any definition of "national cultural objectives" is likely to be served by increased production industry growth, <u>in and of itself</u>. This distinction is reflected in the three goals which shaped a recent draft comprehensive policy for Canadian television (see Annex G). While one of these goals was to "stimulate growth of the program production industry through fiscal incentives", the first and perhaps most important was to "make more Canadian-produced television programs available, of a sort and in a manner that offers genuine diversity of choice to both mass and specialized audiences".

It is therefore a general conclusion of this report that fiscal incentives alone cannot be expected to enhance the cultural goals of a comprehensive television policy, in part because they are not directed at the demand side of broadcasting. This does not mean that these measures should not in principle be part of such a comprehensive policy. It is, however, a further conclusion of this report that, with strict regard to program supply, the fiscal incentives under consideration present certain difficulties which may limit their anticipated effectiveness. It will be the task of the next four sections to outline these difficulties.

2. The Programming Crisis

The policy issue responsible for research interest in fiscal incentives is the well-documented absence of quality domestic television programming from the schedules of Canadian networks, affiliates and independent stations. But it is more particularly the absence of independently produced Canadian programs from these schedules which is being addressed here. The Canadian programming crisis thus has two aspects: the general preference of Canadian broadcasters for U.S. programs over Canadian programs; and the tendency of integrated broadcasters to procure (Canadian) programs from their own affiliated production houses, rather than from independent (Canadian) producers.

There are fairly straightforward economic reasons for this state of affairs, and some of these are outlined in a paper prepared for the Department by Robert Babe (August 16, 1979). Popular U.S. programs are more attractive to Canadian broadcasters than popular Canadian programs because a) the latter are estimated to cost anywhere from 7 to 30 times as much per hour as the former, and b) U.S. programs have a much greater audience reach than similar Canadian programs, and thus in 1975 yielded advertising revenues over 1½ times greater per hour than Canadian programs. Next, Babe offers four reasons to explain why it is apparently more profitable for Canadian stations and networks to procure programming from vertically owned production houses than from independent producers.

a) Because CRTC licensing practice requires that broadcasters own extensive production facilities, the costs to their own production houses of studio time and labor are fixed as overhead and need not be allocated to the costs of any particular program, which is of course not the case for the independent producer.

b) Vertical integration reduces the risk of bankruptcy to the program producer and assures a steady supply of Canadian programming to the broadcaster, who must meet the CRTC's regulatory content quotas.

c) Integration allows broadcasters to participate in the profits from successful Canadian programs, without any need to share profits ("rents") with a non-integrated producer, while such programs may be used to cross-subsidize unsuccessful Canadian programs.

d) Contractual arrangements between the broadcaster and his integrated production house (which are unlikely to be true arm's length arrangements) may permit the broadcaster to show lower profits and thus request less onerous regulatory demands.

Babe then makes a number of assumptions and estimates which allow him to quantify the total "disadvantage" under which integrated and non-integrated produces operate. He assumes, somewhat arbitrarily as he admits, that the disadvantage of the independent (non-integrated Canadian) producer vis-à-vis the integrated producer is in the order of 20% (this means that a program made by the former would cost, or at least appear to cost, 20% more than if the same program were made by the latter). Using a set of differential figures for advertising revenues and audience reach (for Canadian programs this latter is 30% below the audience for U.S. programs), as well as a simplified scheduling concept, Babe calculates that for the regulatory prime-time period of 6 p.m. to midnight, the required use of 50% Canadian content from <u>vertically integrated production houses exclusively</u> reduces potential profits on 100% U.S. programming by a factor of 52%. On the other hand, if the 6-7 p.m. and 10 p.m.-12 a.m. slots were filled with <u>independent Canadian production exclusively</u>, the profit loss against the hypothetical 100% U.S. (unregulated) case would be 9% greater, i.e., 61% (given the apparent 20% disadvantage noted above).

After outlining certain qualifications concerning audiences, scheduling and rival stations (as well as noting that scheduling Canadian programs from any source throughout true prime time would cause an even greater drop in profits), Babe concludes that the assumed 20% advantage enjoyed by integrated producers is due largely to "pecuniary" rather than "real" economics of integration, and that if "accounting practices were such that all costs were recognized for both integrated and non-integrated producers, there is no reason why the costs of the latter would be higher" (p.8). Nevertheless, whether for accounting or some of the other more substantial institutional reasons described above, it is clear that integrated broadcasters have little incentive to procure independently produced Canadian programming, let alone schedule it in time prime time [2].

2. This was described by Edmunds in his 1976 study as the major problem facing the Canadian independents, particularly if the CBC is included among "integrated broadcasters" (see Annex A). As just suggested, the woes of independent programming are not ones for which the private broadcasters alone are responsible. Indeed, CFTA spokesmen are much more critical of the CBC in this respect (see Annexes C and E). Criticism of CBC (Radio-Canada) procurement practice is one also echoed thoughout the 1977 Archambault/Lacoste study of the Quebec industry (see Annex B).

3. CCA Regulations Governing Private Investment in Certified Canadian Film/Video Productions

A film or video production that is certified as Canadian by the Secretary of State - either because it is a co-production between Canada and another country or because there is majority Canadian participation in terms of talent, monies spent in Canada and so on - is an asset that falls into Class 12 of Schedule B to the Income Tax Regulations and is accorded a 100% rate of capital cost allowance for investment purposes. Thus, any loss which results from claiming the CCA may be used to reduce or shelter a taxpayer's personal income from all sources.[3] Since enactment of an amendment effective after May 25, 1976,[4] such assets have included not only "certified feature films" but also "certified feature productions" and "certified short productions" - in other words, short films (of less than 75 minutes running time) and video productions of any length. In all cases, the effect of these provisions is to convert an investment into an expense and thus allow the investor to defer some portion of his tax to a later year.[5]

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3. Cf. Reg. 1104(2)(h)-(j) and Reg. 1100(17)(c).

4. Cf. Order-in-Council P.C. 1976-2763, enacted 10 November 1976, amending Reg. 1104(2) and 1104(10), as well as classes 10, 12 and 18 of Schedule B.

5. Such tax shelter arrangements are normally considered to be of benefit only to individuals with a marginal tax rate of 50% or higher.

The purpose of the 1976 amendment was quite clearly to accommodate program production destined specifically for television use, since television programs are seldom of feature length and are commonly shot on videotape. It is important to bear in mind, however, that the regulations in question neither make explicit accommodation for the medium of television itself, nor impose any restrictions (except indirectly, as we shall see shortly) on the end use of a certified production acquired for investment purposes.[6] This is perhaps a reflection of the fact that the original provisions, which came into effect on Novemver 18, 1974, were intended to attract private investment to Canada's languishing feature film industry, and were thus drafted under the aegis of a film policy, rather than a broadcasting policy.

The success of the 100% CCA provisions in respect of this film policy is now well documented.[7] Since 1974 there has been a dramatic increase in (a) the level of private financing of feature films, (b) the number of features produced per year and (c) the size of individual feature budgets.[8]. The fact that the 100% CCA has been

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6. The only mention made of television per se in the 1976 amendment, for example, is a passing reference to a "television commercial message".

7. See especially "An Evaluation of the Impact on the Canadian Film Industry of the Increase to 100% of the Capital Cost Allowance", a study prepared recently for the Department of the Secretary of State by ERA Consulting Economists of Montreal.

8. These increases may not be attributable in their entirety to the increased CCA provisions alone.

so successful in stimulating the growth of the feature film industry, and that its provisions seem to apply indifferently to film and televison, together raise one of the major issues of the departmental paper referred to above ("Development of a More Mature Televison Program Production Industry"): namely, why it is that "only a handful of broadcasters and investors have utilized the CCA provision for television production". Four "preliminary conclusions" are offered concerning the lack of utilization of this incentive for investment:

> (1) the provision is not easily adaptable for television production (for example, it does not embrace the possibility of series productionn); (2) even with the CCA, producers have difficulty in obtaining loans or other forms of risk capital for the financing of program pilots because the chances for successful sale of a series are not great; (3) although broadcasters often operate subsidiary production companies, the individual production budgets for programs are often amortized over a full fiscal year and deducted from a company's taxable income as a business expense; and (4) many broadcasters and investors are simply not aware of this incentive.

Before examining these observations in details, we might do well to consider two preliminary points. First of all, there would seem to be consensus among students of this problem that the CCA regulations have created certain problems for the television producer which do not affect the production of films for theatrical release, but - and this is a most significant qualification - the problems relating to television would appear to be outweighed by general problems of interpretation and application which affect <u>all</u> investors. Thus, in a paper on television production presented to the Department on September 2, 1979, Philip Slayton maintains that "the Canadian requirements bear no more harshly on television production than on other film production", that "issues of film 'cost'..., timing of the completion of principal photography, whether genuine 'purchase' is involved or merely a financing arrangement or joint venture, and so on, go to the entire structure of the CCA regulations"; that "the Regulations probably do not discriminate particularly against television production"; and that "any defects in these highly complex regulations appear generally speaking to apply to all production, and are not peculiar to television" (pp. 7, 9, 10). Similar views were expressed by investment counsellor Richard Wise in an interview with the consultant, and in a published article which is highly critical of the December, 1978 amendments to the CCA provisions (see Annex F).

Secondly, we must ask just what advantages are conferred on the individual taxpayer using the CCA shelter, and under what conditions, so that we have some ideal case against which to measure the allegedly problematic aspects of the regulations. In the paper referred to above, Robert Babe calculates the financial position of a taxpayer in a 50% marginal tax bracket who invests $10,000 in a film with reference to three different situations: no recoupment of investment, break-even and return of $20,000, with and without use of the 100% CCA. Babe is able to show here that the CCA provision would increase this investor's after-tax profits by 12% over the non-CCA case - but that "the film itself must be profitable for the investor to earn a profit" (p. 12). Even at break-even, the investor would effectively lose money, because of the lost opportunity cost (base-line investment with assured 10%

return). Because the provision cannot reduce risk or turn a loss into a profit, and because, as Babe points out, only 1 in 20 Canadian films earns a profit (compared to 1 in 9 U.S. films), it is apparent that the CCA is not quite so attractive as may appear at first glance. What the provision can do is increase the profitability of an already profitable venture: this is an important point to which we will return in the discussion below. For the moment, however, we need to review the various reasons advanced above for the apparent under-utilisation of the CCA shelter.

(1) The provision is not easily adaptable for television production

Whether or not this observation is true in any absolute sense, industry spokesmen, those most directly concerned with the CCA for film, certainly believe it to be true, and their criticisms of the governing regulations are reflected in the proposed amendments submitted recently to the Interdepartmental Committee on the Cultural Industries. There are four recommendations contained in this submission: that the "principal photography" calendar be extended to 24 months, or other period more suited to television production; that producers be allowed to sell undivided interests in future series revenue, not tied to ownership of interests in particular programs comprising the series; that R&D costs not necessarily associated with a finished production be considered as capital costs to an investor for tax purposes; and that certain of the restrictive provisions of the December 1978 amendments to section 1100 be revoked or diluted (the reader is referred to Annex H for further explanation of these points). One or two other problems relating to television production have been singled out in other studies. In the paper referred to above, for example, Philip Slayton suggests that

> ... television production may also encounter financial difficulties when distribution has an international aspect. The Canada-United States Reciprocal Tax Convention specifically excludes "rents or royalties in respect of motion picture films" from the exemption that is accorded royalties for the right to use copyrights... This means that the United States distributor would be required by U.S. law to withhold 15% tax from remittance to Canada. There would be no Canadian foreign tax credit available in respect of this tax if the Canadian investors' CCA wiped out what would otherwise be their net income from U.S. sources (p.9).

While the Department may wish to address "television-specific" problems such as those described here, officials should also recall that what is perceived as an accounting or marketing problem by the producer may not be regarded by the investment community as a problem for the investor (on this point see Wise interview, Annex F); that even industry spokesmen themselves do not regard the CCA defects as anything like the major obstacles to industry growth (see record of CFTA meeting, Annex E); and that, as Slayton suggest (p. 9), "a complete overhaul of the Regulations may well be desirable".[9]

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9. Note also that the various fiscal recommendations proposed by Edmunds and Archambault/Lacoste would apply equally to film and television, as for example disallowance of any CCA for foreign films, now accorded a 30% rate as assets falling into Class 10 of Schedule B. See Annexes A and B.

(2) Producers have difficulty in obtaining loans or other forms of risk capital because the chances for successful sale of a series are not great.

The difficulty television producers have in obtaining risk capital is not of course likely to be a reason in itself why producers and investors have not, in the past, availed themselves more of the CCA shelter. Furthermore, as we have already noted, the CCA for film cannot, in the absence of certain other conditions, reduce risk or turn a loss into a profit. In other words, the CCA cannot in and of itself be expected to enhance investor confidence in an industry and a market which for well-established institutional reasons, are fraught with risk, and it is not likely that the most radical amendments to the present provisions would change this state of affairs. Risk to the independent television producer (and investor) is created by the highly unstable demand for Canadian programs in both Canada and the United States. Apart from the notorious difficulties of pleasing both Canadian audiences and U.S. distributors with domestic productions, the independent producers have very little access to the distribution facilities (stations and networks) of the integrated broadcasters, or the publicly owned facilities of the CBC, which altogether constitute a very limited market in any case. How domestic and foreign markets for independently produced Canadian programs can be increased, and producer risk thereby reduced, will be indicated below.

(3) Individual production budgets for programs are often amortized over a full fiscal year and deducted from a (vertically integrated production) company's taxable income as a business expense.

Here the analyst has pointed up a significant limitation in the applicability, or appeal, of the CCA provisions. This is that integrated producer/broadcasters would have no apparent reason for resorting to the CCA shelter, since all their true program costs (and there may be some difficulty of definition with these) would already be eligible for a 100% write-off in the taxation year incurred. Thus, none of the defects in, or amendments to, the regulations described above would be likely to have any bearing on the operations of integrated producers. And finally, profits of the larger private television stations are known to be high and growing steadily: their affiliated production houses are not therefore faced with anything like the problem of attracting program investment funds that face the independent producers.

The inappropriateness of the CCA provisions to the financing of broadcaster-sponsored production would not seem to apply to independent production, and, as we read in the Babe paper, "it could be argued that [adoption of CCA] would aid non integrated producers." However, continues Babe,

> in order for CCA to be of benefit to non integrated producers, the production must have the ability to be profitable in the accounting sense without the CCA provisions... [But] the profit increase to an investor in independent productions is in the order of 12% (given the assumptions); therefore even with this

> advantage, it is unlikely an integrated broadcaster would wish to use independent productions voluntarily, expecially given that the latter already appears to write-off 100% of program costs [and for procurement purposes enjoys an apparent 20% advantage over the independents] (pp. 12-13).

This does not mean of course that no investment benefit may accrue to the independent producer when selling to a market other than that comprised of the integrated broadcasters, but only that the tax shelter alone cannot be expected to give the independent industry greater access to the private stations and networks as a whole.

(4) Many broadcasters and investors are simply not aware of this incentive.

It would appear that this statement is a little misleading as it stands. First of all, no mention is made of the independent producers themselves, who seem to have the greatest vested interest in measures to stimulate growth of their own industry. Be that as it may, discussions held by the consultant with industry spokesmen (see, e.g., Annex E) revealed that few producers with any experience in television were actually unaware that the CCA incentive is on the books and of potential benefit to them in certain situations. As for broadcasters and investors, the former, as we have just seen, are unlikely to have any recourse to the CCA shelter, while the latter are, in principle at least, those players most able to avail themselves of the expert technical advice provided by accountants, tax attornies and investment consultants, since such shelters are seldom of benefit to any individual who pays tax at less than a 50% marginal rate.

Let us therefore assume that independent producers are included under this "information gap" rubric, and suggest that what the producers are unaware of, if they are unaware of anything, is not the existence of the incentive itself, but rather exactly how to exploit it to their best advantage. Slayton (September 2, 1979) is of the opinion that the "biggest problem [with CCA] is probably the failure of the television production industry fully to exploit the opportunities presented by the Regulations, together with the fundamental difficulty of arranging financing in the first place for high-risk ventures" (p.9). It is perhaps worth nothing as well that legal counsel to the Department recently advised the consultant that some of the more vexing provisions of the Regulations (such as those that would seem to prejudice series production) may be open to an interpretation more favorable to the interests of the independent producer. Although she was not prepared to give a firm opinion on the matter, she did suggest that challenge in the courts might be the most efficacious way to clear up certain ambiguities in the Regulations which seem to work against the interests of television producers and investors.

We have been speaking thus far of independent producers as though they formed a homogeneous group with identical interests from one to another. We might do well at this point to recall that the great differences in sheer size of staff, plant, turnover and so on between the various Canadian production houses, make for considerable differences in their ability to analyze and exploit tax shelters and other incentive programs. Thus, the amendments to the CCA regulations urged by officers of Crawley Films and Nielsen-Ferns International (some of which are reflected in the draft proposals of Annex H), may not, even if enacted, be of direct benefit to the smaller houses, which do not enjoy the same access to financial expertise as the larger and more successful houses. Interpretation of the Income Tax Regulations is an exercise of notorious difficulty, and it is unlikely that clarity and simplicity will be the result of further amendments to the regulations governing the CCA shelter.[10]

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10. The problem which smaller houses might experience in deriving some benefit from a highly technical and complex set of regulations is one that would seem to afflict the majority of independent producers in Quebec, who are unable to call on the kind of financial expertise referred to above. We read, for example, in the 1977 Archambault/Lacost study that for "la plupart des entreprises privées de production... leur volume d'affaires ne leur permet pas d'avoir à leur service un administrateur capable de gérer quotidiennement l'entreprise et d'assurer une planification de ses activités à moyen terme.... Si au Québec les maisons de production rattachées à des postes de télévision occupent une place importante c'est parce que les maisons de production sont faibles et ne font à peu près jamais d'étude de marché" (pp. 131-2).

4. The Role of the CFDC

The CFDC was created in 1967 with an original budget of $10 million primarily in order to assist the Canadian feature film industry, but since its inception it has invested in productions of various types for television use. In "The Development of a More Mature Television Program Production Industry", we read that although "the CFDC has started to back television producers, it has not published guidelines pertaining to this activity.... Because [this is so], many producers are unaware that the Corporation is involved in such an activity and others are confused about what productions are attractive to the Corporation." The paper does maintain that the CFDC's Executive-Director is "on record as stating that CFDC's financing is intended 'to put the producer [apparently for television] in a position to sell to the networks for main financing'". Although no source is given for this remark, average CFDC participation in feature projects has, since enactment of the CCA regulations for film in 1974, been rather low - in the order of 15%.[11] Thus, the general indication of television investment policy given above is at least not overly out of line with recent practice in assistance to features. Finally, the paper provides several examples of recent CFDC involvement in television production: "A Man Called Intrepid" (an Anglo-Canadian co-production aired in three parts on CTV and NBC); an eight-episode series based on Joy Carroll's

11. ERA Report, p. 19. Compare private investor participation in Canadian features for the same period at 47%.

novel Proud Blood; and a Denis Héroux production of "Les Plouffes".[12] Slayton (Sept. 2/79) gives another example of major involvement: "the CFDC, in collaboration with Radio-Québec and the Educational Television Bureau of Ontario, following a joint proposal from four Quebec producers, recently allocated about $1,000,000 for the producing of ten films for television and the educational and cultural media. The financial viability of this project was consolidated by guaranteed sale to Radio-Québec and OTEO" (p. 2).

The Canadian Film Development Corporation Act, which established the CFDC, describes its objects and powers in sub-section 10(1): "The objects of the Corporation are to foster and promote the development of a feature film industry in Canada..." (emphasis added). This provision by itself would seem to preclude CFDC involvement in production for television. However, when we come to sub-section 10(2), we read the following:

> (2) For the purposes of this Act, a "Canadian feature film" or "Canadian feature film production" is a feature film or feature film production in respect of which the Corporation has determined
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> (a) that the completed film will, in the judgment of the Corporation, have a significant Canadian creative, artistic and technical content, and that arrangements have been made to ensure that the copyright in the

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12. The consultant has learned that this latter project has not in fact been funded by the CFDC as yet, since production has been postponed to 1981.

completed film will be beneficially owned by an individual resident in Canada, by a corporation incorporated under the laws of Canada or a province or by any combination of such persons; or

(b) that provision has been made for the production of the film under a co-production agreement entered into between Canada and another country.

Thus, the only concern of the Act in this connection is what it terms "significant Canadian content", not the physical nature, length, end-use or other technical characteristics of the productions it may choose to assist. No other definition of "feature film" is provided or referred to. In strict statutory terms, therefore, the CFDC does not seem to be hindered in any way in its pursuit of a television investment policy.[13]

Nevertheless, just as the lack in the CCA provisions of any explicit restrictions on investment in production for television does not constitute an incentive, so too the apparent absence of any restrictive provisions on television in the governing statute cannot in itself be considered grounds for an active policy. In order, therefore, to establish how the CFDC was currently interpreting its mandate, how it was justifying its involvement with television and how it envisaged its future role, the consultant held a number of discussions with a senior officer of the Corporation in July and August. In the course of these discussions, he learned that Corporation financing policy was undergoing revision: emphasis is now being shifted to assistance on a loan

13. Legal counsel to the Department confirmed this opinion in discussions with the consultant.

rather than grant basis, while provision is being made for a new financing structure which will apportion CFDC monies among three areas, namely, development funding, interim funding and equity funding. Furthermore, CFDC participation in television had expanded to include an animated series and possibly a series for children as well. Most significantly, the officer characterized the "confusion" over the CFDC mandate as a problem of sheer budget, rather than one of policy or public relations. The CFDC, he claimed, would be willing in principle to expand its involvement in television if more monies were forthcoming from the government coffers to enable them to do so.[14] If such monies were not forthcoming, the officer allowed that it might be appropriate to consider proceeding with full or partial "privatization" of the Corporation, a scheme which had found favor with certain Conservative politicians. Under this scheme, the CFDC's activities would be financed by a levy imposed on Canadian cable operators, in exchange for shares in the Corporation. It is estimated that at least $45 million could be raised in this way.

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14. In a Cabinet document dated Sept. 28, 1977 and entitled "The Canadian Feature Film Industry", the Secretary of State recommended, inter alia, that "the annual appropriation for the Canadian Film Development Corporation over five years commencing fiscal year 1978-79 be increased to permit... net investment and program expenditures averaging six million annually [with $1.25 million specifically earmarked for 'TV feature film investments']; and that "the CFDC broaden its investment pattern to include films for television that can qualify as feature films within the meaning of the Canadian Film Development Corporation Act". In the Record of Decision (Nov. 15, 1979, no. 474-77RD), Cabinet agreed that "subject to a prior submission to the Treasury Board re-establishing the 1976-77 base, the CFDC be authorized to broaden its investment pattern to include films for television that can qualify as feature films within the meaning of the Canadian Film Development Corporation Act." No reference is made in the document to the request for an increased annual appropriation.

Finally, the officer made a most interesting revelation concerning an expanded CFDC mandate. He explained that the Corporation was giving active consideration to a proposal from a prominent Toronto feature film producer that they invest in a crime series for television which would be broadcast in conjunction with publication by a large Toronto house of the book or books on which the series is based. The broadcast/book tie-in concept has apparently been the subject of meetings held between producers and publishers under CFDC sponsorship. This is a particularly significant development in the light of public comments made recently by Under-Secretary of State Pierre Juneau to the effect that plans were being drawn up to transform the CFDC into a Cultural Industries Development Corporation with responsibility not only for film and television, but for the book and recording industries as well.[15]

While this last possibility may be worth further examination, we are reminded by Babe that whereas as a general rule "CFDC financing [to television] through low interest debt... could have a mild stimulative effect on production by integrated broadcasters... [they] are not short of capital [and] CFDC support is not required for capital infusion." Furthermore, Babe cautions that CFDC support to non-integrated

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15. In an interview with Juneau published July 14, 1979, in <u>Le Droit</u>, we read: "De la Société de développement cinématographique, destinée sous le gouvernement conservateur à devenir une Société des industries culturelles (avec notamment le disque et l'édition), M. Juneau dit que ce secteur subventionné fera l'objet de réformes, puisque le ministre MacDonald 'va aller de l'avant'".

producers might prove "valuable", but, as is generally the case with the CCA shelter, only to the extent that greater distribution possibilities are also made available to them (p. 14).

5. The Role of the FBDB

The departmental paper which has served as our starting point states that "programs administered by the Minister of State for Small Business, such as the Federal Business Development Bank and the Small Business Loans Program, are often cited by independent producers as being prejudiced against businesses engaged in television program production." The paper goes on to recommend that television production be included as "an industry to be supported by [such] programs..."

The statutory objects of the FBDB are "to promote and assist in the establishment and development of business enterprises in Canada", by providing financial and other assistance, giving "particular consideration to the needs of small business enterprises" (section 4). Under section 20, which sets out the Bank's powers, the Bank may lend money to a person if it is satisfied that he is (a) "engaged or about to be engaged in a business enterprise in Canada; (b) credit or other financial resources are not otherwise available to that person on reasonable terms and conditions; (c) the Corporation [Bank] may reasonably expect that [persons investing in the enterprise] will have a continuing commitment to the business enterprise; and (d) the business enterprise may reasonably be expected to prove successful."

As we saw in the two preceding sections of this paper with respect to the CCA regulations and CFDC mandate, television production is by no means expressly excluded from the statutory purview of the

FBDB. As Slayton suggests, "there seems no clear reason why the Bank has not and could not assume a role in the financing of television production. The key requirement of ss.20(1)(d) of the Act should be no more insuperable for the television production industry than for any other industry; and the other statutory requirements seem unexceptional enough" (p. 5). But as Slayton reports on the preceding page, "the Bank in considering a loan application is concerned with available security. The Bank's policy is not to give lines-of-credit on receivables or provide advance funds as working capital. The FBDB is primarily a mortgage-lender. It normally requires that a substantial ratio of the necessary capital be secured by fixed assets." Thus, while there may not be actual "prejudice" operating against the independent producer, he is, by the very nature of his business, in a financial position that is not calculated to appeal to officers of the Bank. In a recent project prepared for the Department by Fred Lazar (Sept. 5/79), the producer's prospects are described in very bleak terms:

> It is hard to visualize at this time the FBDB taking a more active role in supporting the production of television programs in Canada. Given the rather conservative nature of the FBDB it is difficult for even rapidly growing manufacturing firms in Canada to obtain financing from this source. To obtain financing for television production companies when the nature of their product and the prospect of their sales is of an unknown nature would appear to be almost impossible (p. 23).

If these assessments are accurate, then the recommendation alluded to above - that television production be included as an industry to be supported by programs such as the FBDB - would not seem to address the television producer's problem in a suitable manner, since theoretically speaking, television production is already included within the Bank's business purview. With this in mind, the following recommendation was included in the draft comprehensive policy for Canadian television (see Annex G): "that the operating criteria of the Federal Business Development Bank... be modified to ensure full and equitable consideration of applications for assistance from Canadian program producers" (p. 4). In the absence of further research, however, it is difficult to see how such a recommendation could be realized without upsetting an established pattern of lending activity that has been in train since 1961, when the present Bank was created.

6. Balancing Incentives with Demand

In the preceding sections, it has been suggested that the three policy initiatives under consideration are not likely, in and of themselves, to achieve the strictly economic goal of stimulating growth of the production industry by making more funds available to the producers of programs for television. Still less, it was argued, were these initiatives likely to achieve the broader goal of making "more Canadian-produced television programs available, of a sort and in a manner that offers genuine diversity of choice to both mass and specialized audiences." Although a sharp distinction was drawn between the two goals, it is worth noting here that they are both poorly served by the measures in question for very much the same reason - namely, that the measures fail to address directly the problem of restricted access to Canadian and foreign markets. "In order for adoption of such measures to be successful in a public policy sense, "writes Babe, "they must be accompanied by other events" (p.14). Just what, then, are these other events? What additional measures would resolve the outstanding difficulty shared by the three supply-side incentives, which is the high risk faced by Canadian producers? Lazar, writing mainly from a free market persepctive, emphasizes that "there cannot be an increased supply of production in Canada unless there is a commensurate increase in demand for such production" (p.1).

The potential market for independent Canadian programming can be divided for our purposes into four sectors: the private (Canadian) broadcasters and cablecasters, the publicly owned services of the CBC, U.S. and foreign broadcasters, and new non-broadcast video technologies such as cassettes and discs for home consumption. It will be apparent that if demand is to be increased by calculated intervention in any of these areas, a number of very different kinds of policy and market "events" will have to take place.

We have already noted that the private broadcasters have no corporate incentive to procure and schedule independent Canadian programming, and that they would be largely unaffected by the proposed fiscal measures. Demand will not, therefore, increase spontaneously in this sector.[16] It is likely, furthermore, that there would be no demand at all for Canadian programming were it not for the CRTC regulation requiring that 60% of a licensee's schedule during the 6:00 a.m. - midnight period, averaged annually, be Canadian, (with the quota reduced to 50% for the prime time period from 6:00 p.m. to midnight). The Canadian content regulations have been widely criticized by some for being too onerous and by others for being ineffective and providing no incentive for "the production of [especially independent] Canadian programming of an audience appeal matching that of programs produced in the United States", in the words of the departmental paper on a more mature television industry. It is for this reason, among others, that the paper describes the regulation as "deficient" and casts doubt on the suggestion that these Canadian program goals might ultimately be

16. This may not be true of the cablecasters, who through the CCTA have developed a scheme to create a Cable Satellite Network (CSN), which if approved could become a significant source of demand for programs.

achieved by modifications to the regulation. Whereas, on the one hand, the effectiveness of this regulation would seem to have been undermined by events, the Commission does not seem, on the other hand, to have utilized and enforced its licensing authority in a manner calculated to give encouragement to independent producers, at least not until very recently. The August CTV network relicensing decision,[17] in which the Commission, for the first time, made explicit requirements concerning the procurement and scheduling of Canadian programs, may mark a significant departure in CRTC policy, and a new resolve to see the objectives of the Broadcasting Act carried out. At all events, the decision has been criticized as vague and incomplete, and indeed has been challenged by CTV before both Cabinet and the courts.

Whatever the outcome of these challenges, the original decision serves to make us aware of the inadequacy of the Canadian content regulation for purposes of a comprehensive television policy such as that described in Annex G. In order to create significant demand for quality independent production in the private television sector, and ensure satisfactory exposure and rewards, the Commission would have to require of its licensees (a) that they procure a certain proportion of their programming from "truly independent" Canadian sources; (b) that they broadcast some proportion of it during "true" prime time; (c) that they pay the program supplier on a scale that reflects his own costs, rather than the artificially budgeted costs of their own affiliated production houses; and (d) that the programming meet certain criteria relating to category, quality, cultural value, major talent and so on.

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17. CRTC Decision 79-453, issued August 3, 1979.

Turning to the publicly owned CBC television networks, we come to what is in some ways an even thornier policy problem than the CRTC regulatory and licensing process as it relates to economic and cultural goals. Those CFTA members who attended the special July 26 meeting reported in Annex E made it abundantly clear that their chief concern as spokesmen for the industry was not incentives or subsidies, or even the behavior of the private television sector, but rather the vexed question of access to the CBC networks. The main target of industry wrath (and this would seem to hold true of both the English- and French-language sides) is the disproportionate role played by the CBC in production. The CFTA is naturally much distressed that the CBC and integrated broadcasters account for approximately 80% of all expenditure on program production in this country. It is perhaps equally natural that its members find greater injustice in being denied access to the publicly owned networks than the privately owned ones. In any case, there is vocal and adamant support among both English and French producers' associations for a greatly reduced CBC production role; some will be satisfied with nothing less than a mandatory outside procurement quota, while others feel that the CBC should be permitted to produce only news and public affairs programs.

As we noted on page 1, the departmental paper on a more mature television industry is as pessimistic about the ability of the CBC's national broadcasting service to further national cultural goals as it is about the CRTC's ability to encourage the growth of the independent industry. Given its present structure and responsibilities, with the insecurity attaching to its parliamentary appropriations, its confused role as an agent of public service and purveyor of commercial advertising, its statutory duties in connection with fostering national unity and a sense of identity, given all this and the scheduling constraints imposed by single-channel broadcasting, it is little wonder that the Corporation has been able to give few opportunities to Canadian artists for creative expression, or that its programming has become nearly indistinguishable from that of its commercial competitors, whether American or Canadian.

Here again, however, a fairly recent development may mark a radical new departure in the Corporation's role and in its ability to turn to the independent industry for programs: this is of course its plan for second-channel programming on CBC-II, a proposed second national public network. At a September 13 presentation given to the Department by senior CBC staff who have been engaged in planning CBC-II, several significant points emerged. First, organizational, financial and programming plans are all at an advanced stage. Second, the CBC officials present predicted that with the new network in place some time in the 1980s, the Corporation would be relying "much more heavily" on independent production, and expressed the hope that CBC-II in particular would help create "closer ties" with the independent community. Third, CBC-II has been conceived of not only as a service which will be more Canadian, and less commercial, with reduced emphasis on sports and more emphasis on current affairs, drama, the arts and sciences, quality entertainment and so on, but also as a service operating with smaller budgets and destined to appeal to smaller, more specialized audiences. For this reason, it could form an ideal outlet for smaller production houses and young, untested writing and acting talent, precisely those who are least able to find exposure on the commercial networks at present, for the simple reason that high-budget, mass-exposure television cannot afford to gamble with any but the tried and true professional, who can be counted on to bring glossy production values to the screen. This is perhaps the most convincing rationale for a two-channel service (one, incidentally, that has worked well in Canadian radio for some years): the opportunity it affords the public broadcaster to back away from head-on competition with the commercial networks, and provide vertically scheduled and diversified programming, without being encumbered by any specious distinction between "popular" and "high-brow" products.

Rich as the future possibilities for independent producers might appear with creation of this second public network, they too are bound to prove inadequate for substantial industry growth if they are pursued in a policy environment which does not take other prospects and obstacles into account. Like the fiscal incentives we began with, they will be useful as far as they go, but they do not go far enough. Even if a consortium is formed among the networks, the cable industry and independent producers to service CBC-II, writes Lazar, "foreign sales will still be required to fully recover the costs of production." In his opinion, international sales

> represent the most important source of demand for Canadian production, both in the short term and over the longer term. Moreover, successful penetration of foreign markets should increase the revenue potential for Canadian productions, and hence make feasible large scale investments in Canadian programming which in turn might result in a substitution of Canadian-produced programmes on the existing Canadian broadcast outlets. Thus, if Canadian content rules are not altered the production of higher quality or more audience-attractive programming in Canada could produce an increase in Canadian content on existing broadcast outlets (p.2).

In the second section of his paper, Lazar provides an abundantly detailed survey of existing and potential foreign demand for programs, with the U.S. constituting the principal world market. While the three major networks and their affiliates have traditionally generated the greatest demand, a buyer called Operation Prime Time has been formed recently by about 100 independent stations to sponsor "non-network programmes that are of network quality [and provide] a market for independent producers for a higher quality programming that is not accepted or purchased by networks." The Palace, a production co-sponsored by CHCH-TV Hamilton, is one Canadian program purchased by the OPT syndicate. The trend among certain independent stations to conversion to "super-station" status, linking up to cable systems across the U.S. via satellite, promises another area of steady growth in demand. This is particularly so at a time when U.S. cable systems are being steadily deregulated by court and FCC rulings, which opens the way to an expansion of activity in both distant-signal importation and pay services. Moreover, development of pay-television via cable is now being paralleled by the growth of subscription television (STV), which is essentially an over-the-air pay-television service provided by subscription companies who buy blocks of prime access time from local stations. Another source of demand will come from individual consumer use of home video playback and recording systems, which should become reliable, popular and affordable in the 1980s as they move into mass production and lower pricing. Finally, we are reminded that in 1978 U.S. companies realized sales outside of North America totalling nearly $235 million.

But if program demand around the world is growing as never before, particularly as new distribution technologies such as cable and satellites come into more extensive use, competition among program suppliers is also on the increase. And in the United States, Canadian producers face a formidable array of seasoned corporate competitors - the major network suppliers, the major producers of theatrical films, syndicators, packagers, even the networks themselves (who have recently taken a serious interest in the home video market), as well co-production ventures between U.S. and foreign companies. Despite a small measure of success, Canadian firms have not, in fact, made any real impact on the markets described above. For Lazar, this state of affairs is closely bound up with the "inability of producers to penetrate the Canadian broadcast market and generate adequate sales in this market so as to partly cover the expense and minimize the risks of attempting in turn to market such programs in other countries" (p.19). Thus, reducing risk and finding funds in the domestic market are part and parcel of achieving success in U.S. and foreign markets. "If Canadian producers were provided with a large market in Canada," continues Lazar, "and perhaps a more assured market in Canada, then it is conceivable that more risks would be undertaken and larger amounts would be invested in producing more expensive and perhaps higher quality products that could conceivably find its way into prime time television in the U.S. or generate significant international sales" (p.19).

7. Conclusions and Suggestions for Further Research

It has been our contention all along that a comprehensive policy for the development of Canadian television, and especially of the program production industry, cannot be expected to achieve either its purely economic goals, or its more ambitious cultural goals, unless problems of investment and supply are considered together with problems relating to demand. Thus, the policy initiatives concerning the CCA provisions, the CFDC and the FBDB will have something to recommend them if, and only if, they are pursued in a market climate where risk has decreased and demand increased, in other words, where many more program production ventures stand a chance of making a profit without government intervention. "Given the current level of demand for independent productions," concludes Babe (p.15), "the three measures discussed here are not likely to have a significant effect upon independent productions. However, if demand for such productions increases, whether via regulations on existing broadcasters, pay-TV, video discs, export to the U.S., or otherwise, the three measures applied to independent productions could very well prove to be a useful stimulus."

What particular steps can be taken to ensure some measure of progress towards the goals we have discussed? Without losing sight of the many difficulties involved in amending the Income Tax Regulations, the Department will wish to pursue the four particular modifications to the CCA provisions presented to the Committee on the Cultural Industries (Annex H) - recognizing again that even if implemented, these modifications alone are unlikely to attract funds, in the absence of any improvement in the health of the industry as a whole. If necessary, legal counsel with extensive experience in tax law should be asked to prepare draft amendments, and give opinions as to the copyright implications of the second recommendation concerning series production. Further research might be commissioned into the incentives afforded by Canada's international co-production treaties, both because they hold much promise for penetration of world markets and because they have been severely criticized by certain industry players for the abuses of confidence they have permitted (see, e.g., ACTRA comments in Annex D).

In the draft comprehensive policy for Canadian television (Annex G), it was recommended that the CFDC be asked for a "detailed statement of its involvement in television production, with a view to suggesting increased CFDC participation in this aspect of the domestic production industry". As we have seen (footnote 14), Cabinet agreed less than two years ago that the CFDC should "be authorized to broaden its investment pattern to include films for television" - and the Corporation seems to have done just that in the intervening period. If such a broadened mandate is to be given full effect, the government must of course be persuaded of the wisdom of allocating funds sufficient for the purpose. The Department might also wish to give further study to two matters connected with CFDC activity: the feasibility of full or partial "privatization" through a levy on cable revenues, with funds thus raised to earn points or shares for operators; and the prospects afforded by broadcast/publishing tie-ins, novelizations and other cross-media joint ventures (special study should be made of U.S. experience with this highly attractive marketing strategy).

Finally, although even as a lender of last resort the FBDB does not seem well placed to offer increased assistance to the production industry, the Department may wish to pursue official discussions with the Bank in order to obtain detailed information on its policies, particularly on its security requirements, and, if appropriate, to make representations concerning the availability of funds to independent television producers.

In the preceding section, we discussed a number of policy and market "events" that might stimulate domestic and foreign demand for Canadian programs and thus enhance the supply-side measures which have been the principal subject of this paper. These pose a problem for the broadcasting policy-maker, because in the current environment they do not easily lend themselves to direct intervention or assistance. We noted first of all the conditions under which Canadian program demand could be created - by CRTC regulation - in the private television sector. The Commission is about to embark on a long-term, comprehensive review of Canadian television, and the Minister of Communications will undoubtedly wish to provide general guidelines for this inquiry. However, it will be some time before findings become available, and unless and until the Minister is able to issue policy directives to the CRTC (as provided for in the new Telecommunications Act), the Commission may not find the political will to carry the decision on CTV through to its logical conclusion.

Secondly, we noted that significant new demand for quality Canadian programming may come in the near future from CBC-II. While it is difficult for this Department to play any direct role in shaping the CBC's future, it should do everything within its power to ensure that the plans for the second channel revealed at this month's briefing are funded and realized as quickly as possible. The advent of CBC-II may mark the first time since the very beginning of its television service that the Corporation will have had a real opportunity to promote the cultural goals with which the national service has always been associated.

Thirdly, we reviewed some of the major sources of current foreign demand and noted that penetration of international (especially U.S) markets was an indispensable prerequisite to the stability and growth of the domestic industry. It is perhaps here that there is most scope for fresh policies on assistance to the industry, and most need for further research on the costs and benefits of assistance aimed specifically at distribution, promotion, marketing, export sales and the like. This may be an area where expenditure subsidies, in the form of technical advice and counselling, dedicated grants, trade fair accommodation, even an export development agency for film and television, could be used to complement a program of fiscal incentives. A number of government agencies already provide certain services of this sort. The CFDC, for example, helps fund the Trade Fair at the Toronto Film Festival; the Ontario Ministry of Industry and Tourism has a Film Office budget of $120,000 to give marketing support to television and theatrical film, mainly through Ontario exhibits at the trade shows held annually in Cannes, Milan and California; and the Secretary of State's Department provides similar direct aid to the feature film industry. There are, of course, many more precedents for marketing and export sales assistance in industries unrelated to film or television, and these might form the subject of further study. But whatever specific measures may be contemplated in this field, the essential task will be to balance improved investment incentives on the one hand with better access to markets on the other.

The Independent Production Industry with respect to
English Language Programs for Broadcast in Canada
(H. Edmunds, 1976)

In his 1976 study of the independent Canadian production industry, Prof. Hugh Edmunds outlines three reasons for valuing a healthy television production industry in this country. These are:

(1) the defense of a "free society" and the "free flow of information" by giving "many voices...access to the public";

(2) the development of "new and fresh program ideas" through the independent producer's "originality and efficiency learned from his struggle to survive and prosper"; and

(3) the "much greater scope of employment" offered to Canadian craftsmen, technicians and performing talents.

Edmunds goes on to give a very important legislative rationale for the existence of an independent industry. While pointing out that the 1968 Broadcasting Act does not make explicit provision for independent production, he does state that in its interpretation of the Act, the CRTC has often "directed that independent Canadian producers be supported...almost as a statement of faith." He reminds us that the Commission has "directed the CTV network at times of its licence renewals to specifically enter into arrangements with independent producers", and that one of the key objectives in licensing the Global

Television Network was that it should "utilize the resources of the independent Canadian production industry". On the other hand, the CBC itself has not been "given a mandate to purchase programming from independent sources."

Edmunds then gives some details on the television marketplace in Canada. It consists of 67 stations representing 42 unduplicated markets. All 42 markets count a CBC-TV presence, although the CBC network "uses negligible quantities of truly independent production," while the CBC affiliates still constitute an "insignificant market at present". As for CTV, most of its affiliates are connected with a full-fledged production house, and Edmunds gives as examples CFTO Toronto and Glen-Warren Productions, CJOH Ottawa and Carleton Productions, and CFCF Montreal and Champlain Productions. "In many cases," notes Edmunds, "the production house is lodged in the same building as the TV operation and uses the same facilities," and it is therefore "questionable" whether the non-network programs produced by such houses can be considered "independent". Edmunds also claims that there is "evidence of pressure on the CTV affiliates not to use material produced by other broadcasters which might be considered similarly "independent". Finally, whereas Global was originally felt to constitute a "considerable market for independent production", its financial difficulties had, by 1976, caused it virtually to "withdraw from significant expenditures in this area." Edmunds concludes that "within this system short of a network sale the independent producer can make no coherent sale for general distribution."

Under the rubric of the economics of television production, Edmunds puts forward the view that by its very nature the broadcasting industry is "totally constrained to preclude diversity of content, innovation and the use of independent sources." One way in which the network program producers compete unfairly with the independents is in their cost accounting of in-house productions, which tends not to include staff and overheads. This puts the independent producers at a serious disadvantage, since the networks will generally offer much less for an independently produced program than it would cost them to produce a similar program themselves. Thus, concludes Edmunds, "open competition between the two appears non-existent."

However, as Edmunds then reminds us, such imperfect competition is a characteristic of the television industry as a whole. Networks tend to stay with those types of programs which have proved to be successful and make only "marginal yearly changes." Canadian networks, furthermore, "are to a large degree constrained by what is shown by U.S. television and will not deviate significantly from that format or those program types." Even the publicly owned CBC is also "guided by the constraints or factors affecting programming in general." And these constraints are "most significant for the Canadian independent production industry," because the independents cannot compete in their costing with the dumping rates paid by Canadian broadcasters for U.S. programs. Thus, it is apparently only "Canadian content legislation which prevents a network such as CTV from relying almost completely on American programs, except for such items as the news or sports."

Edmunds sums up the factors which constrain independent production in both their content and scheduling: "the economics of program production, the similarity of Canadian and American television viewing habits, the availability of American programs to Canadian networks and stations, the proximity of American border television stations and cable providing American signals to the Canadian market and fragmenting Canadian audiences, and the network tradition of producing its own programs."

After reviewing some incomplete and not altogether reliable figures on volume of production and profitability, Edmunds describes the present Canadian content quota system as "having been quite detrimental to the success of an independent industry." This state of affairs he blames on the "broadcaster investments in plant and staff [to bring production to a level sufficient to meet the quota], together with alliances through ownership, national representatives or affiliations, [which] have made it nearly impossible for an independent producer to gain significant national distribution of his product."

Edmunds makes some final remarks on incentives and quotas in a section on "What the Producers Want". "Almost without exception," he notes, "the producers who responded to our survey opposed subsidies and favoured instead loans, tax incentives and other types of incentives and assistance." On the subject of broadcast quotas for independent programs, Edmunds points to both producer objections and difficulties of a more general nature. He describes the notion of forcing the private networks, by regulation, to contract out for, rather than produce, some portion of their programming as "a delicate matter for which no precedent appears to exist in any industry in Canada." As far as the CBC is concerned, outside procurement is part of the larger "make or buy" issue within government departments as a whole. Edmunds reminds us that the Glassco Commission "examined CBC policy in video-tape and film production and recommended more outside participation," but reminds us too that the CBC "has often been reluctant to share what might be called editorial control with an outside source."

The following are Edmunds' final recommendations as they appear in his report, in summary form:

RECOMMENDATION 1

The current tax provision of a 100 per cent write-off of capital cost to an investor for a "certified feature film" in the year in which the film is made be extended to all Canadian film regardless of the running time of the film.

RECOMMENDATION 2

An additional investment incentive be introduced in the form of (i) a tax credit which would permit a certain percentage of the cost of the investment to be deducted from the tax liability on income obtained from the investment, or (ii) a special depletion allowance reflecting the declining and unreplacable value of a film or TV program production.

RECOMMENDATION 3

The current deductions for tax purposes for investments in foreign films and videotape either be disallowed or greatly reduced to channel Canadian investment funds from foreign productions to Canadian productions.

RECOMMENDATION 4

Revenues earned from the sale of Canadian programs in foreign markets be tax exempt and that a foreign tax credit be granted for any taxes paid on these revenues in the foreign country.

RECOMMENDATION 5

The Federal Government establish a government lending agency for the financing of independent program producers through direct loans and the guaranteeing of loans.

RECOMMENDATION 6

That additional program monies should be made available from the public treasury to the CBC for the enhancement of Canadian programs, and that a large proportion of these additional monies should be specified for the purchase of independent product.

RECOMMENDATION 7

The CRTC should ensure that the CTV Network Ltd. carries out its commitment toward independent production.

RECOMMENDATION 8

The CRTC should study possibilities of establishing a limited network which may operate for only a few prime time hours and which incorporates both the resources of Global and CHCH Hamilton to include a distribution system that reaches the third stations in Winnipeg, Calgary, Edmonton and Vancouver, and with the possible extension to the Maritimes.

RECOMMENDATION 9

A specific period of prime time television be set aside for exclusive Canadian content. This would simultaneously apply to all broadcasters and would include a portion of local as well as network time.

Étude de l'Industrie de la Production
Indépendante Audio-Visuelle au Québec (1975-76)
(M. Archambault/M. Lacoste, 1977)

The authors note on the very first page that both federal and provincial governments have played too great a role in the Quebec industry. It is suggested that this has a great deal to do with the sheer number of agencies involved in production, distribution, financing or some other aspect of television or filmmaking. These include the CBC, NFB, CFDC, Canada Council, Radio-Québec, the Direction générale du cinéma et de l'audio-visuel, the Institut du Film du Québec, the Institut québécois du cinéma and the Service général des moyens d'enseignement. Most industry producers in Quebec surveyed believe that "le rôle attribué aux organismes governementaux et les politiques d'utilisation des ressources indépendantes de création et de production laissent une marge d'action nettement trop étroite aux entreprises privées." Describing the present (i.e. 1977) situation for the industry as "un désastre", the authors go on to point out that most of these same producers, while willing to see increased government incentives and even subsidies, object most strenuously to the "rôle de producteur tenu par l'Etat [i.e. by CBC and NFB] malgré le contexte difficile pour l'industrie tant au Canada qu'au Québec".

Incentives and subsidies form the subject of chapter V, where the authors make the claim that "au Canada comme au Québec, il n'y a guère eu de planification concertée au niveau des deux gouvernements et de leurs organismes dans le but d'assurer à la production indépendante le même rythme de croissance qu'aux États-Unis ou en Europe". Moreover, despite the existence of fiscal incentives (notably the capital cost allowance applicable to Canadian productions under the Income Tax Act), such incentives are of limited use given that "le marché de la production est mal connu et mal perçu par les hommes d'affaires et les banquiers au Québec." The value of incentives is further limited by yet another factor, according to the authors - "le trop grand pouvoir discrétionnaire du Ministère du Revenu..."

The authors come back again and again to the question of competition - allegedly unfair competition - between the public and private sectors. It is noted, for example, in the chapter on industry problems that "l'ONF, Radio-Canada et Radio-Québec, tout en respectant les termes de leur mandat, représentent pour les producteurs privés un concurrent dont la présence n'est pas toujours justifiable. Les budgets confiés à ces organismes gouvernementaux pour la production dépassent largement les sommes disponibles dans le secteur privé." Furthermore, we read, "pour une même production, Radio-Canada paierait moins d'argent à une entreprise privée que ce qu'elle dépenserait elle-même si elle en assurait la réalisation."

A large measure of ambivalence would seem to pervade the attitude of independent Quebec producers to governement involvement in their industry, not only because they want a government presence without "unfair" competition, but also because they wish to see increased aid yet do not seem to feel that such aid is forthcoming or even desirable. "Les producteurs ne croient pas que les gouvernements veulent réellement aider l'entreprise privée.... Plusieurs s'étonnent que les organismes gouvernementaux ne se concertent pas pour établir des politiques favorables au développement de leur industrie et regrettent de ne pas être consultés quand les décisions sont prises. Aussi paradoxal que cela puisse paraître, plusieurs comptent sur l'Etat pour améliorer leur situation."

This skepticism is also reflected in the recommendations that close the report, which include measures to expand markets, increase both direct and indirect aid (subsidies and incentives) and improve distribution. "Dans l'ensemble," write the authors in their first sentence," les producteurs croient que la première chose à faire serait de diminuer le rôle de producteur joué par Radio-Canada, Radio-Québec et l'Office National du Film au profit des entreprises privées. Toutefois, ils doutent que le Secrétariat d'Etat et les Ministères des communications aient un contrôle suffisant sur ces organismes pour en modifier sensiblement le rôle."

The specific recommendations of the study are paraphrased as follows:

1. CBC, NFB and Radio-Québec should be given a reduced production mandate, with particular program categories going to the private sector, but without any decrease in the public agency budgets (in order that various collective agreements may be respected).

2. Quebec productions should be made an obligatory part of weekly cable-TV programming.

3. The introduction of pay-TV should be postponed for several years in order to stem the U.S. cultural invasion of Quebec.

4. A direct-aid budget of $5 million should be made available over five years to finance production of both shorts and features, with 10% earmarked for the promotion and release of Quebec productions.

5. A non-profit agency should be created with a $1 million annual budget to encourage script development.

6. A team of three or four consultants should be created at both levels of government to advise the industry on financial and management problems.

7. Investment in the industry should be stimulated by making provision for an accelerated write-off on the value of a given production.

8. Fiscal benefits for foreign productions should be disallowed, while a foreign tax credit should be created for Quebec producers.

9. The tendering practices of the public agencies should be rationalized through the use of a central index and program categories.

10. A three-year plan should be drawn up designed to persuade cinema owners to exhibit more Quebec films.

11. A task force should be created to renegotiate performing artist fee scales set by the Union des artistes for TV use of film production.

12. An aid program should be developed for foreign distribution of both commercial and educational films.

Interview - Findlay Quinn, President, Canadian Film Television Association (CFTA); Toronto, July 19, 1979

In keeping with his position as an independent businessman, Quinn heartily endorsed the idea of a "financial and industrial strategy" for stimulating program production. Indeed, Quinn stressed that "our survival depends on the industrial, not cultural aspects of the (film) business". As a member of the Ontario government's Film Liaison (Villeneuve) Committee, established by the Ministry of Industry and Tourism to promote Ontario locations and the marketing of Ontario-produced films, Quinn was at pains to persuade Queen's Park that film production should be considered as an industry, rather than as a cultural activity. This is no mere matter of definitions for Quinn: he seems to feel that the health of the business can be very adversely affected by the failure of governments to take proper account of its "bricks and mortar" aspect - which he contrasts with the popular (and misleading) image of film-making as a glamorous artistic occupation. (The Ministry points out in a press release that "Ontario will concentrate on directing its marketing support to television film, considered the fastest segment of the industry".)

Our discussion of incentives was pretty well confined to the 100% CCA. Quinn sees three broad problems with the current regulations, two of them already familiar, the other rather novel. The first is that under the Secretary of State's film certification procedures, producers may not certify Canadian film or video production of any length as a series: instead, certificates issued for Canadian investment purposes must be applied on a program-by-program basis. Quinn, speaking for the CFTA, singled out this requirement as a serious obstacle, one which at once creates an administrative burden and reduces investment flexibility. Secondly, too little information has been made available to independent producers by federal officials responsible for administering the CCA and certification. Whether or not a policy problem exists regarding assistance to production for television, Quinn certainly insisted that a public relations problem exists. This has two aspects: many CFTA members are simply not aware that the CCA applies to film and video production for television; and a number of other member-producers, even if they are so aware, do not seem to have access to the detailed technical information they would require in order to take advantage of this tax shelter. Quinn also indicated that younger members are unwilling, or unable, to commit funds for legal and accounting fees to get professional advice on this matter, and he feels the government has a responsibility to take some initiative in solving this particular problem.

The third problem raised by Quinn in connection with the CCA concerns his assessment of the dubious role played by certain lawyers, CAs and "agents" who have been taking what Quinn feels are exorbitantly high fees out of Canadian feature film budgets since 1974. He refers to this new breed of entertainment entrepreneur as so many "rip-off artists", opportunists who, without having any real commitment to the business of film or program production, enjoy an inordinate amount of influence over major talent and investors because of their professional skills and financial contacts. Quinn and his colleagues are concerned enough about this problem to suggest that some budget ceiling be put on personal earnings and "finders' fees" related to CFDC-financed productions.

In a general vein, Quinn feels that there is a "lack of communication" between his people and Ottawa - though the CFTA is perhaps partly responsible for this state of affairs. Fiscal incentives should be explained in a <u>non-technical</u> way to the industry people who stand to benefit from them. They have little faith in the explanations provided by high-powered experts; in Quinn's words, the education process must be a "grass roots thing". He was also insistent that new technological developments in broadcasting, such as satellites, be "advertised" to producers by government, though he did not suggest how this might best be done.

Further to industry relations with agencies of government, Quinn had some harsh words for the CBC, NFB and even the CFDC. The CFTA position on the present role of the CBC in program production is perfectly consistent with the interests of its membership. Quinn is highly critical of the fact that there are no provisions for the use of outside facilities or personnel by CBC, and feels that the Corporation, disadvantaged by "incestuous ideas" and producers who "keep making programs for themselves", should be "forced" to contact out for a certain proportion of its broadcast programming. Quinn accused CBC "middle management" of standing in the way of policies to encourage more outside production, and thus supportive of the CFTA position. Even the initiatives of CBC President Al Johnson are allegedly being subverted in this fashion, a situation Quinn compared to the "obstructionist tactics" of the NFB in its implementation, or rather non-implementation, of certain policies of former Secretary of State John Roberts. Nevertheless, Quinn acknowledged that the unions have to share blame with the crown corporations for their commitment to the status quo (and pointed out, by way of example, that NABET obliged the CBC to hire no less than 700 technical and other staff for the telecast of the Edmonton Games).

The CFTA is of the opinion that explicit outside procurement regulations can and should be enacted. They have suggested a three-way allotment of funds to CBC, with one budget earmarked for administration, a second for CBC-produced programs and a "third pot of money" for outside programming, to be administered by a triumvirate independent of the CBC's own board. As far as recent proposals for the makeup of CBC-2 are concerned, Quinn was adamant that CBC "should not have control over programming". He was less concerned about the actual amount of funds that would be diverted to private-sector production, than he was about enshrining the principle that the Corporation should not be given a free hand with CBC-2. The CFTA is clearly anxious to have the cable industry play a key role in CBC-2, and Quinn himself announced that he was "grateful to the cable people for supporting us..."

Finally, Quinn maintained that the CFDC is "being coy on TV", and furthermore, he suggested that Industry, Trade and Commerce could get involved in the interim financing of "bricks and mortar stuff", like striking release prints of programs for foreign sales, and could also play an active role in foreign marketing and distribution of Canadian-produced material. He did not eleaborate on either of these latter points.

Interview: ACTRA executives Jack Gray, Marg Collier & Paul Siren; Toronto, July 19, 1979

Because ACTRA is a labor union operating in a highly unstable seller's market, it finds itself in an embattled position vis-à-vis the independent producers. Its representatives are highly critical of current industry incentives and the role of public agencies concerned with program production. On the other hand, ACTRA seems to enjoy good relations with CFTA (and Quinn for his part emphasized that ACTRA, unlike NABET, "can be talked to"), while Gray and his colleagues have a number of very constructive proposals for both stimulating industry growth and improving the quality of Canadian productions. These last two considerations must be looked upon as quite distinct, for whereas all parties stand to benefit from industry growth in and of itself, the various parties (producers, talent, CBC, private networks, etc.) are not in agreement on the kinds of Canadian programming that should be subsidized by public funds, scheduled for Canadian television or ultimately sold abroad.

ACTRA is anxious to help build a "firm industrial base" for program production in this country, but suggests that the independent production record to date is "very poor". This has a good deal to do, in the first instance, with the dilemmas of the Canadian market. Jack Gray emphasized that there can be "no possible return on investment for television production of any quality within Canada". However, as soon as producers look to foreign, particularly U.S. markets, for a profit, they tend to play fast and loose with the "cultural components" of their programs. Marg Collier cited the instance of Police Surgeon, a series produced and filmed in Toronto, in which great care was taken to eradicate all traces of its Canadian indentity: cars appearing on the screen were provided with U.S. plates, the Stars and Stripes replaced the Canadian flag throughout, all references to legal concepts were American, and so on. Drawing specific comparisons with practices in a number of foreign countries, our interviewees made much of the observation that "the only people who make programs for the rest of the world, instead of themselves, are the Canadians".

The ACTRA people see two basic kinds of problems with the status quo, the one relating to government policy, the other to producer abuses. Firstly, Gray reiterated some familiar criticisms: the calendar for CCA write-offs is "totally unrealistic" as far as TV is concerned and "must be changed"; this confusion is compounded by Canada's antiquated copyright law, which must be revised without further delay; if the broadcasting system is "in a mess", any blame can be laid at the doorstep of the CRTC, which simply has "no policy at all on anything" and "must be fixed"; and so on. Secondly, current incentive arrangements have permitted, even encouraged, abuses of the CCA tax shelter. Allusion was made here to a number of productions which if they were "Canadian" by the letter of the law, were definitely not so in spirit: they were in most cases American for all purposes except a mere technical definition of nationality. ACTRA wants to see the

CFDC, DNR and SOS get "very tough" with producers who are guilty of such breaches of trust, and indeed Gray urged that the nationality rules be rewritten, so that if "<u>any</u> foreigner" is involved in a key position like executive producer, writer or lead actor, the production's points would go "<u>way</u> down". Gray was especially critical of Canada's co-production treaty arrangements, which have allowed producers of a film such as "A Man Called Intrepid" to benefit from the CCA, even though this was a Canada-U.K. co-production entirely set up in the United States, before being sold to a Canadian investor; ACTRA describe the project as "a disaster" for the Canadian industry.

ACTRA support the idea of a Canadian program production fund. Unlike certain other industry players, they would see such a fund financed not only by a levy on gross cable subscriber revenues, but also by a levy taken off the top of the gross revenues of the private television networks. As Gray put it: "Why leave CTV out of the picture when they have more money to play with than anybody else?" But there would be an attractive quid pro quo here, namely that in the ACTRA scenario, the private broadcasters would be entirely deregulated for content (there would be no more Canadian quotas in the private sector), and in addition, the networks would have full access to the fund in order to produce broadcast programs, whether under arm's length controls or otherwise. As far as the CBC is concerned, ACTRA would like to see the national broadcasting service completely de-commercialized, and CBC-2 go on the air "as soon as possible". The net effect of all these measures would be to enhance program production by redistributing cable and broadcasting profits, and to give Canadian viewers a more substantial choice of program types, as between wholly commercial and wholly non-commercial television services.

Record of special meeting of CFTA's Television & Sponsored Program Group; Toronto, July 26, 1979

The consultant was invited to this meeting in the company of D. Hoyle, who has responsibility for the SOS Canadian Film Certification Office. The meeting was called primarily to allow Hoyle to explain in detail SOS policy on the certification process for television programs, and to give the TV group members an opportunity to ask questions and air certain grievances; the consultant attended primarily on an observer basis.

After a lengthy presentation by Hoyle, discussion opened on the subject of the 100% CCA and its application to television production. Contrary to what we originally believed (and to what we had previously heard from certain individual industry representatives), there does not seem to be a "public relations" problem in regard to the CCA incentive for television, at least not among the producers themselves, especially those present at the meeting, since they all have a particular interest in television. Some did suggest, however, that, in "trying to educate new investors", they were finding that the film tax shelter was viewed by the investment community with considerable distrust.

While there was no explicit discussion of the fact that the relevant Income Tax Regulations, even as amended to include tape, make no mention of television per se (but for a reference to a "television commercial message"), one member explained "what we're asking for is that television be treated a little differently". There was general agreement that such different treatment should consist in amending the tax calendar for principal photography and promissory notes. Indeed, a number of members expressed puzzlement over why an incentive arrangement should be so restrictive, and urged quick action to make the necessary changes - such as a two-year write-off period for television. Hoyle cautioned, however, that in the eyes of the Department of Finance the Income Tax Act and Regulations exist not to provide investment shelters but to raise money for the public coffers, and that a two-year calendar for television would probably be "very unpopular" at DNR.

A few alternative ideas were given brief mention, including the creation of an incentive vehicle which would treat script and pre-production costs much like R&D in other, more traditional industries. Surprisingly little attention was given to the role of the CFDC in supporting independent production. The suggestion was made that the CFDC might grant development loans to producers and tie repayment (and interest charges) to future revenues, making a loan an outright grant in certain cases, such as when a project failed to go into production. The further suggestion was made that venture capital might be granted on a block basis to companies, rather than be tied to particular scripts or projects, with the CFTA vetting companies on behalf of the funding body.

Despite fairly strong feelings expressed about current CCA arrangements, whether for television or film proper, we were urged by the producers present not to leave the meeting thinking that fiscal incentives constitute the group's chief concern. One member, apparently speaking for all, was at pains to explain that "we are not as an industry group simply asking the government for more money"; indeed, he went on to say, "maybe we can even save the government money." A number of considerations would seem to lie behind this such an outlook: entrepreneurial pride; a certain ambivalence over the ultimate feasibility of an incentive system which "encourages abuses", as several members claimed; and outright scepticism over the question of access to the airwaves for a potentially greater volume of Canadian-produced programs. In any case, the members present made it quite clear that freeing up funds to allow more programs to be produced for television would not in itself guarantee a secure place for Canadian programs in the broadcasting system. One producer stressed that the industry does not really need fiscal incentives; rather what it needs is better access to Canada's television networks and a better environment in which to work. In practical terms, said this same producer, this means radical changes in the cultural agencies which most affect the state of the independent industry - the CBC and NFB.

As it transpired, much more time was devoted in the discussions to industry relations with the CBC and NFB than to the CCA shelter and certification. Criticisms of the two agencies centred on their disproportionate role in program production and their unfair dealings with the independents. Both agencies were accused of being "our judge and jury" - holding sway over the fate of the industry while constituting their major competition. "The people who structure the debate between industry and government," said one producer, "are the people with the vested interest - the CBC and the Film Board." Another added that "we are essentially being locked out by two big clubs."

The CBC was charged with "subsidizing advertising in this country"; of paying far too high a price for U.S. programs ($40,000 an episode for Paper Chase); of "squandering" the taxpayers' money ("We can make a profit on 65% of the CBC budget"); of being structured to "accommodate freelancers on an occasional, one-shot basis, but not an independent production industry." Opining that Canadian broadcasting has "clearly failed", one speaker laid the blame squarely on the CBC's shoulders, and insisted that the only solution to the ills of the system was to give the independents real access to Canada's principal television network, and that the only way to do so was to force a mandatory outside procurement quota on the Corporation (some producers felt that CBC should only be permitted to produce news and public affairs programs, and nothing else). Pat Ferns, Vice-President of Nielson Ferns, announced that they were giving the CBC until September to begin making policy changes..."then the gloves are off."

Interview - Richard M. Wise, Partner, Touche Ross and Company; Montreal, August 9, 1979 (with reference to Wise article "The New Rules for Motion Picture Tax Shelters", published in Canadian Tax Journal, vol. 27, no.3, May-June 1979)

A number of significant points emerged from this discussion with Wise in his capacity as a national expert on the motion picture tax shelter and spokesman for the investment community. First of all, Wise explained that the tax problems singled out by Canadian television producers are by and large part of a set of much wider anomalies in the regulations governing investment in film. Thus, the television medium as such is not regarded by investors as especially problematic by comparison with motion pictures produced for theatrical release. Indeed, television is regarded as a "good medium for exploitation" and television sales over the last two years have been "lucrative".

Wise admitted that the individual certification of programs comprising a television series did pose an accounting and packaging problem - but a problem for the producer, not the investor. He suggested, furthermore, that the lack of provision in the regulations for television production did not in itself constitute an investment disincentive of any importance. The basic question of concern to a Canadian investor is simply whether or not a particular production has been certified (or may be certified) under the regulations as they now stand.

Wise was not suggesting, however, that the investor's problems began and ended with certification, far from it. The other major investor problems would seem to be associated with both the drafting of regulations and their interpretation and enforcement. By way of background, Wise explained that what may be regarded in public policy as an "incentive" is not really conceived of as such under the Income Tax Act, or regarded as such by officials of the Taxation Division of Revenue Canada.

Furthermore, between the goals of Canadian investors and the goals of Canadian cultural nationalism there may be sharp conflict, even contradiction. Thus, the December 1978 amendments, in addition to suffering from "unclear and unprecise wording", saddle an investment in a certified production with so many restrictions (notably, a minimum 20% cash outlay, investment purchase from Canadian residents only, 48-month promissory note period, revenue guarantee penalty), that they threaten to transform an incentive into a disincentive by driving investors away from certified (i.e., Canadian) productions. Wise claimed that the reaction of many businessmen to this state of affairs is to say - "If that's the way it is, let the Canadian government keep our taxes, we'll take the U.S. deals."

In connection with interpretation of the regulations, Wise was most emphatic about the obstructionist and even hostile attitude of Taxation Division officials, whose official behavior he described as "irrational".* Wise indicated that the wide discretionary powers

* Wise described an encounter between himself and a senior official of DNR at a social function, during which the official is alleged to have said, in "his drunken stupor", that the didn't "give a damn about government policy," and was particularly unhappy about the CCA for film giving "rich guys another chance to rip off other taxpayers."

of DNR, and its exercise of particular enforcement zeal in this area, have been very discouraging to potential investors, and could be damaging to the growth of the industry. In his article, Wise explains, by way of example, how certified films involving revenue and royalty guarantees were singled out for prejudicial treatment by DNR. Whereas

> similar arrangements involving real estate are acceptable to the Department... the Rulings Division of Revenue Canada in 1977 and 1978 was able to establish a deterrent simply by refusing to rule in such situations.... That is, advance rulings were denied on the basis that the proposed transactions...may not have been designed primarily for business purposes but rather may have been designed to gain an advantage by tax referral.... [But] Revenue Canada...recognized that disallowing CCA on the "guaranteed" portion of the investor's purchase price...would find no support in court if the taxpayer were to contest such an assessment. It was because of the Department's appreciation for its real position that Tax Avoidance recommended that the law be changed, resulting in the [1978] amendments to the CCA rules for films.

Draft Comprehensive Policy for Canadian Television (September 7, 1979)

OBJECT

Until very recently, the major debates over Canadian broadcasting have been couched in terms unsuited to the distribution technologies of the 70s and 80s. This has a good deal to do with the fact that the Broadcasting Act itself is primarily designed to govern the use by broadcasting undertakings of a scarce natural resource, the radio frequency spectrum. However, the greatly expanded capacity now offered by cable and fibre optics, as well as the coverage possibilities afforded by satellite distribution, have largely eroded the statutory concept of off-air broadcasting. Indeed, such is the pace of technological development in Canadian telecommunications that within two years the presence of yet another satellite will serve to widen still further the discrepancy between Canada's delivery systems and her ability to exploit these systems in the interests of national cultural sovereignty.

In keeping with this observation, the present document is presented to Cabinet with a view to achieving the following three major national goals:

1. To make more Canadian-produced television programs available, of a sort and in a manner that offers genuine diversity of choice to both mass and specialized audiences.

2. To stimulate growth of the program production industry through fiscal incentives.

3. To clarify the role of the CBC in its provision of the national broadcasting service.

DECISIONS REQUIRED

Cabinet is requested to approve in principle five inter-related policy initiatives concerning the development of Canadian television. These are:

1. Three measures to stimulate private investment in domestic television production, including explicit application to the television industry of the 100% capital cost allowance (CCA) on investment in certified Canadian film or video productions; accommodation of television production under the Federal Business Development Bank and the Small Business Loans Program; and expansion of the purview of the Canadian Film Development Corporation to make explicit allowance for television production.

2. A request to be made to the CRTC to report in detail on its proposed comprehensive review of Canadian television, with particular attention to the problem of the Canadian content regulation.

3. A request to be made to the CBC that it submit to Cabinet a comprehensive plan for the development of its television programming services and of its corporate activities in general, with a view to allowing the Corporation to make more extensive use of Canada's creative resources and delivery systems.

4. Development of a policy on satellite television services from which guidelines can be issued to the CRTC to serve as the terms of reference for a licensing hearing.

5. Preparation of a detailed policy on the institution of pay-television in Canada, to take the form of a memorandum for the consideration of Cabinet.

CONSIDERATIONS

Traditionally, two federal instruments have been available to encourage domestic program production and diffusion, and thus to carry out the principles enshrined in section 3 of the Broadcasting Act. These are the national broadcasting service provided by the CBC and the regulatory and licensing process administered by the CRTC. There is now widespread agreement, however, that neither agency has been entirely successful in meeting the challenges of foreign content and new technologies, particularly cable, which together have effectively de-Canadianized broadcast programming (though not, it should be noted, ownership of the system itself).

The challenge to the present government is not therefore confined to any one sector - public, private or "independent" - or any one aspect of television production, scheduling, distribution or regulation. For while the federal agencies of public service and control (CBC and CRTC) have been unable to achieve a satisfactory balance of program content and type, the private elements of the system have labored under a statutory instrument whose basic objectives are quite inconsistent with the nature of private enterprise decision-making. As a consequence of the operations of both public agencies and private interests, the independent program production industry is experiencing serious underemployment and under-utilization of plant, as industry and union representatives have continued to remind me (i.e., Minister of Communications).

In formulating this document, I have tried to keep a number of principles and assumptions in mind. Firstly, all Canadians, in both built-up and remote areas, should have unrestricted access to a wide choice of programming services in both English and French, which includes not only the national service provided at present by the CBC, but also popular and specialized programming provided by both Canadian private broadcasters and foreign broadcasters and program packagers.

Secondly, if Canadians have a right of access to the best programming the world has to offer, it should be recognized at the same time that provision must be made to safeguard the cultural and economic sovereignty of Canada. Canadian programming must therefore be given an assured place in any future system architecture involving satellite and premium television services.

Thirdly, the coexistence of a number of partners in the Canadian broadcasting system would seem to require that less emphasis be placed on direct competition between program entities and that more be placed on specialization in the provision of complementary services over an integrated delivery system. The possibility which pay-TV introduces of supplementing the present system of advertising and tax-payer support with a system of direct audience support, will inevitably mesh with and encourage this trend.

Finally, new markets, both domestic and foreign, must be made available for Canadian programs and programmers. The role of government here will be to assist industry in gaining access to these markets, not to impose solutions or to involve itself in the mechanics of the system.

(a) Financial Considerations

Ministers will note that none of the policy initiatives outlined above would, if accepted and approved for further action, entail any direct costs claimed against the Consolidated Revenue Fund. Approval for extended fiscal incentives would tend to produce a short-term net loss in tax revenues. However, a net benefit should accrue in the longer term as a result of increased program production activity and employment, a prediction which is corroborated by a consultant study of the impact on the feature film industry of the increased CCA under the Income Tax Act and Regulations, as the Secretary of State pointed out in the August 16 Memorandum to Cabinet on Cultural Policy Development.

(b) Federal-Provincial Considerations

While the provinces have no immediate interest in the CRTC review or the CBC plan, film production industry incentive programs are already operating at the provincial level. My officials will be contacting the governments of Ontario, Quebec and Alberta in particular to ensure that the federal incentive programs proposed in this document do not duplicate provincial efforts. Furthermore, provincial ministers have expressed interest in the development of satellite television services. This matter will therefore be an item on the agenda of the next federal-provincial meeting of Communications Ministers. Finally, any federal-provincial considerations relating to a policy on pay-television will be discussed in detail in the proposed memorandum on this subject, if Cabinet agrees that such a document should be brought forward.

(c) Interdepartmental Consultations

Ministers are referred to my letter of August 17 addressed to several among you, in which I stressed the importance of our initiatives in the field of cultural policy and the need for close and efficient cooperation among concerned departments. Officials of this Department have already begun consultations with the Department of the Secretary of State on the subject of investment incentives for the program production industry, and with officials of the CBC concerning a briefing on CBC-II, which is expected to form a major part of the proposed CBC comprehensive plan. Moreover, I have now contacted the Chairman of the CRTC by letter to recommend that the Commission hold a public hearing, at an early date, on the development of satellite television services. I have also prepared a letter to be sent to the Executive-Director of the Canadian Film Development Corporation on the subject of Corporation involvement in funding television production.

Finally, the program production industry incentives proposed here will require extensive consultations with Finance, Revenue Canada (Taxation), Industry, Trade and Commerce, Small Business and the Secretary of State.

(d) Public Information Strategy

The Speech from the Throne will be the first public notice of the Government's intention to institute a comprehensive policy for Canadian television. Subsequent public statements by the Minister of Communications, along with information releases from concerned departments and agencies, will specify the policy initiatives. Further information in relation to fiscal incentives will be released when the budget is introduced.

(e) Political Considerations

I am confident that the policy initiatives proposed in this document will create considerable goodwill for the Government and indicate its resolve to take decisive action in an area of great concern to Canada. Finally, implementation of the policies under consideration should do much to foster a positive climate for the introduction of revised broadcasting legislation.

CONCLUSION

I am convinced that the time has come for this government to give serious consideration to a new and comprehensive policy for the development of television. I am also satisfied that the measures recommended below will provide an opportunity noc only to resolve some of the issues noted in this document, but also to make a lasting contribution to the health of Canada's television industry and the cultural identity of Canadians.

RECOMMENDATIONS

It is recommended:

1. that the Minister of Communications be authorized to develop, in consultation with his colleagues, such amendments to the Income Tax Act and Regulations as he deems necessary to make the 100% capital cost allowance on investment in certified Canadian film or

video productions explicitly applicable to production for television, and better suited to the normal television production calendar;

2. that the operating criteria of the Federal Business Development Bank and the Small Business Loans Program be modified to ensure full and equitable consideration of applications for assistance from Canadian program producers;

3. that the Minister be authorized to ask the Canadian Film Development Corporation for a detailed statement of its involvement in television production, with a view to suggesting increased CFDC participation in this aspect of the domestic production industry;

4. that the Canadian Radio-television and Telecommunications Commission be asked to report in detail on its proposed comprehensive review of Canadian television giving particular attention to the problem of the Canadian content regulation;

5. that the Minister be authorized to ask the CBC to submit to Cabinet a comprehensive plan for the development of its television program services and of its corporate activities in general;

6. that the Minister be authorized to develop a policy on satellite television services from which guidelines can be issued to the CRTC to serve as the terms of reference for a licensing hearing; and

7. that the Minister be authorized to prepare a detailed policy on the institution of pay-television in Canada, to take the form of a memorandum for the consideration of Cabinet.

Draft Proposal to Interdepartmental Committee on the Cultural Industries Concerning the 100% CCA on Investment in Film/Video Productions

(September 18, 1979)

The modifications outlined below form part of a comprehensive departmental policy on television and are specifically intended to make the regulations in question more adaptable to production for television. Because they might, if adopted, create a short-term loss in tax revenue, they are presented here in connection with your deliberations on the budgetary implications of new policies for development of the cultural industries.

The application to feature films of a write-off or tax shelter at the 100% rate was first introduced under amendments to the Income Tax Regulations effective November 18, 1974. One and half years later, on May 25, 1976, the regulations were again amended to make short films (less than 75 minutes) and video tape productions of any length, eligible for the 100% CCA. There would seem to be general agreement that these amendments have been successful in encouraging investment in, and stimulating growth of, the feature film industry, over and above any other contributing factors.

Strictly speaking, the income tax provisions in question apply equally to production for television, and there are no explicit restrictions on an investment write-off concerning the medium of exploitation. In practice, however, it appears that certain provisions, drafted under the aegis of a film policy, rather than a broadcasting policy, are disadvantageous to production for television, and that the shelter may therefore have been under-utilized. While it is extremely difficult to confirm that this is so, a number of industry and investment community representatives have, in discussions with departmental officials, isolated several problems which the regulations have created and which they are anxious to have resolved. These problems include the following: the calendar for "principal photography"; the certification of a series of programs for investment purposes; the status of script and other development costs not now construable as capital investment; and the new restrictions on film investment introduced by the December 1978 amendments.

1) Principal photography:

The present regulations require that principal photography be completed (as a general rule) by December 31st of the year in which an investment is made, i.e., in which the taxpayer acquires his interest in the production in question. While this is an arrangement which has worked well for single productions, particularly feature films for theatrical release, it is quite out of keeping with the normal production calendar for a television series running, say, 13 or 26 episodes, since principal photography of all episodes may not be completed for as long as 12 to 24 months after commencement. In such a case, the investor may not be able to use the CCA provision to his advantage.

It is recommended that consideration be given to extending the principal photography calendar for television production to 24 months, or other such period as seems suitable in light of the problem described above, by appropriate amendments to section 1100 of the Income Tax Regulations.

2) Series production:

The principal photography problem is part of a wider difficulty faced by the television producer in search of investment capital. Under the current regulations, each individual program in a television series must be certified and sold to an investor as a separate copyrighted entity. This means that the investor gains the right to receive revenue from that one film or video production only, whereas the strength of any individual film in a television series is to a large degree derived from its association with an all-inclusive series "concept", which is promoted and exploited as such. Thus, even though the investor's risk is tied largely to the success of the entire series, his return is based strictly on the revenues generated by the particular film or films in which he has invested.

It is recommended that consideration be given to amending the Income Tax Regulations and the certification process, to enable producers to sell undivided interests in future <u>*series*</u> *revenue, not tied to ownership of interests in particular programs comprising the series.* Legal counsel assigned to developing the fiscal incentives recommended by the Committee should be asked to investigate whether such a modification would be in conflict with current provisions of the Copyright Act.

3) Development costs:

The current regulations treat film/video productions in a rather special manner, by contrast with the allowance and incentive arrangements common to other industries. The net effect of the regulations is to restrict any write-off on films to a tangible asset, or finished product. This is quite unlike the shelter arrangements permitted in connection with investment in real estate, for example, where work-in-progress is considered to be a legitimate investment object for tax shelter purposes. Furthermore, the incentive provisions for film/video make no allowance for investment in bona fide script and purchase development.

It is recommended that an amendment to the Income Tax Regulations be considered which would allow research and development costs, not necessarily associated with a finished film/video production, to be construed as capital costs to an investor for tax purposes in the year in which they are incurred.

4) Restrictive provisions of the 1978 amendments:

On December 14, 1978, a series of amendments to section 1100 of the Income Tax Regulations came into effect. There are four major provisions of these amendments which serve to put new restrictions on the film tax shelter. The new regulations a) require that an investor make a minimum 20% cash prepayment against his purchase of an interest in a certified production; b) limit the promissory note portion of a 100% CCA investment to 48 months; c) disallow acquisition of an investment property from a non-resident; and d) provide penalties for the inclusion in a purchase agreement of any revenue guarantee to the taxpayer. These new provisions have been described by investment analysts and industry spokesmen as unclear, poorly drafted, prejudicial and likely to drive away a significant number of potential Canadian investors. Such were the difficulties of application created by the 1978 amendments that within months DNR felt obliged to begin work on an interpretation bulletin designed to clarify and explain the new provisions.

It is recommended that this interpretation bulletin be made publicly available at the earliest possible date, and that consideration be given to revoking or diluting some or all of the restrictive provisions noted above.