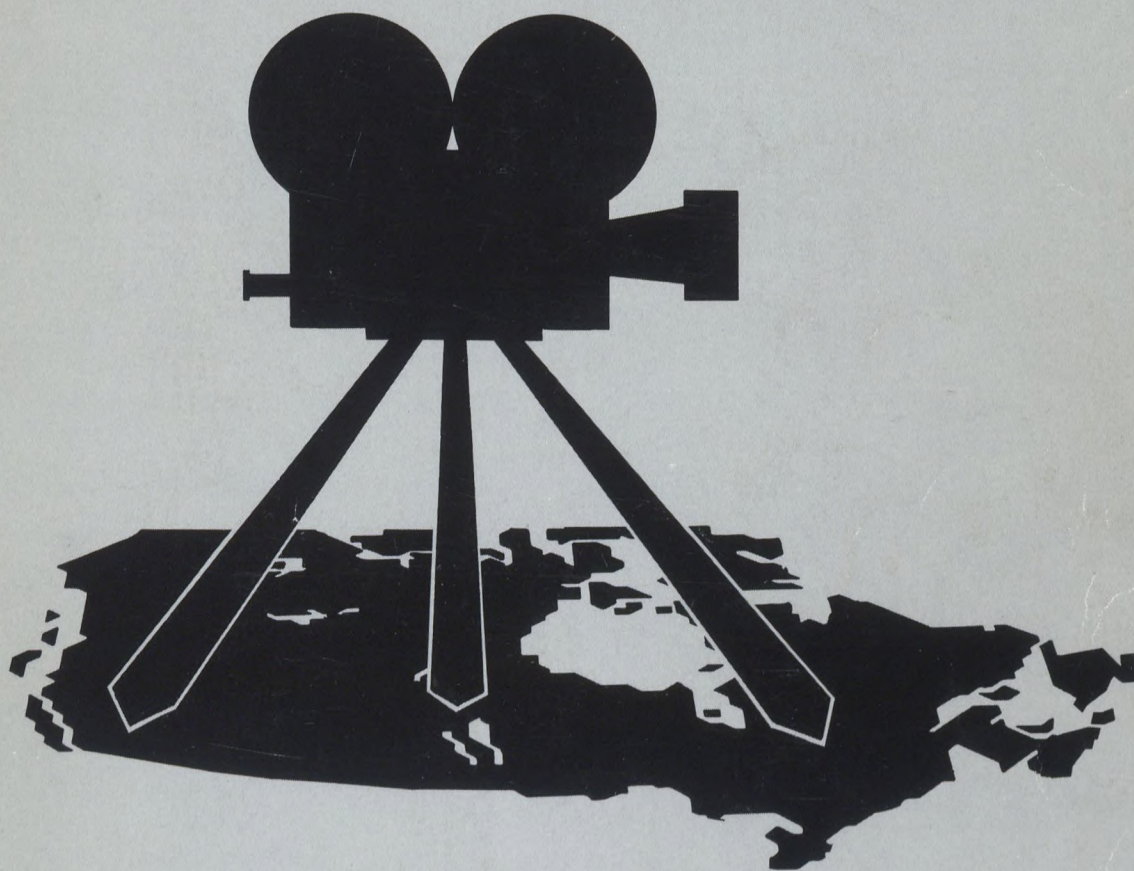


CANADIAN CINEMA

a solid base



Report of the Film Industry Task Force
November 1985

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The Honourable Marcel Masse
Minister of Communications
Journal Tower North
240 Street Street
Ottawa, Ontario
K1A 1A2

Dear Mr. Masse:

② **CANADIAN CINEMA**

A SOLID BASE

We have the honor to report to you on the findings of the Film Industry Task Force. In the course of our mandate, we have attempted to synthesize the large number of briefs and reports on this subject submitted over the past few years. We identify three critical structural anomalies, and recommend action required to remedy these.

These three anomalies are fundamental obstacles to a successful and economically vibrant film industry. Their existence weakens Canadians' respect of our cultural self-expression.

These problems can be overcome by resolution. The solutions we recommend are not exhaustive. A solution to one or another of these

In preparing this report, we have had the full support of the Department of Communications and the co-operation of its staff. At no time were departmental views or opinions imposed upon us. The opinions expressed in this report are those of the Task Force alone. We wish to thank the many individuals and organizations who have assisted us in our efforts.

① **Report of the Film Industry Task Force**

November 1985

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Cat. No. Co52-8/1985

ISBN 0-662-54167-7

PN 1993.5

DD 5981785

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November 30, 1985

The Honourable Marcel Masse
Minister of Communications
Journal Tower North
300 Slater Street
Ottawa, Ontario
K1A 0C8

Dear Mr. Masse:

We have the honour to present the Report of the Film Industry Task Force. In the few short weeks of our mandate, we have attempted to synthesize the large number of briefs and reports on this subject submitted over the past few years. We identify three critical structural anomalies, and recommend action required to remedy these.

These three anomalies are fundamental, and represent obstacles to a successful and economically viable Canadian film industry. Their existence denies Canadians control over this vital aspect of our cultural self-expression.

These problems can be overcome by resolute government action. The solutions we recommend are not exhaustive, but are interdependent. A solution to one or another alone will not work.

In preparing this report, we have had the full support of the Department of Communications and the co-operation of its staff. At no time were department views or opinions imposed upon us. The opinions expressed in this report are those of the Task Force alone. We wish however, to thank your staff for their assistance, as well as our writers, Michel Houle and John Sifton, for their efforts.

.../2

We, the co-chairmen, wish especially to thank the members of our Task Force: Messrs. Ken Chapman, Gordon Guiry, François Macerola, René Malo, Peter Pearson, Bill Stevens and Dan Weinzweig.

Despite their own personal and professional time pressures, and the shortness of our mandate, they were able to meet frequently and extensively. Although representing many diverse aspects of our industry, they unanimously and enthusiastically generated this report.

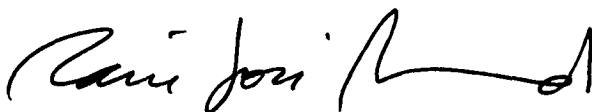
Finally, we are presenting this report at a time when the predominant concern, shared by all of the cultural industries, is the forthcoming trade negotiations with the United States.

We wish to stress, however, that the structural problems identified and the solutions proposed in this report, relate solely to our domestic film policy: to our ability, as Canadians, to decide what programs we see on Canadian screens and to improve the quality of Canadian expression through film. Our problem is less one of obtaining entry to foreign markets as it is in gaining access to our own.

We require a firm domestic film policy. This we see as the responsibility of our elected government. It is surely a Canadian policy, not one subject to bilateral trade negotiations, particularly with the country that totally dominates our domestic market.

We urge you, Mr. Masse, to resist being distracted by the ongoing trade talks, and to steadfastly pursue your oft-stated policy of developing and enforcing, unilaterally in Canada, a truly Canadian film policy.

Yours sincerely,



Marie-José Raymond
Co-chairman



Stephen Roth
Co-chairman

TABLE OF CONTENTS

	Page
Introduction	7
Chapter I - Canadian control over distribution	13
Chapter II - The private sector capitalization of companies and the financing of Canadian feature films	25
Chapter III - Concentration and vertical integration	41
Conclusion	49
Bibliography	51

INTRODUCTION

On September 5, 1985, the Task Force on the Canadian Film Industry was given a mandate to analyze the structural problems of the industry and its main components: production, distribution and exhibition.

The Canadian film industry plays a unique role in our cultural expression. It defines our identity, creates jobs, and has considerable economic ramifications.

The problems affecting the film industry deserve to be tackled in a straightforward and decisive manner; the Task Force considers that the terms of its mandate are particularly appropriate.

In our analysis, we have identified three major structural problems that require solutions for a healthy, dynamic, profitable and competitive Canadian film industry to be developed. These are:

- Foreign domination of film and video distribution in Canada. This domination prevents Canadian producers from taking their rightful place in their own market.
- Chronic under-capitalization of production companies and the difficulty of financing feature films. This is due to:
a) the limited size of our domestic market; b) the lack of access by Canadian producers to revenues generated by the distribution of all films and videos in Canada; and c) the project-by-project approach of current government and agency film programs.
- Concentration of theatre ownership and the vertical integration of distribution and exhibition. Combining these factors reduces competition in the field of distribution and exhibition.

Our main recommendations deal with these fundamental problems: they are as closely linked and as interdependent as the legs of a tripod, which, when firmly planted, will form a solid base for Canadian cinema.

1. CANADIAN CONTROL OVER DISTRIBUTION

Our first recommendation:

That the distribution of films and videos in all medias in Canada be by companies owned and controlled by Canadians.

Distribution occupies a strategic position in the industry. It supplies markets and finances production. Throughout the world, national distributors contribute to the financing of national productions.

In 1981, 97 per cent of profits from Canadian theatrical distribution went to foreign -- mainly American -- companies. Since then, American companies have stepped up their film and video activities by acquiring Canadian distribution rights to numerous European, independent American and other productions.

In practice, the American industry considers Canada to be part of its domestic market. When it acquires American distribution rights for a film, it insists on Canadian rights as well.

This situation is unique in the world; it poses a threat to Canadian sovereignty and hampers the growth of our industry, which is trapped in a truncated industrial structure. Ties that should exist between Canadian production and distribution are inoperative, since our domestic market is under foreign control.

Results:

- . Canadian films occupy only three to five per cent of screen time, and account for only two to four per cent of the titles available on videocassette in Canada;
- . Canadian distribution companies are restricted to marginal positions in their own market;
- . Canadian film-goers are financing foreign productions.

The situation is critical. Canadians do not control their own access to creative works. They have no voice in determining how these cultural products are distributed across the country. The Canadian film industry, deprived of the financial resources of its own market, is unable to develop in a healthy manner and provide creative artists with the means of expression commensurate with their talent and their ambitions.

That is why we recommend that the Government:

Make a clear policy statement that Canadian ownership and control over distribution in Canada is essential.

Take the appropriate legislative and regulatory measures to ensure that this policy is carried out.

The Canadian ownership that we are asking for involves distribution rights throughout Canada. We are not talking about ownership of equipment or property. It is not a matter of expropriation, nor of denying foreign interests' access to the Canadian market and their fair remuneration. Rather, Canadian companies will compete fairly for the acquisition of these rights and will pay royalties to Canadian and foreign producers in accordance with standard business practice.

2. THE PRIVATE SECTOR CAPITALIZATION OF COMPANIES AND THE FINANCING OF CANADIAN FEATURE FILMS

No industrialized country with a domestic market of fewer than 100 million, is capable of fully developing a national film industry without state support. In this respect, Australia, Brazil, Japan and virtually all European countries have developed complex and sophisticated support systems.

Since 1968, Canada has made a similar commitment, and our recommendations aim at ensuring that its actions are appropriate to the present maturity of the Canadian film industry.

At the outset, the Task Force notes that all governmental measures adopted to date have been aimed exclusively at films on a project-by-project basis. None of these measures focus directly on the development of film companies.

This must now be corrected. In a competitive situation, the vitality and dynamism of a cultural industry are measured by the strength of the companies that comprise it.

This is why we recommend:

The creation of tax incentives and other support mechanisms that encourage investment in Canadian production, distribution and export companies.

The goal is to set up a strong, dynamic and well-financed infrastructure. In this respect, capitalization is as essential as stimulating individual projects.

Mechanisms are necessary to ensure that these investments stimulate the production, distribution and export of Canadian films. Such investments will encourage industrial stability, financial and strategic planning, risk-taking and development initiatives.

With full access to their market resources, Canadian distributors will be in a position to contribute to the financing of Canadian productions. This new state of affairs will also enable Canadian producers to make better use of existing financing instruments, such as the Capital Cost Allowance and co-production agreements.

Still, the Canadian market represents 10 per cent of the American and four per cent of Western markets. This is an incontestable demographic reality, and public investment is necessary to finance high-quality, competitive Canadian feature films.

Virtually all funds currently available to the industry through Telefilm Canada are allocated under the Canadian Broadcast Program Development Fund. The purpose of this Fund is to ensure the production of high-quality Canadian television programming for prime-time viewing. To have access to this Fund, producers must first obtain a commitment from a television broadcaster, and we fully support this principle.

However, feature films are not a priority for television broadcasters. Feature films are destined primarily for theatres, videocassettes and pay television, from which 80 per cent of their revenue is derived. The financing of feature films depends on this situation and must be specifically addressed.

This is why we recommend:

The creation of a Canadian Feature Film Fund with an annual budget of 60 million dollars.

A precondition of access to this Fund by a producer would be a commitment by a Canadian distributor for distribution of that film in Canada so as to establish, at the outset, the essential relationship between production and distribution.

The Fund should be administered by Telefilm Canada, and should support every stage in the life of a film: development, production, domestic distribution and foreign sales. Therefore, it must be accessible to Canadian production, distribution and export companies.

3. CONCENTRATION AND VERTICAL INTEGRATION

In Canada there are currently only two major national circuits: Famous Players-United Cinemas and Cineplex-Odeon. Together, they account for 78 per cent of box-office receipts in the nine major centres in Canada.

Each of these circuits is vertically integrated with a distributor: Famous Players (theatres) and Paramount (distribution) are controlled by the same conglomerate, Gulf + Western, while Cineplex-Odeon (theatres) is related to Pan-Canadian (distribution).

This concentration of ownership, along with vertically integrated distribution-exhibition, severely limits competition and distorts the marketplace.

Any distributor that is vertically integrated with a large theatre chain or -- in the near future -- with videoclub chains, can use this power to gain preferred access to the principal points of sale, thereby acquiring all commercially valuable foreign and domestic products and unfairly denying access to the large theatre chains by other Canadian distributors.

By ensuring that it has access to the most lucrative products, an integrated company can simultaneously reinforce its own position and limit competition in exhibition.

The Task Force does not even exclude the possibility that the present duopoly might be transformed into a virtual monopoly.

Competition is essential for a healthy, orderly market, and that is why we recommend that the government:

Enact measures which will prevent all vertical integration of distribution and exhibition (including video retail) to the extent that such integration limits competition and freedom of trade in Canada.

4. CONCLUSION

Our principal recommendations are relatively few and are presented more fully in the chapters that follow. They form a whole; they cannot be separated without threatening to upset the balance of the entire structure. They should be applied concurrently.

These recommendations articulate an industrial development strategy which, in our opinion, must be fully implemented in order to allow the Canadian film industry to attain financial stability, a high level of excellence, and the full measure of the tremendous creative potential and entrepreneurial spirit that exist in this country.

The vitality and prosperity of the Canadian film industry are essential instruments for affirming our national identity, for expressing our culture, for testifying to our reality and to the influence of the Canadian creative spirit.

CHAPTER I
CANADIAN CONTROL OVER DISTRIBUTION

Recommendation

Ensure that films and videos for all markets in Canada are distributed by companies owned and controlled by Canadians.

Distribution occupies a strategic position in the industry: it feeds markets and finances production, thus engendering the adage that "whoever controls distribution controls the cinema."

In Canada, however, the distribution of films and videos remains under foreign control. Approximately 97 per cent of the profits from distribution in Canada were amassed by foreign companies, primarily American.

This stranglehold has recently tightened. The major American distributors have lately increased their volume through the acquisition and distribution in Canada of countless independent American, European and other products. New American companies, meanwhile, have either set up shop in this country, or else announced their intention to do so.

In the new and rapidly expanding videocassette market, the story is much the same: a recent study indicated that American companies already control 90 per cent of the Canadian market.

This American grip on the distribution of films and videos in Canada stems from the financial strength and the extraordinary market power wielded by American distributors. Most of them are simply arms of large and powerful conglomerates who operate from a domestic market base of 250 million consumers.

In practice, the American industry considers Canada as an extension of their domestic market. Canadian rights are insisted upon with the acquisition of North American rights, or foreign filmmakers, anxious for the American market, "give Canada away" in order to make an American sale. This is the predominant formula by which most of the more profitable films in Canada are acquired and distributed.

This situation is absolutely unique.

All countries are preoccupied with American cultural influence. American films and videos reach important audiences worldwide. They are enjoyed and appreciated by the public in virtually every country. The Task Force shares these concerns but believes that freedom of choice remains an essential principle that must be both respected and preserved. In no way does the Task Force wish to limit access to American programming per se.

The presence and the attractiveness of American productions is not the problem. It is rather the domination by American-owned and -controlled companies of the distribution in Canada of not only American, but virtually all foreign films. This situation must be remedied, because it is retarding the growth of our industry, which is caught in a stunted industrial structure, whose market is owned and exploited by foreigners, and without the necessary links between production and distribution.

1. THE CONSEQUENCES OF FOREIGN DOMINATION

Distribution feeds the markets. It determines who can see what, when and how. It chooses the films to be imported, thus determining what products the Canadian public will have access to. It determines the marketing strategy for a film in the various medias: theatres, videocassettes, pay- and free-TV. It determines the scope of their reach across various regions of the country. All these decisions affect the cultural life of the nation. It is unacceptable that they be made by non-Canadians, purely in their own economic interests.

Any country intending to affirm and preserve its sovereignty must control these decisions. Cinema is a powerful and prestigious means of expression, disseminating ideas and inspiring cultures around the world. Canadians must control their own access to these cinematographic works of creativity and imagination, and direct their dissemination across the country.

Distribution is also inextricably tied to production. Throughout the world, it finances production, and in most other nations indigenous distributors contribute to the motion picture production of their own countries.

Canadians spend more than a billion dollars annually to see movies in theatres, on videocassettes and on pay-TV. But only a negligible percentage of the distribution profits are earned in this market by Canadian distributors and are spent in the production of Canadian films and videos.

The domination of foreign companies confines indigenous distributors to an extremely marginal position in their own market. Movie theatres, videocassette wholesalers and retailers, and pay-TV licensees seek out a distributor who can supply them with a large and varied product line, both foreign and domestic, and therefore deal almost exclusively with American companies.

Without access to a complete product line, Canadian distribution companies cannot survive, compete, or satisfy the market demand. Nor can they invest any significant part of distribution revenues into Canadian films and videos, thus completing the cycle inherent in any healthy industry.

As the Canadian Institute for Economic Policy observed in its publication, Canada's Cultural Industries:

Any effort to develop a strong and healthy Canadian film industry will have to address and redress the historical tradition of a production sector divorced from its major home market.

No production sector can develop in a healthy and profitable fashion without the financial support of a strong, competitive domestic distribution sector.

Canada must take hold of the development of its film industry if Canadians are to express their culture, affirm their identity and participate in the enrichment of the world culture.

To this end, quality Canadian films must be financed and produced in sufficient number. They must also be distributed on a wide basis, and accessible to both domestic and foreign audiences.

The first decisive, indispensable step in this process is the guarantee of Canadian control over the distribution of films and videos in all markets and medias across Canada.

The monopoly of domination

Canadian control of distribution will enable Canadian companies to negotiate and freely compete for the acquisition of Canadian distribution rights for foreign films and tapes. These companies would pay normal licensing or royalty fees to the holders of these original rights -- whether American, Canadian or other -- according to established business practices.

Canadian control over distribution practices would break the de facto-monopoly now enjoyed by American distributors. American film distributors are united through an organization called the Canadian Motion Picture Distributors Association, while the American tape distributors band together under the Home Video Board - Canada. The two are linked through the Motion Picture Export Association of America (MPEAA), a very strong American cartel.

The idea that the principal players in an industry unite under the banner of a trust, association or cartel with an eye to the monopolization of a market is nothing new in the history of film. In the United States, as early as 1909, the major magnates banded together to form the United Film Protective Association of the Film Manufacturing and Importers of the United States (also known simply as the Patents Company or Trust Edison) to control the market and prevent the incursion of independent or foreign producers and distributors.

Through a complex licensing system to all levels of the industry, this Trust managed to set up insurmountable barriers against any non-member independent producer and distributor. The United States government -- upheld by the Supreme Court -- intervened and dismantled the combine in 1915 through application of the Anti-Trust Law.

Later, a system of vertical integration (production-distribution-exhibition) was employed by five of the big American studios to establish a dominant position in the marketplace. Another intervention by the Supreme Court in 1948 -- this time in the name of the Sherman Act -- moved to break this monopoly. Thereafter, independent distributors not integrated with exhibition chains increased their distribution activities and their financial involvement in production.

The limits imposed by the judiciary have imparted a certain dynamism to the American film industry for decades. By systematically opening its market to independent distributors and producers, the United States has guaranteed a constant revitalization of its industry.

But these rules apply in the United States alone. At home, American distributors must abide by rules of fair competition, but in Canada they function as a cartel, and by so doing have relegated Canadian producers and distributors to marginal roles in their own market.

The breaking of this cartel by the Canadian government would be consistent with the traditions that shaped American movie history. Such measures would also have the same desired effects -- the stimulation of a national industry and the enrichment of Canadian culture. In such a context, the film industry -- doubtless the most prestigious and influential mass medium in the world -- would develop in a healthy and profitable fashion within Canada.

2. A SOLUTION IN THE CANADIAN TRADITION

According to a recent survey, 82 per cent of Canadians consider our culture a major source of pride. Culture plays a unique role in the formation of a national identity -- it is the cement that binds the elements of a society.

Cultural industries are the means of affirming national cultures. The reasons for the exclusion of cultural industries in the free trade negotiations to be undertaken with the United States are both numerous and evident.

Those cultural industries currently under Canadian control are economically viable, financially solid and significant generators of employment for Canadians. They provide the means for the dynamic self-expression of our artists and creative community.

Newspapers, radio and television work to bring Canadians together in every corner of the country, carrying news; analyses and opinions; original creative works; insights and ideas on the history, imagination and future of Canada and the world.

Each time Canada has patriated a cultural sector, the economy and the population have benefitted. For example, as a result of the revised Broadcasting Act in 1968, Canadians benefitted from broadcast earnings which jumped by 700 per cent and before-tax profits by 550 per cent between 1968 and 1973. The number of jobs available to Canadians doubled.

Conversely, in sectors where foreign domination remains strong -- publishing and film -- Canadian works distributed by indigenous companies are confined to a marginal position in the market. These same Canadian companies are constantly troubled by problems of under-capitalization and financial instability, which prevent them from responding to the social, economic and cultural needs of the country.

Our first recommendation is thus engraved in the history and tradition of cultural policies in this country. Canadian control of the communications industries is the bedrock of Canadian cultural sovereignty.

The daily press: Constantly Canadian

The daily press in Canada has always been almost entirely controlled by Canadian-owned firms. Throughout the years, various commissions and committees have in turn expressed a determination that this situation remain unchanged.

All took the view that Canadian ownership of newspapers was essential to Canada's political independence.

The 1961 O'Leary Royal Commission on Publications reported that communications "are the thread which bind together the fibres of a nation." The Commission added: "It can be claimed -- with little threat of disagreement -- that the communications of a nation are as vital to its life as its defences, and should receive at least as great a measure of national protection."

Radio and television -- Now a Canadian industry

In 1932, Prime Minister R.B. Bennett, who brought about the first Canadian Radio Broadcasting Act, stated:

This country must be assured of complete control of broadcasting from Canadian sources, free from foreign interference or influence. Without such control, radio broadcasting can never become a great agency for communication of matters of national concern and for the diffusion of national thought and ideals, and without such control, it can never be the agency by which national consciousness may be fostered and sustained and national unity still further strengthened.

The Bennett government was convinced that Canadian ownership was the best guarantee of attaining these objectives and preserving national sovereignty. Because of that conviction, the Canadian Broadcasting Act was written, and the Canadian Broadcasting Corporation was established in 1936.

A number of commissions have successively addressed the question of Canadian broadcasting. All have recommended that this mixed private and public system remain essentially under Canadian control.

In 1942, the Parliamentary Commission on Broadcasting asked the Department of Transport -- then the licensing agency for broadcasting -- to determine on a discretionary basis the proportion of foreign ownership allowable in specific cases. The 1957 Fowler Commission on Broadcasting argued for legislative provisions to place a 20 per cent limit on foreign participation in any new broadcasting firm.

Despite these firm positions, foreign companies maintained an advantageous position in Canadian broadcasting. Acquired rights were retained by established companies, powers of dispensation were built into legislation and cablecasting fell under no authority at all.

The 1966 White Paper on Broadcasting clearly stated: "It has always been recognized that control of Canadian communications facilities should remain in Canadian hands." The ensuing Broadcasting Act of 1968 clearly stated that, "the Canadian broadcasting system must be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada."

A series of directives and decrees were issued to implement that provision. Between 1969 and 1973, foreign firms divested themselves of interests in 55 cable broadcast firms, 13 television stations, 10 radio stations and one short-wave transmitting station. Canadian buy-back transactions totalled almost \$150 million. These events benefitted the entire Canadian economy, and today these Canadian firms are among the healthiest and most profitable in the country. All produce or carry a significant proportion of Canadian content and contribute to a vibrant and successful Canadian cultural activity.

Book publishing -- A decisive step towards Canadian control

The 1961 Royal Commission on publishing wrote:

Canada's particular responsibilities, her government, her constitutional structure, her ideals and aspirations, her memories and milestones, even her discords, are facts in her existence which cannot be approached understandingly or usefully by communications media owned and controlled in another country, even though that country be friendly.

The Quebec White Paper on Quebec's Cultural Development Policy pointed out that:

...publishing and its related industries -- distribution and sales -- are a powerful medium for expressing a community's culture; no country, no people and no national group should tolerate foreign control over these industries.

The Ontario Royal Commission on Book Publishing also expressed concern about foreign control of book publishing and distribution in Canada. More important, it emphasized the need to establish a fair balance in both activities and markets between Canadian and foreign firms.

Financial assistance for Canadian publishing has not been able to achieve such a balance, despite significant efforts by both federal and provincial governments. In 1985, for example, Canadian-owned and -controlled publishers accounted for only 18 per cent of English-language book sales. These Canadian firms, which share only one-fifth of our domestic market, publish and distribute 85 per cent of all the original works by Canadian authors available in this country.

After assessing the consequences of this imbalance on the possibilities for cultural expression by Canadians, the federal government recently announced a new policy on foreign investment in Canadian publishing. This policy states:

The government recognizes that there exists a direct link between the current condition of Canadian publishing and the role played by non-Canadian investment in this sector of activity... the government is stating clearly that it considers as essential Canadian control of this activity.

This policy won support from both the provinces and the business community.

A national consensus

What emerges more than anything else from this brief historical overview is a clear national consensus: cultural industries and the means of mass communication must be owned and controlled by Canadians. This includes the film industry.

There is no clearer affirmation of our cultural and political sovereignty.

3. RECOMMENDATIONS

To ensure that films and videos destined for all markets and medias in Canada are handled by Canadian-owned and -controlled companies, we suggest that the government:

Affirm through a clear statement of policy that Canadian ownership and control of film and video distribution in Canada is essential.

The principle of Canadian ownership and control over our communications medias has always been the foundation of Canadian cultural policy, and its application has never been more necessary. This affirmation will complete the panoply of policies adopted for other communications sectors, all of which contribute to the affirmation of Canadian political and cultural sovereignty.

We also suggest that the government:

Subsequently, take the appropriate measures -- legislative and regulatory -- to guarantee the application of this policy.

One of these measures must be undertaken without delay; Investment Canada must be instructed to ensure that no new foreign distribution concerns be permitted to start business in Canada.

A formal Cabinet decision must instruct Investment Canada to review all direct and indirect acquisitions of existing distribution companies -- both Canadian and foreign -- now operating in Canada.

For such transactions to be authorized, the foreign owner must be required to either:

- . transfer ownership and control to Canadians at fair market prices within a reasonable time period;
- or
- . co-venture with a Canadian-owned and -controlled company with respect to all distribution in Canada.

Effective ownership and control of film and video rights must rest in Canadian hands.

We wish to re-emphasize that the ownership at issue is that of distribution rights. It is not a question of expropriating property or of depriving foreign rights-holders of their just remuneration. Our recommendation simply states that the right to distribute films and videos on Canadian territory must be held and exercised by Canadian-owned and -controlled companies. These companies would compete freely to acquire those rights, paying royalties to foreign and Canadian producers in accordance with normal commercial practices.

Investment Canada must therefore accord particular attention to "the review of certain investments in the domain of commercial activity linked to cultural heritage and national identity." These activities are enumerated in Schedule IV, Article 8 of the regulations.

We further suggest to the government that the Minister of Communications be accorded the responsibility for the administration of these measures. This Minister is responsible before Parliament and the Canadian public for the development of Canadian cultural policy, and has at his disposal the expertise of those involved in the communications and cultural industries. He is best placed to evaluate the advantages and disadvantages of foreign investment in these two sectors as it particularly affects cultural sovereignty and Canadian national identity.

Other measures must be developed and adopted by the government within its own jurisdiction and in concert with the provinces if they are deemed necessary to ensure Canadian control of distribution.

CHAPTER II

THE PRIVATE SECTOR CAPITALIZATION OF COMPANIES AND THE FINANCING OF CANADIAN FEATURE FILMS

Recommendations

The creation of fiscal incentives to encourage private investment in Canadian production, distribution and export companies.

The creation of a Canadian Feature Film Fund with an annual budget of 60 million dollars.

We have identified two major deficiencies in the feature production sector: the chronic under-capitalization of companies and the difficulties inherent in financing feature films.

The principal reasons for these deficiencies are:

- . foreign domination of distribution in Canada, which confines Canadian companies to a marginal position in their own market.

This problem is peculiar to Canada. No other country is part of the American domestic market, and none submits to this kind of overwhelming domination. There is a vital prerequisite to any reorganization of this system: the Canadian industry must control the resources of its own market.

- . the limited size of the Canadian market (25 million inhabitants) that collectively represents only 10 per cent of the American market and four per cent of the Western world.

This problem concerns all the Western countries with the exception of the United States, which enjoys access to a domestic market of some 250 million people.

Because of its size, the American domestic market (which includes the profitable Canadian market under its control) gives rise to a high level of self-financing. The economic and political weight of the United States also favours export of these same cultural products.

These two elements account for the strength of the American industry, and guarantee the profitability of the companies which make it up. It is this same industry that determines the financial parameters as well as the standards of quality and technology that prevail on the international level.

Most other industrialized countries have access to domestic markets of less than 100 million inhabitants. In this context, national film industries must on the one hand adapt their economies, their budgets and their means of financing to the dimensions of that domestic market. On the other hand, these industries must provide competitive cultural products that respond to both the public's expectations and prevailing international standards.

To help their industries to meet this challenge, the governments of Australia, Brazil, Japan and almost all the European nations have adopted permanent measures to stimulate and support their domestic industries. These moves illustrate the fact that cinema is a highly privileged form of mass media through which nations can affirm their identities and open an avenue of cultural expression essential to our moment in time.

Canada has also recognized the importance of such moves to stimulate creativity and film production in this country, and adopted various measures.

1. FEATURE FILMS IN CANADA

Without doubt, fictional feature films are the most influential and prestigious of all forms of mass communication. The feature is to the twentieth century what the oral tradition, mythology and romantic literature represented to eras gone by. It is a form of storytelling perfectly suited to our time.

Features cross international borders with almost startling ease. They are almost wholly responsible for the global recognition of artists and directors, and offer the most stimulating creative challenges. Feature film production spearheads research and development affecting all aspects of audiovisual industries.

Feature film production is a high-risk proposition. A feature reaches its audiences through an ever-expanding variety of distribution modes -- solid proof of this is the Canadian videocassette industry, a relative newcomer to the market, which nonetheless represented some \$530 million by 1984. This year, Canadians will spend about \$115 million in subscriptions to pay-TV, and traditional theatrical venues will report another \$400 million in domestic revenues.

It is primarily for these three markets -- movie houses, cassettes and pay-TV -- that the feature film is destined, and from which 80 per cent of its revenues is generated. Remaining revenues emanate from "free TV" (networks, stations and syndication) and from community distribution. Feature financing relies on this system of recoupment.

Various factors influence the financing scenario: the quality of the project, its genre and its target audience, the interest of distributors and private investors, the co-production and foreign sales possibilities, and a host of others.

All these factors must be taken into account in any examination of the Canadian feature film financing challenge.

Past experience

On March 3, 1968, Bill C-204 established the Canadian Film Development Corporation (CFDC), whose principal mandate was to encourage the development of a Canadian feature film industry.

The CFDC initially required that all projects be accompanied by a letter of commitment from a distributor. From 1968 to 1974, the government body participated in the financing of 119 films, 68 of which were English-language, 51 French-language.

The policy was successful on the francophone side. Quebec producers already had years of experience, and Quebec distributors were numerous and significantly controlling their own regional

market. These factors allowed the production and distribution sectors to work together and to involve themselves even further in the business of making indigenous movies.

The results were that between 1971 and 1974, Quebec films occupied an average of nine per cent of all screen time in the Montreal region. Twenty films of this period substantially returned their investments, of which eight went into profit. It should be noted that these figures are drawn from a 1976 report, and do not represent subsequent receipts for these same films, many of which still continue to earn revenues.

In English Canada, foreign control of distribution was already very strong. In its Annual Report for 1974-75, the CFDC underlined the fact that its successful stimulation of the production sector hit a roadblock when Canadian distribution of these films was required. These distribution and marketing problems severely reduced both the profitability of Canadian productions and their possibilities for financing.

Alternative financing sources were obviously imperative. They arrived in 1974 when the federal government created the Capital Cost Allowance (CCA) Program, a financial incentive designed to encourage private investment in Canadian film production.

The CCA's impact on production was significant and ongoing. The Program reached its peak in 1979, when 67 certified Canadian features -- total budgets of \$180 million -- benefitted from private tax-sheltered investments.

But there was negative fallout from the program as well, principally because it widened the gap between production and market. In a recent independent study, the company Stratavision Inc. stated that:

... the advent of the capital cost allowance for film production significantly reduced the importance of distributor participation in the front-end of the production of a property. This not only reduced the number of films to which Canadian distributors had automatic access, but also precluded knowledgeable Canadian distributors from influencing the type of property that was produced. As such, while the supply of Canadian theatrical properties increased considerably, many were totally unmarketable.

Concurrent with the implementation of the CCA was the decision by the CFDC to abandon its requirement of a distribution agreement. This was subsequently reinforced by Revenue Canada in its decision not to permit revenue guarantees. These policy shifts gave rise to the phenomenon of the "overnight producers," non-industry individuals more concerned with the exploitation of a tax shelter than the production of commercially viable films. Feature budgets rocketed skyward, bearing little relation to the realities of a market no one seemed to care about. The CCA by definition was intended for investment in specific projects. Investors were required to pick and choose individual films and were unable to invest in production companies that could spread their risk over a number of projects.

In league with the economic recession, these specific problems led to a bottoming out of private investment in the early 1980s. Interestingly enough, this same period witnessed increased activity in the Canadian market on the part of the American distributors (the "Majors"), who acquired an ever-growing number of foreign and independent American products for distribution by them in Canada.

In Quebec, for example, the number of non-American films distributed by the Majors increased by 264 per cent in 1981 and 257 per cent in 1982 compared to figures from 1980. The market share held by Canadian and Quebec distributors decreased accordingly, as did their participation in production.

The loss of private investment and the weakened position of national distributors rendered the financing of Canadian features -- both francophone and anglophone -- increasingly difficult.

There was nothing the CFDC could do about either situation, and government efforts to alter the distribution problem met with no success.

The CFDC gradually widened its area of activities, a move that culminated in 1983 in a change of name (the Corporation became Telefilm Canada) and the establishment of the Canadian Broadcast Program Development Fund.

The Fund is designed to open the Canadian television program market to independent producers, and also provides start-up incentives. It represents a major change in direction, replacing the original emphasis on feature films with a new concern for television production.

To qualify for this funding program, Canadian producers must first obtain a letter of commitment from a Canadian broadcaster, guaranteeing that the resulting program will be aired on prime-time television.

The experiment has met with considerable success. Since its creation, the Fund has stimulated a volume of activity of \$285 million. Half of that figure represents salaries paid out to creative and technical personnel. A full two-thirds of it emanates from sources other than Telefilm: Canadian and foreign broadcasters, producers and co-producers, private investors, provincial bodies, etc.

More than a thousand hours of Canadian programming has been produced, much of which garnered impressive ratings upon telecast. This tendency toward viewer support for indigenous programs continues to grow as these productions touch Canadians from coast to coast while also meeting with notable success in foreign markets.

But the Fund has not provided significant impetus for the financing of Canadian feature films, which remain an area of low priority and little interest to broadcasters.

2. THE SOLUTION

The capitalization of companies

The foregoing measures stimulated the production of an important number of film and television programs, but the Task Force submits that all such involvement has been directed primarily toward production, and is exclusively oriented towards the development of projects on a case-by-case basis. No measure has been directly aimed at the capitalization and consolidation of companies.

This has limited the access of the Canadian-owned film sector to private capital which, in a competitive investment market, seeks to spread its risk over a long period of time.

The time has come to correct this oversight. The industry has reached a stage of development that necessitates a capitalization of companies at all levels. More than ever, the health and dynamism of a cultural industry is measured by the strength of the companies which form its core. These companies must be well-financed, solid and autonomous if they intend to make their mark at home and in the international film community.

The Task Force believes that the implementation of mechanisms to encourage the capitalization of Canadian production, distribution and exporting companies is an urgent necessity.

Tax systems remain one of the best suited means to this end. Fiscal initiatives have spurred activity in various sectors of the Canadian economy, and the Stock Savings Plan in Quebec has met with unparalleled success, channelling considerable private investment into small and medium-sized businesses.

We recommend to the government:

that fiscal incentives be created to encourage private investment in film and video production, distribution and export companies.

These companies must be Canadian-owned and -controlled. Any resulting legislation must ensure that a percentage of these investments be devoted to the production, distribution and export of Canadian-certified films and co-productions. The investment generated by this program would serve to both capitalize the industry and develop Canadian productions.

These investments will encourage corporate stability, long-range planning and film development initiatives.

Most importantly, the investor will participate directly in the growth and success of an industry.

A viable, well capitalized industrial base will increase significantly the financing available for feature film production in Canada.

Control of distribution

If given access to the Canadian market as recommended in Chapter I, Canadian distributors will certainly commit a significant share of their revenues to the financing of Canadian films. This kind of distributor participation has always been a tradition in the international marketplace, and was indeed characteristic of the Quebec film scene in the 1970s. It remains an element -- albeit a minimal one -- in the current Canadian market, reflecting the paltry three per cent profit share of the national box office held by indigenous distributors.

Bearing in mind the size of the Canadian market, we estimate that Canadian distributors could pay from \$250,000 to a million dollars for the rights to a quality English-language indigenous picture. The figures for the acquisition of a like French-language product would be in proportion to the market size.

This system would establish a significant first source of financing for Canadian features. The resulting co-operation between moviemakers and sellers would also give producers access to the distributors' marketing know-how. These elements would no doubt result in a new relationship between the movie-going public and Canadian cinema.

This new producer-distributor interdependence will have positive repercussions on the financial situation, attracting increased private investment and foreign co-production financing.

Private investment on a project-by-project basis

From 1974 to 1979, the increase in production volume attributable to the CCA spawned the growth of a large Canadian talent pool, developing producers, directors, technicians, production designers, actors, lab technicians, etc. The future of the independent film and television program industry rests squarely on the shoulders of these valuable resource people.

These now seasoned, competent producers have used the combination of the economic recovery and the Broadcast Fund to restore investor confidence. The CCA now provides an indispensable element of private investment for Canadian productions.

Within the context of a normal producer-distributor relationship, the CCA would play an expanding and beneficial role in the attraction of private investment, essential to the production of Canadian feature films. And to avoid the pitfalls of the recent past in which productions were undertaken with little or no regard for the realities of the market, we suggest:

that Canadian features intended for theatrical distribution be accompanied by a commitment from a Canadian distribution company in order to qualify for the CCA.

Co-productions

Since the early 1960s, various countries have confronted the narrowing possibilities of their national markets and attempted to combat this trend with cinematographic co-production treaties. This pooling of market resources was full of promise, but Canadian producers -- divorced from the national distribution sector -- found themselves unable to take full advantage of the situation.

In the last few years, television production has emerged as the winner in the co-production pool, mostly due to the fact that the producer/broadcaster role is firmly established and ensures distribution. Since the creation of the Broadcast Fund, close to \$90 million of foreign money has been invested in Canadian programming through co-production deals, representing an almost dollar-for-dollar match of Telefilm investment.

This kind of success could be replicated in the feature domain when Canadian distributors gain access to their own market, and co-production would become a vital financing source for feature production.

Foreign sales

The film industry produces a variety of motion pictures. Some are destined primarily for domestic consumption, where they often meet with considerable success. Their exposure in foreign markets, however, is generally limited; a full 45 per cent of American pictures, for example, are not dubbed into French, and consequently bypass a significant market in francophone countries. The first priority of a national cinema, quite obviously, is its own public.

Other products, whether co-productions or not, reach larger markets, and return more impressive revenues from foreign distribution than they manage domestically. Both of these production genres are important, and their combined force lends the industry its inherent dynamism.

The Task Force contends that all these Canadian productions rarely reach their full potential in foreign markets, regardless of their relatively strong or weak "exportability quotient." And this despite a seasoned, professional and well-financed Canadian export sector.

The establishment and maintenance of distribution and broadcast contacts in major markets and the exploration of new, developing markets are intricate, costly operations whose profitability emerges only on a long-term basis.

Companies opting to engage in this undertaking require two tools: a solid financial structure in league with a large and diversified product line. This combination has been clearly lacking within the Canadian film industry and, as such, has severely limited the profitability of Canadian productions and restricted their international distribution.

The industry must help itself. Currently unfocused energies should be regrouped and pooled. Canadian exporters do not need to be numerous in order to be successful -- they need to be strong, with a solid product base from which to work.

But the industry also needs help. We therefore recommend that:

the government accord priority to the development of Canadian video and film exporters through its numerous export development programs.

Canadian producers will thus have access to another source of revenue in the quest to finance their theatrical and television productions.

The Feature Film Fund

Notwithstanding the substantial increased funds to finance feature film which will become available from a well-capitalized industry, the control over domestic distribution, private-sector investment, co-productions and foreign sales, the Task Force concludes that the Canadian reality of a small domestic market in proximity to the United States necessitates direct public participation in the financing of feature film.

Since 1983, production for Canadian television has flourished. This success is directly attributable to the existence of all the factors necessary for the sector's growth. We believe that the feature industry can experience similar expansion if normal, dynamic and interactive ties between the processes of production and distribution are established, with both elements owned and controlled by Canadians. Public funds must also be made available to compensate for the limited size of our market, therefore enabling a vital expression of Canadian culture to flourish.

We therefore recommend:

The creation of a Canadian Feature Film Fund with an annual budget of 60 million dollars.

This Fund would be administered by Telefilm Canada. To gain access to the Fund, Canadian producers would require a commitment from a Canadian-owned and -controlled distribution company. This implicates the distributor in the film's financing, whether through investment or distribution advances.

The Fund should also support every phase in the creation and marketing of a feature film, from development and production through to domestic distribution and foreign sales. Production is a high-risk undertaking, and every film requires considerable investment to actually see the light of day. The best chance to recoup its cost and realize a profit comes of a concerted effort to ensure that the finished film actually reaches its audience -- both domestic and foreign -- through the whole gamut of distribution and exhibition possibilities. The cultural and commercial value of any film is determined by its reception by the public. The Fund must therefore be accessible to Canadian distributors and exporters as well.

A sufficient number of quality films must be produced each year if they are to significantly impact on the domestic market place.

Canadians can and should produce 40 to 50 films annually in order to achieve these objectives, assuming average budgets of \$4 million. The \$60 million Feature Film Fund would represent approximately one-third of the aggregate film budgets.

Sixty million dollars represents merely five per cent of what Canadians spend annually to view features in cinemas, on video-cassette and on pay-TV, and is a genuinely minimal figure when compared with support systems in other Western countries, many of which boast more significant domestic markets.

Canada boasts two official languages, and Canadians from both cultural communities must be offered the same creative opportunities. The administration of the Fund must be undertaken in a fashion that compensates for certain basic inequalities, all of which stem from the disproportionate division of the market between the two linguistic groups.

Telefilm must also respond to regional aspirations, and seek to compensate for the difficulties inherent in a physical distance from major production centres. Regional producers are deprived of easy access to service infrastructures, private and public financial institutions, head offices for major distributors and broadcasters, the vast majority of artists and technicians, and a host of other necessities. We therefore recommend:

that particular attention be accorded to both francophone and regional productions, and that the percentages of participation and other elements be adapted to the realities of the market size and the related distances involved.

The CFDC and, later, Telefilm Canada historically operated on a project-by-project basis, evaluating the extent of their involvement in each submission according to the quality of that particular film.

This method of operation was established in the original empowering legislation, and by implication, confers substantial discretionary powers upon government agencies. It also renders the job of financial planning and strategy extremely difficult for private companies, thereby contributing to the undercapitalization of the industry previously recognized.

The Task Force believes that a substantial portion of the Film Fund should gradually be used for the ongoing production activities of the companies, based on the successful performances of these companies.

By so doing, we would increase the accountability and stability of these companies, making them more autonomous from discretionary administrative decisions, and more dependent on their performance in the marketplace.

The Task Force also recognizes that a share of the Telefilm budget must continue to be allocated on a selective basis in order to meet certain cultural objectives as well as goals in regional development, positive action and the encouragement of experimentation, all of which fall within the mandate of a government agency. The system must also be flexible enough to admit new producers onto the scene, and to encourage healthy competition and a constant regeneration of new creative teams.

We therefore recommend that in the administration of the funds conferred upon it, Telefilm Canada finds an equitable balance between:

- programs aimed at the financing of ongoing production activities and those contributing on a project-by-project basis;

and between

- selective mechanisms based on the presumed quality of a specific project and automatic mechanisms recognizing the proven performance of a production company.

Experiences around the world indicate that this kind of balance between support mechanisms results in both a quantitative and qualitative improvement in production, as well as the development of healthy and prosperous companies. It also encourages the kind of dynamic relationship between a national cinema and its public so necessary to the flourishing of a film industry.

To attain these ends, the empowering legislation behind Telefilm Canada -- Bill C-204 -- must be reviewed in depth.

This revision is imperative because the Act itself has become timeworn and ill-suited to Telefilm's current practices. We therefore recommend that Bill C-204 be redrafted in the immediate future to accord Telefilm Canada the kind of flexibility and latitude it will require to implement the recommendations we have set forth, while constantly adapting its methodology to the relative maturity of the industry.

This revision should serve as the occasion for the government to draft a Canada Cinema Act laying out the general objectives set for this domain and establishing the foundation for comprehensive, all-encompassing Canadian film and video policy.

3. CONCLUSION

The fiscal and financial incentives established by the federal government have engendered generally positive effects in the growth of the cinematic and television production industry. There have been enactments of like legislation in Quebec, Alberta and Manitoba, and most recently Ontario: moves which we sincerely hope to see replicated in other provinces.

When the CFDC was created in 1968, the overall annual value of independent production in Canada was pegged at \$22 million; by 1984, that figure had passed \$300 million.

The creation of the CFDC contributed in large part to that growth. The development funds permitted Canadian producers to make solid use of other financial resources such as the CCA and the series of co-production treaties. Two hundred and ninety million dollars worth of economic activity was generated in 26 months, and \$90 million of foreign investment was injected into Canadian productions.

These incentives also led to the consolidation of the television production sector. The implementation of similar measures in the feature film area would have the same effects, thereby consolidating cinematographic production in this country.

Television production is based on the principle of series programming, which allows savings on a scale basis, while guaranteeing production continuity on a medium- and long-term

basis. This in turn would contribute to the financial stability of Canadian companies. Television production provides an essential training and development opportunity for national talent.

Feature film production is a "prototypical" industry. While an extraordinarily high-risk undertaking, it nonetheless presents a gamut of some of the most stimulating administrative, technological and creative challenges known. It has contributed to the formation of 25 professional crews, capable of shooting more than 70 features a year.

These two sectors are complementary and vital to the survival of the industry as a whole, since its growth is dependent upon the ability to draw from both sources.

We are convinced that the financial assistance we are requesting from the federal government to guarantee this equilibrium will prove profitable in economic, social and cultural terms.

The film industry as a whole employs 6,410 people on a permanent basis, another 10,193 part-time workers and more than 10,000 freelancers. It is one of the most labour-intensive sectors, with one job created for every \$36,000 in gross annual revenues. This figure compares favourably to the \$114,000 gross annual revenues required (on the average) for each job created within the 50 top North American corporations.

It should also be noted that each dollar invested in film production generates three dollars in other sectors, such as transportation, hotels, tourism, and the restaurant and service industries. Each job created through film production indirectly generates almost one other job in other sectors.

Through the means of co-production, the industry draws important foreign investments to Canada. And foreign sales of Canadian films and programs makes a positive contribution to the balance of payments.

But there is one other point, ultimately the most vital. Cinema remains an extraordinary means of self-affirmation, an unsurpassed expression of national and cultural identity. In 15 years, we enter the twenty-first century; if Canada intends to fully participate in the family of nations by contributing an expression of its reality and its culture, it must now lay the groundwork to ensure that quality Canadian films be available to both the Canadian public and to the world at large.



CHAPTER III
CONCENTRATION AND VERTICAL INTEGRATION

Recommendation

Adopt the measures necessary to prohibit any vertical integration of distribution and exhibition that would limit competition and restrain trade.

The vertical integration of distribution and exhibition within a single company or associated firms can have a severe negative impact on competition, restrict trade and prevent entry into the market.

Concentration of theatre ownership also limits competition and market access.

The combination of these two factors -- vertical integration and ownership concentration -- almost inevitably leads to severely reduced competition. It contravenes freedom of trade and compromises the development of a Canadian movie industry.

This is true today for traditional relations between distributors and exhibitors and could be true as well, in the not so distant future, for relations between distributors and chains of video retailers.

1. CANADA, 1930: A FIRST INQUIRY

In Canada, privileged and exclusive relationships between distributors and exhibitors enabled the large American studios to take control of the Canadian market as early as the 1920s.

Here is a brief summary of events. In 1920, the Famous Players Canadian Corporation was established -- a theatrical exhibition company 95 per cent controlled by Famous Players Lasky, an American production, distribution, and exhibition company better known as Paramount.

The main theatre chain in Canada at that time was the Canadian-owned Allen's Film Theatres, one of the largest and most modern theatre chains in the world.

Paramount Studios' head, Adolf Zukor, hoped to expand his Canadian activities in order to control both distribution and exhibition, but the Allen brothers refused to accept Zukor as a partner.

The "Canadian" subsidiaries of the large American studios came together in an informal association that was named some years later the Motion Picture Distributors and Exhibitors of Canada. This cartel, which included Paramount, decided to award exclusive exhibition rights to Famous Players. The results of this privileged arrangement were soon apparent: in 1922, Allen's Film Theatres, without competitive movies for their theatres, were sold to Famous Players at a bargain basement price. Following numerous transactions, Famous Players acquired control of nine other Canadian theatre chains. By 1929, 207 of 299 theatres belonging to chains of three or more were controlled by Famous Players.

In 1930, the federal Minister of Labour, G.D. Robertson, ordered an inquiry under the Combines Investigation Act into the exclusionary relationship between the large distributors and Famous Players. In his report, entitled Investigation into an Alleged Combine in the Motion Picture Industry, the Commissioner, Peter White, reached the following conclusions:

A combine exists in the motion picture industry in Canada within the meaning of the Combines Investigation Act.

This combine exists and has existed at least since the year 1926...

I further find that the combine so found by me has operated and is likely to operate to the detriment or against the interest of the public.

The Commissioner identified the members of the combine as Famous Players, the distributors Paramount, Universal, Fox, Columbia, R.K.O., Warner, First National, and a few others. He concluded:

By reason of the agreements and arrangements and other activities above mentioned, Famous Players has been able to acquire, particularly in the large cities and towns in Canada, where the most profitable business is, such substantial control as to reduce competition to a minimum, and to make it extremely difficult for the independent theatre to survive, and to make possible the booking arrangements, pooling and operating agreements and acquisitions above mentioned.

Canadian law at that time provided no remedy for this situation.

2. 1948: UNITED STATES VS. PARAMOUNT PICTURES, INC. ET AL.

Anti-trust laws were stricter and more rigorously applied in the United States than in Canada. The United States Supreme Court decided in 1948 under the Sherman Act that it was contrary to the public interest for major producer-distributors to exercise direct or indirect control over American theatre networks.

In its first judgement, "United States vs. Paramount Pictures, Inc. et al.," the Court saw the divorce of exhibition and production-distribution activities as essential

... for the purpose of avoiding discrimination against other exhibitors and distributors, promoting substantial independent theatre competition for the Paramount theatres and promoting competition in the distribution and exhibition of films generally.

The Supreme Court forced the five vertically integrated production-distribution-exhibition companies -- Paramount, Twentieth Century Fox, Loew's (now MGM), R.K.O. and Warner Brothers -- to divest themselves of all interest in film exhibition. In order to reduce ownership concentration in exhibition, the five "divorced" exhibition companies had to give up about 1200 of the 3000 theatres which they directly or indirectly controlled.

This judgement focused on both vertical integration and concentration and profoundly modified the structure of the American film industry. Competition intensified at all levels, and the creativity and performance of the industry improved substantially.

Unfortunately, this American action has not had any influence in Canada.

3. CANADA, 1982: A SECOND INQUIRY

In Canada, motion picture exhibition changed with the appearance in 1941 of Odeon, a new theatre chain vertically integrated with the Rank Organization, the main British producer-distributor.

Now there were two major theatre chains, both foreign controlled. It was not until 1977 that Odeon was purchased by Canadian interests. By the 1980s, Famous Players owned about 400 screens and Odeon some 300.

It was recognized in the industry that these two chains had entered into exclusionary relations with the large American distributors, who block-booked their annual production with Odeon and Famous Players. Because these two theatrical circuits owned screens, Hollywood studios had a guaranteed distribution of their first-run films, while the studios consistently secured the best locations and release dates for all their films, whatever their market value.

This arrangement of mutual self-interest left little room for Canadian circuits and destroyed the ability of independent Canadian theatre-owners to compete in large urban areas. Independent Canadian distributors, for their part, obtained available dates only after the American distributors had booked their productions.

In 1982, Cineplex Corporation, a Canadian theatrical chain, lodged a complaint with the Restrictive Trade Practices Commission. Cineplex alleged that seven of the large distributors operating in Canada had "concluded long-term contracts under which they were committed to furnishing films to the two largest theatre chains (Odeon and Famous Players), excluding Cineplex and other companies."

The Director of Combines Investigation, Lawson Hunter, after studying the complaint, presented a formal request for a ruling against the seven distributors to the Restrictive Trade Practices Commission under Section 31.2 of the Combines Investigation Act.

Following this request, negotiations took place and an agreement was reached between Mr. Hunter and the distributors. Under its terms, the latter made a commitment to modify their distribution practices in such a way as to "allow exhibitors to compete for each film." So began the present "open bidding" system.

In July 1984, in a progress report on the impact of the agreement, Mr. Hunter confirmed that the traditional exclusionary arrangements between the two large chains and the American distributors had been abandoned. However, the Task Force maintains that, in a duopolistic situation of such long standing, an open bidding system for films can only contribute in a modest and limited way towards increased competition among exhibitors. An open bidding system should have encouraged the emergence of a third major exhibition chain. But such was not the case. Cineplex acquired Odeon in 1984, thereby confirming and intensifying the traditional duopolistic situation.

In 1985 there are still only two major national theatre chains -- Odeon-Cineplex, the most important, with 472 screens, and Famous Players, with 471 screens. Together, they take in 60 per cent of box-office receipts in Canada.

Each theatre chain is vertically integrated with a distributor: Famous Players and Paramount are both owned by the same conglomerate, Gulf + Western; Cineplex-Odeon is associated with Pan-Canadian.

Any distributor vertically integrated with either of the major theatre chains or videoclubs can use this access to the main points of sale to acquire all commercially valuable foreign or domestic movies. Other Canadian distributors' access to the major theatre chains is decidedly limited.

By controlling distribution of the most lucrative productions, the company consolidates its position as an exhibitor. It is in a position to limit competition in exhibition and cause difficulties for other chains, mini-circuits and independent theatre-owners. The last two are then vulnerable to buy-outs or takeovers.

The Task Force believes the possibility cannot be entirely dismissed that the present duopoly might change into a virtual monopoly.

4. RECOMMENDATIONS

Significant competition is essential to a healthy and orderly marketplace.

We therefore recommend:

that the Canadian government take the necessary steps to prevent and eliminate any vertical integration of distribution and exhibition (as well as video retail and rental) that would limit competition and restrain trade in the Canadian film industry.

Litigation relating to competition policy -- especially with respect to mergers, monopolies and other related matters -- is slow and cumbersome partly because it falls under criminal law. The process would be more effective and expeditious if treated as a civil matter under the authority of a competent, independent tribunal capable of taking action within a reasonable period of time.

As previously noted, the establishment of privileged and exclusionary arrangements between distributors and theatre chains can have the same effect as actual vertical integration of these activities.

In order to assure real competition in distribution and exhibition, we recommend that:

the bidding system for films be extended to all distributors in such a way as to ensure that all exhibitors can compete fairly for all products.

The Restrictive Trade Practices Commission, or some other competent authority, will have to act with rigour and severity to make open bidding a reality.

We also recommend that:

the federal government, through its economic and regional development programs, provide financial support for the renovation of Canadian movie theatres.

Exhibitors -- especially independents -- are currently in keen competition with other delivery modes for features, specifically videocassettes and pay-TV. The viability and financial stability of many independent exhibitors are now at stake.

Success in theatres still remains the best means of launching and promoting films in secondary markets, and a network of well-equipped and attractive Canadian theatres is essential.

Access by the Canadian public to large screens within their own municipalities is an important element of social and cultural enrichment. Like other cultural and recreational facilities, movie theatres contribute to the quality of life, and stimulate economic activity at the local and regional level.

It is vital that theatre-owners have a reasonable period of time to exhibit movies in theatres before they are circulated on videocassette or shown on pay television.

For this reason, we wish to underscore the importance of trying to establish an orderly and sequential market for film. Only in this way will it be possible for the film industry as a whole to make the best possible profit from each segment of its market.

CONCLUSION

In the past several years, major developments have affected the Canadian audiovisual industry, particularly as far as modes of distribution are concerned.

In barely five years, markets available to film and television production have become both more diversified and more widespread: the growing number of television networks accessible by cable or satellite to ever-larger audiences; the appearance of pay television and specialized channels; the creation of a third French-language television station in Montreal; the rapid spread of the home videocassette recorder.

The challenge is clear: to ensure a place for Canadian culture -- high-quality Canadian programs and films -- on film and television screens.

In the television and cable broadcasting sector, the government has adopted the necessary measures to ensure the presence of Canadian cultural products. The CRTC, Telefilm Canada and the CBPF have contributed to stimulating production of high-quality Canadian programs, and to broadcasting them across the country.

The emergence of new markets has given the Canadian television production industry a new lease on life. Thousands of jobs have been created, foreign investment has been attracted to Canada, the confidence of private brokers and investors has been restored. And Canadians have been able to reach out to other Canadians, to share their vision of the world and a creative expression that is rooted in our own culture and our own reality.

Unfortunately, the feature film industry has gained little from the changes which have occurred in the audiovisual field in the past 10 years.

While the appearance of new markets has meant that income from the exhibition of feature films in Canada has more than doubled, the resulting profits have ended up in foreign hands, serving, essentially, to finance foreign productions.

This foreign domination of film and video distribution in Canada has meant that Canadian distribution companies are confined to marginal positions in both traditional and new markets. Furthermore, the currently low level of competition as far as exhibition is concerned has concentrated box-office receipts in the large, vertically integrated chains, placing a number of Canadian independent exhibitors in a precarious position.

It is still difficult to find financing and a rightful place in theatres, videoclubs and pay television for Canadian feature films. Canadians still have few opportunities to see feature films conceived and produced by other Canadians.

Our recommendations aim at correcting this situation and at giving new energy to the Canadian film industry so that it, in turn, can contribute -- within an orderly setting that is also soundly competitive -- to the enrichment of Canadian culture, and to the social and economic development of the country.

We require new energy and structural changes. These changes will strengthen the film and video industry, an essential component of Canadian cultural sovereignty.

The importance the Government of Canada will give to these recommendations will reflect the importance with which it regards cultural sovereignty.

Just as the three elements recommended in this Report will provide a solid base for the film and video industry in Canada, so will cultural sovereignty provide the solid base from which Canada can proudly and successfully enter the twenty-first century.

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2. Le Réseau indépendant des diffuseurs d'événements artistiques
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3. Les grands explorateurs
4. L'Association des cinémas parallèles du Québec
5. Ciné-Campus (Trois-Rivières) Inc.
6. L'Association vidéo et cinéma du Québec
7. Ciné-Canada, Vidéo-K-Sept
8. François Macerola, l'Office national du film

9. L'Association des producteurs de films et de vidéos du Québec
10. La Société d'information des normes de la vidéo
11. Cinéplex-Odéon
12. Heenan, Blackie, John, Potvin, Trépanier, Cobbett, avocats
13. L'Association canadienne des distributeurs de films, Home Video Board, la Motion Picture Association of America, Inc. et leurs membres
14. La Société générale du cinéma du Québec
15. L'Institut québécois du cinéma
16. L'Association québécoise des distributeurs et exportateurs de films et de vidéos
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