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**IN LIMITED RELEASE: THE POLITICAL ECONOMY OF THE
CANADIAN MOTION PICTURE DISTRIBUTION SYSTEM**

By

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Bachelor of Arts, 2003

University of New Brunswick,

Fredericton, NB.

A thesis presented to Ryerson University

in partial fulfillment of the

requirements for the degree of

Master of Arts

in the Program of

Communication & Culture,

a Partnership of

Ryerson University and York University

Toronto, Ontario, Canada, 2009

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Abstract

In Limited Release: The Political Economy of the Canadian Motion Picture Distribution System

Nicholas Mills

Master of Arts, 2009

Communication & Culture

Ryerson University and York University

Canadian motion pictures face a unique challenge when it comes to reaching a domestic theatrical audience. In fact, roughly 96 percent of the annual screen time of Canadian theatres is occupied by foreign-produced, mostly American, films. This thesis recognizes that the motion picture distributor, in particular the Hollywood studio firm, holds the balance of power in the Canadian film industry. Using a political economy framework, this thesis identifies five unique channels of distribution within the Canadian motion picture distribution system and, through historical analysis, investigates the political and economic motivations behind their formation. The results of this analysis reveal that because the industry's distribution structure was negotiated between political and corporate actors under asymmetrical conditions of power, it places limitations upon the exchange of cultural resources across and within borders, restricts intra-industry firm-level negotiations, and perpetuates the dominant market preference for Hollywood films and the underperformance of domestic films within the Canadian marketplace.

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Each goal I accomplish is, and will be, due to the strength and patience of my partner Cheryl Braun.

Dedication

This work is dedicated to the memory of Mr. Nathaniel A. Munn, my grandfather and confidant, and to the life of Hayden Nicholas Nathaniel Mills, my son and greatest motivator, who was born the same week that my graduate studies began.

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1. Introduction: Current State of the Industry

The global box-office total reached an all time high in 2007 with \$28.1 billion in revenue. Worldwide theatrical revenues have risen steadily since 2002, when the industry earned \$19.77 billion. This represents a 30 percent increase over this six year period (MPA, 2007, 2008). During this time period, the North American box-office averaged approximately \$9.5 billion per year (MPA, 2007, 2008).¹

Each year, Canadian audiences account for eight to ten percent of the total North American box-office revenue (MPA, 2007). In 2003, the Motion Picture Association of America (MPAA) cited Canada as the sixth most profitable geographic market for films and television programs produced within the United States (US):

...more than \$1.35 billion (US) flowed out of Canada to the US as net revenues from cinema admissions, sales and rental of video cassettes and DVDs, broadcast licence fees and other revenues. This is what Canadians spent for the right to view US movies and television programs, net of distribution expenses. Between 1998 and 2003, the amount repatriated to the US from the distribution of US movies and television programs in Canada was more than \$6.5 billion (Neil Craig Associates, 2004: 3).

In 2006, Canada's overall theatrical box office was \$831 million (Grant, 2007). For MPAA members Canada was the number one market in overall dollar growth and number two in revenue growth (second to the UK) (Geist, 2007). Though Canada is a lucrative market for Hollywood, this strong foreign presence in the Canadian motion picture industry has all but silenced competition for theatrical screen time for Canadian-produced motion pictures.

Not since the 1985 report by the Film Industry Task Force have any Canadian policy reports addressed the structural problems of the motion picture industry in Canada. The foreign cultural domination apparent in Canada's motion picture industry is argued to be an absolutely unique and extreme situation since, besides Canada, "no other country is part of the American

¹ Starting in 2008, the Motion Picture Association's (MPA) annual financial report on the world theatrical industry no longer distinguished between Canadian and US revenues, opting instead to report a total gross box-office for the North American market. See: www.mpa.org/researchStatistics.asp

domestic market” (Canada, 1985: 25). The report asserts that the Canadian film industry is “trapped in a truncated industrial structure” in which the growth of indigenous firms is stunted and the productivity of the industry is perpetually retarded (8).

In 2000, the Canadian government set new objectives for its national Canadian Feature Film Policy (CFFP) with the publication of the Standing Committee on Canadian Heritage’s report *From Script to Screen*. The report’s most pertinent recommendation was to set what seemed like a reasonable goal: for Canadian films to attain an annual share of Canada’s domestic theatrical box-office of five percent or greater within the next five years. The CFFP’s objectives and goals were put into place in April 2001. Since that time the Canadian industry has celebrated several filmmaking achievements but has not been able to maintain significant market share of the domestic box-office.

Only once in this current decade has the domestic box-office share met the five percent standard. In 2005, on the back of successes including *Maurice Richard*, *Water*, and the co-productions *White Noise* and *Being Julia* which each surpassed \$1 million in box-office sales, Canadian cinema achieved a record high 5.5 percent share of theatre receipts. In the three years since, the Canadian box-office share has been on a steady decline.

Despite the success of the bilingual blockbuster *Bon Cop, Bad Cop*, which went on to be Canada’s top grossing film in history by earning theatrical revenues of \$12.1 million, Canadian films saw their share of the domestic box-office drop to only 4.2 percent from the 5.5 percent attained in 2005 (CFTPA, 2007; Telefilm Canada, 2007a). In total, 99 Canadian films received some theatrical screen time in 2006 (CFTPA, 2007). Together they earned \$35 million with \$22 million coming from the French-language market and \$13 million from English films. Canada’s total box-office share in the French-language market fell by ten percent to 17 percent. The

English language results in 2006 were led by two films which were based on successful products in other media; *Silent Hill*, a video game adaptation, which took in \$4.2 million, and *Trailer Park Boys: The Movie* which opened on 200 screens making it one of the widest theatrical releases for a Canadian film. Such wide distribution, due primarily to the film's name recognition, helped it to garner \$3.7 million in box-office gross (Grant, 2007).

Statistics for 2007 reveal that Canadian producers were not able to build upon the breakout box-office success of the two previous years. The Canadian Film & Television Production Association's (CFTPA) annual industry profile acknowledges this missed opportunity:

Bon Cop Bad Cop and *Trailer Park Boys: The Movie* gave the industry reason to be hopeful that Canadian films – particularly in the English-language market – could achieve some box-office momentum. David Cronenberg's *Eastern Promises* and Sarah Polley's *Away from Her* were the bright spots for Canada's English-language cinema in 2007. However, neither of these films – both recipients of wide international acclaim – represented the type of audience blockbuster required to move the box-office-share needle in any significant way (2008: 8).

Canadian films earned \$28 million in 2007, a 20 percent decrease from 2006. Their corresponding share of the box-office was 3.2 percent. In total, exhibitors screened 629 film titles in 2007. Of these 312 were American, 205 other foreign productions, and 112 Canadian films were screened theatrically (CFTPA, 2008).²

While domestic theatres collected \$920 million in box-office revenues in 2008, Canadian films earned a mere \$26 million: an overall share of 2.8 percent (CFTPA, 2009). The World War I epic drama *Passchendaele* was the top-grossing Canadian-produced film in 2008 with over \$4.3 million in box-office revenue. This one film accounted for nearly 17 percent of the combined box-office earnings for Canadian productions. In total, 122 Canadian-produced films had screenings in domestic theatres in 2008. The top 20 grossing Canadian films earned \$21.33

² There is no data provided on the average length of theatrical runs for these films. It is also not clear as to whether films shown as a one time special screening were also included in these totals.

million or 82 percent of all revenues for Canadian productions [See Table 1]. The remaining 102 Canadian theatrical releases, therefore, brought in a miniscule \$4.67 million among them (CFTPA, 2009).

The continued underperformance of Canadian-produced films at the domestic box-office paints an overwhelming picture of market dominance by its Hollywood neighbours. The apparent dependency of the Canadian motion picture industry upon imported film product is reproduced by a variety of structural forces and industry players which have come to rely on the capital these imports provide (Dorland, 1998; Gasher, 1992; Magder, 1989, 1993; Pendakur, 1981, 1990).

2. Thesis Statement

This thesis updates previous political economy-based research on the Canadian motion picture industry by revealing current structural impediments to Canadian films reaching the domestic theatrical audience. A historical analysis of the power relationships that exist within the vertical supply chain of the industry and the impact of state policy measures for the film industry will reveal the structural barriers and industry control mechanisms which influence and limit intra-industry firm-level negotiations. As argued by Magder (1993), by overlooking the influence that the cultural sector's structural internal dynamics have upon state policy, scholars of Canadian cultural dependency have been trapped in a tendency to:

... reduce the activities of the dependent state to a strict function of the dynamic forces in the imperialist core. It is this perspective, more than any other, that fixes the stamp of functionalism and immutability on the activities of the Canadian state and thus loses sight of both the internal forces that impinge upon the policy process and the substantial changes that have occurred over time...dependency must be analyzed as a process of struggle and negotiation and not as a static relation of domination (18).

It is, therefore, critical to analyze the socio-politico-economic structure within which the Canadian motion picture industry has evolved.

Focusing on the motion picture distribution sector, this thesis recognizes that it is at this level of the industry supply chain that key decisions about production financing, market potential, and product delivery are made. Distribution has been labeled “the nexus of power” in the motion picture industry (Kunz, 2007: 107). As the industry gatekeeper, the distribution sector has the potential to restrict the flow of communication, dictate the availability of cultural products, and limit diversity among media producers. The Film Industry Task Force states that the distributor “...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” (Canada, 1985: 14). What differentiates the major Hollywood studio distributors from independent and Canadian distributors is not their volume of output alone, but the depth and strength of their distribution networks.

Though legislative actions and the enactment of social policy are the greatest measures through which to resist corporate imperialism (Petras & Veltmeyer, 2001), state policy initiatives have not addressed the dominance of the Hollywood studio distributor over the Canadian market through risk reduction strategies and structural control mechanisms. Historically proposed nationalist policies and Canadian legislation intended to subvert the spatialization, or corporate extension, of the US film industry into Canada have routinely succumbed to the influences of US political lobbying. As Boyd-Barrett (1977) states, “The power of US finance overcomes even government action designed to protect these affected markets” (122). Hollywood studio distributors – the member companies of the Motion Picture Association of America (MPAA) – have obtained direct distribution and direct ownership of theatre chains in Canada through aggressive diplomacy in both Washington and Ottawa as a means of preventing Canadian

legislation that would limit any power or profits to be had by the majors within the Canadian marketplace (Pendakur, 2008).

It will be argued in this thesis that compromises to film policy measures on the part of the Canadian state have aided in the creation of a complex inter-continental film distribution system within which currently exist a series of unique and individually constrictive distribution structures, or product flows, between and within these two nations. Four major Canadian proprietary rights policies emerged in the 1980s: the Quebec Cinema Act, the proposed National Cinema Act, the Federal Distribution Bill, and the 1988 Investment Canada distribution policy directive. These key film policy measures attempted to renegotiate the power imbalance within the North American motion picture distribution system and to create a distinct Canadian theatrical exhibition market from that of the integrated North American market. Aggressive challenges on the part of Hollywood's lobbyists and the US government over Canada's attempt to change the political and economic arrangements of the North American film trade resulted in the failure of domestic cultural policy to once and for all legislate a distinct Canadian market.

It is the fundamental goal of this political economy analysis to reveal the distinctive distribution structure within which the Canadian motion picture industry operates and to determine how the failure of the aforementioned Canadian film policy initiatives has influenced its formation. A main complementary objective is to explore how, within this politically-defined distribution system, structural barriers influence the opportunities and business strategies of Canadian distribution firms, thereby limiting the market access of Canadian-produced motion pictures. To this effect, this thesis seeks to answer several pertinent research questions:

- What industry practices are restricting the entry of Canadian films into the theatrical market and what mechanisms are being used to maintain them over time?

- How does operating within the existing politically-defined motion picture distribution structures limit the supply and demand possibilities and the negotiation strategies of Canadian distributors?
- Why are even the best-marketed Canadian films not privy to the industry's optimal theatrical release strategy?
- Do ancillary film exhibition markets offer a new window of opportunity for Canadian-made films?

3. Methodology and Sources Employed

This examination of the motion picture distribution industry incorporates the analysis of scholarly publications, industry documents and reports, government policy papers and statistics, as well as participant interviews. Critical historical and institutional analysis is used to explain the context – the economic, political, and ideological structures - in which the current Canadian industry has developed. Case studies of Canadian film distribution companies and individual Canadian feature films are used to illustrate how historically the Canadian feature film has had to address structural hindrances to reach a theatrical audience.

An understanding of the unique nature of distribution negotiations and the determinants of success for Canadian distribution firms is best attained through interviews with key players from film distribution and exhibition firms. As Pendakur (1981) states:

To understand why Canada is the biggest foreign consumer of American films...It is necessary to investigate the ownership and policies of the dominant firms in the Canadian film market to understand why Canada is dependent on imported films and why profitability for films made in Canada is limited in the domestic and foreign markets (49).

To conduct this primary research, a maximum variation case selection strategy was employed to gather complimentary and contrasting views from within the specific population of motion picture industry players. This thesis benefited from the sampling of five case settings representing the various levels in the motion picture industry supply chain: Canadian affiliates of Hollywood studio distribution firms, Canadian-owned distribution firms, Canadian-owned

exhibition firms, feature film production firms, and industry associations including government funding bodies.

In total, 31 executive interviews with distribution and exhibition firms, and industry associations were conducted and analyzed. An additional 20 interviews with executives from Canadian film production firms were made available via my participation in a Social Science and Humanities Research Council (SSHRC) funded study on the screen-based media industry in Toronto headed by Dr. Charles Davis of Ryerson University. The qualitative data collected from these semi-structured interviews reveals intimate details of intra-industry negotiations, unique perceptions of current economic conditions, and first-hand accounts of the industry's power structure. These insights inform the thesis' analysis of how the structure of the film distribution industry in Canada restricts the supply and demand side decisions and negotiations of the Canadian distributor.

4. Literature Review

A. Theoretical Grounding: Political Economy

Political economy serves as the theoretical foundation of this thesis. By analyzing the interconnected economic, political, and cultural relations as well as critically examining the distribution of wealth and power within a given society, political economy seeks to determine the context in which politics and economics enable and constrain the allocation, production, distribution, and consumption of social resources including communicative resources (Clement, 1987, 1997; Garnham, 1979; Golding & Murdock, 1996; Marchak, 1985; Mosco, 1996; Wasko, 2005). The four central characteristics of critical political economy are its emphasis on social

change and history, social totality (a holistic approach), moral philosophy, and praxis (Mosco, 1996; Wasko, 2005).

Contemporary political economy seeks most of all to prevent the political and social aspects of life from being marginalized by a strictly economic logic. This is achieved by investigating relationships between the economy and politics (not just governance and regulation, but social organization and its struggles and tensions) as they affect social and cultural life (Clement, 1997; Magder, 1989). Golding & Murdock (1996) assert that “whereas mainstream economics sees the economy as a separate and specialized domain, critical political economy is interested in the interplay between economic organization and political, social and cultural life” (14). A critical political economy analysis illuminates how the dynamics of current economic and political structures affect a given society’s cultural expression.

Whereas capitalism was studied from a functional perspective by classical economists, political economy evolved to include Marx’s critical historical materialism and class analysis. According to Clement & Williams (1989):

The best of political economy has avoided *economism*, which attributes all explanations to the laws of motion of capitalism, instead impregnating materialism with *human agency* whereby the decisions and action of people are integral to explaining the course of history (7).

The materialist approach looks at how social relations are shaped by the way society reproduces itself. That is to say, how people make a living as substance producers, producers of goods for sale, or wage earners and are able to continue as social beings. Materialist analysis is less concerned with the individual than with the social relations that follow from the way a society is organized (Clement, 1987). The emphasis on the historical dimension of society within political economy reflects the Marxist assumption that the way society is currently organized depends on the past.

A focus on human agency is part of political economy because it is understood that the actions and ideas of people affect the course of history (Clement, 1987). The values, attitudes, interests, and ideals that individuals hold are both inherited and created from the dominant assumptions of their society. They arise out of and help shape people's material existence and are in integral relation to the political and economic realities (Clement, 1987).

The political and economic context of cultural relations bears significance on social organization and has consequences for individuals. With its emphasis on praxis, political economy attempts to transcend the distinction between research and policy. Political economy "goes beyond technical issues of efficiency to engage with basic moral questions of justice, equity, and the public good" (Golding & Murdock, 1996: 8). It is oriented toward actual social change and practice.

Critical political economists point to distortions in market systems that lead to inequalities related to both the range of resources available and the freedom of different social groups in accessing these products (Golding & Murdock, 1996). It is the ultimate goal of critical political economy to not merely analyze contemporary issues but to comment on them and attempt to guide policy and make suggestions for other ways of improving systems of communication in the interest of the public. Wasko (2005) stresses that analysis of the motion picture industry should focus its attention upon 'what ought to be' as well as 'what is'.

A. 1. Political Economy of Communication

As opposed to media effects and the psychology of communications, political economy looks at "the economic context in which media is produced, distributed, and consumed" (Wasko, 2005: 9). Whereas media economics emphasizes how media industries and companies can grow

and prosper, political economy looks at media industries in terms of the power relations which determine the context in which the production, distribution, and consumption of resources take place. Communication products and services are the primary resources of this relation. There is a strengthening of these relations seen through the linkages of producers to wholesalers, wholesalers to retailers, and retailers to consumers (Mosco, 1996).

Smythe (1960) argues that central to the political economy of communication is the study of the structure and the policies of communications institutions which emanate from the production, allocation, distribution, and the organization and control of capital. Similarly, Golding & Murdock (1996) emphasize that political economy analysis of cultural and communications industries should ideally include investigation into the effectiveness of government programs and predict or suggest future state involvement.

The analysis of distribution is a key entry point of the political economy of communications because media distribution firms are able to influence and constrain cultural practices (Magder, 1989; Mosco, 1996; Pendakur, 1990). Political economists research various media ownership issues including consolidation, diversification, commercialization, internationalization, globalization, and public versus private media systems. Ownership concentration is a central theme to a political economy of communication since the owners of media institutions form a group whose interests strongly influence what shapes and defines culture (Magder, 1996; Mosco, 1996; Pendakur, 1990).

The communications industries are becoming increasingly dominated by conglomerates with significant stakes in a range of major media markets giving them an unprecedented degree of potential control over the range and direction of cultural production (Murdock, 1982). The increasing reach and power of large communications corporations gives a new urgency to the

long-standing arguments about who controls them and whose interests they serve (Murdock, 1982).

Concentrated ownership is a central characteristic of the motion picture industry. Throughout history, theatrical exhibitors have been inclined to concentrate horizontally and film distributors, vertically (Waterman, 1982). Vertical integration occurs when one particular firm acquires controlling interest in other companies that are part of the same vertical supply chain, expanding into different levels of the same industry (Doyle, 2002; Hoskins, McFadyen, & Finn, 1997).

Hollywood studios have oligopoly control over the film business (Wasko 2005; Currah, 2006). The Hollywood industry exhibits two central features of oligopolies: “there is a limited degree of product-based competition; and the lead firms regularly co-operate to enhance the exposure and value of their products” (Currah, 2006: 441). Dominance is maintained through “control over film distribution as well as pursuing various strategies to reduce risk and protect and promote their products” (Wasko 2005: 17). As Magder (1989) suggests, the basic fact that the term Hollywood “refers to both the most dominant film production and distribution companies in the world and to the dominant form of filmmaking itself is proof positive of these trends” (279). Though independent production exists, the majors set the agenda and “reap the bulk of the rewards” (Wasko 2005: 17).

A. 2. Political Economy of Motion Pictures

Political economy places motion pictures within a social, economic, and political context and are “critiqued in terms of the contribution to maintaining and reproducing structures of power” (Wasko, 2005). Films are communicative and cultural resources as well as an economic

means of the reproduction of capital. Since they are both a “tangible product and an intangible service” (Pendakur, 1990: 39-40), motion pictures are unique commodities that are “produced and distributed within a capitalist industrial structure” (Wasko, 2005: 10).

Laissez-faire economics argues that “the invisible hand of the free market dictates what film and TV products are produced and how they are distributed” (Kunz, 2007: 5). This perspective proposes that the film industry functions like any other capital seeking entity and the major distributors act with no bias against commercially promising Canadian films and that the only restriction placed upon these films is their own merit (Globerman, 1983; 1991; Globerman & Vining, 1987). There is, however, an intra-industry pressure to maximize audiences and revenues that produces a consistent tendency to avoid the ‘unpopular’ and draw instead on the values and assumptions which are most familiar and most widely legitimated.

A long standing myth has been perpetuated by the dominant distributors and exhibitors that “it was not the structure of the industry and the market relationships that precluded Canadian films in the national market but their ‘poor quality’...” (Pendakur, 1990: 155). This free market or consumer choice rationale, however, assumes free and open competition between US and Canadian firms and, therefore, masks structural impediments to Canadian films accessing their own domestic theatre audience (Pendakur, 1981, 1990). It does not ask: “which cultural products are on the shelf?” or “what choice do moviegoers have?” (Gasher, 1992: 1). People can only consume the cultural products that are advertised and made freely available to them. While the Hollywood motion picture industry would have one believe that entertainment options are determined by audience demand, audience choice is constrained and audience preferences are learned through repeat exposure (Wasko, 2005). Only when a film has been given the opportunity to reach its potential audience can it be judged on its own merits (Donahue, 1987).

The popularity of the consumer choice rationale legitimizes concerns that increasing monopolization of the culture industry is leading to limited diversification (Murdock & Golding, 1996). According to Magder (1989), "Increasing concentration and monopolization within the cultural industries have helped standardize and homogenize cultural production" (279). Universal appeal is, however, fundamentally impossible since certain audiences, tastes, cultures and points of view are invariably and systematically excluded (Attallah, 1996). The standardization of media products, therefore, aides in the quest for global corporate extension.

A. 3. Globalization, Spatialization, and Imperialism

Globalization refers to the cross-national flows of goods, investment, production, technology, and information. Countering the concept of globalization is the notion of 'imperialism' which attempts to contextualize the flows, locating them in a setting of unequal power among conflicting states, classes, and markets (Petras & Veltmeyer, 2001).

A modern communications era in which information and entertainment were freely available and freely accessible was envisioned by communications theorist Marshall McLuhan (1964). His notion of the 'global village', however, discounted the existence of power difference among nations. McLuhan did not perceive that the global flow of communication could result in a struggle to maintain cultural sovereignty or act as an enabler of cultural domination.

The push toward globalization was driven by political and economic motivations. Industries benefit from this increased flow of goods and subsequent revenue potential (Mosco, 1996). Spatialization refers to the extension of corporate power and capital across the constraints of space and time. Mosco (1996) argues that spatialization is a key entry point for the political economy analysis of communication since it is achieved through the concentration of corporate

ownership and media concentration which can potentially restrict the flow of communication and limit diversity among media producers and distributors.

The simplest form of concentration takes place when a media firm buys controlling interest in a company operating principally in the same business (Doyle, 2002; Mosco, 1996). Similar companies with similar products and services, and corporate operations often combine to strengthen their mutual business interests. Their aim is to maximize economics of scale and shared resources at one level of production, distribution, or exhibition (Kunz, 2007; Doyle, 2002). With the minimal transportation and distributing costs which create economies of scale, there is no theoretical reason for firms to locate in any one country over another (Jayakar & Waterman, 2000).

Transcending space represents the concentration of institutional power, and a broadening of influence and scope across national, physical, political, and cultural boundaries. Therefore, as stated by Mosco (1996):

Both spatialization and nation-building are political economic processes. Spatialization involves... both the logic of production in the contemporary global economy, and a logic of power concentrating some measure of control over economic decisions in those who, directly or indirectly, hold substantial sway over the political decision-making of nations, regions, and localities (200).

Advanced communication technologies and the rapid transmission of messages, goods, and people allow firms to operate across several borders (Mosco, 1996). This has the effect of letting them transcend the boundaries (political, legal, cultural¹) of their home base (Mosco, 1996). Bringing power to the center of corporate control reduces uncertainties involved with relying on an external companies and markets, and aids in the control of the entire circuit of production/distribution. This extension of power reorders spatial relationships in terms of physical boundaries, the flow of capital, political and organizational alliances, and cultural production.

Imperialism is the process of dominance and dependency between nations. Both cultural dependency and media imperialism emerge from this imbalance of power. Cultural dominance by one state, and its spread of cultural hegemony to another, “accrues almost spontaneously” since it is a “by-product of economic power, prestige, influence, history, and chance” (Sassoon, 2002: 114). Cultural dependency can also “reflect, and may reinforce, imbalances of socioeconomic power among the affluent nations, or among cultures within nations” (Boyd-Barrett, 1982: 175). Sassoon (2002) describes the crucial sign of cultural dominance as: “other people watching your films, reading your books, listening to your music, going to your plays, and imitating them, while you know nothing of theirs” (114).

Media imperialism lends itself to a more specific analysis of phenomena than cultural imperialism. Boyd-Barrett (1977) defines media imperialism as “the process whereby the ownership, structure, distribution, or content of the media in any one country are singly or together subject to substantial pressure from the media interests of any other country or countries without proportionate reciprocation of the country so affected” (117). Media imperialism exemplifies unidirectional flows of media products and influence from a small number of source countries who account for large share of global media influence (Boyd-Barrett, 1977; Schiller 1969, 1991).

The US motion picture industry is a “pioneer in setting the pattern for the one-way flow of cultural commodities to countries around the world” (Pendakur, 1990: 36). Drake (2008) emphasizes that “Hollywood is a transnational industry and the majors have significant distribution interest in international markets” (65). Hollywood should, therefore, be conceptualized as a rights-based industry whereby, the major studios, “...maintain economic

power primarily through their access to and control over global distribution networks, where these rights are exploited” (81).

Sassoon (2002) proposes that the US became the largest exporter of culture primarily because of its sheer industrial capacity and the size, complexity, and diversity of its domestic market, but more importantly due to the scale of its corporations and “the will of its administration to help and nurture them” (125). From the early days of the industry, the US State Department supported Hollywood’s international aspirations not only because they were promoting trade in domestic goods, but more importantly because they were promoting the ‘American way of life’ on a global scale (Trumpbour, 2008: 210).

Litwak (1987) alludes to the power of film to facilitate the spread of American imperialism around the globe. He states that:

While a single film rarely has a demonstrable impact on society, the cumulative effect of movies is pervasive. Movies have the ability to mold people’s perception of the world they live in. They reach far more people than books and plays and can do so in a more compelling manner than any other mode of mass communication. They have greatly affected how the world views America and have effectively promoted American values, life-style and products (307).

In *Mass Communication and American Empire*, Schiller (1969) traces a long history of American global dominance across various media. Schiller’s main claim is that the global media *are* American. Schiller’s works in the early 1990s painted an even darker picture than before. He states that though “American national power no longer is an exclusive determinant of cultural domination ... [it is evident that] transnational corporate cultural domination... [is] marked by American input” (Schiller, 1991: 13, 15). Today’s world market economy, he argues, “has evolved from, but retains the central characteristics of, the original American pattern” (Schiller, 1992: 39).

The height of power and the absence of choice or low power positioning of certain countries is most evident in extreme cases of media imperialism “where resistance to imported

media models is so low that one may say that their media systems are simply extensions of the media system of another country” (Boyd-Barrett, 1977: 120). While very little is known about actual media effects in relation to cultural dependency, media structures are directly linked to other structures of international dependence (Boyd-Barrett, 1982).

A. 4. Canadian Political Economy and Cultural Dependency

As a stream of political economy analysis, Canadian political economy is a debate about the relationship between culture, politics, and class, as well as an examination of the role of the state in Canada’s relatively slow industrial development by considering both its dependence on exports of staples and its geopolitical relationships to Britain and the US (Marchak, 1985). In examining foreign ownership, regional disparities, and class struggle, Canadian political economy views social institutions as the instruments of those who occupy elite decision-making positions and who manipulate them to their own narrow interests. Canadian political economy research has sought to reveal these structures and the patterns through which they are developed (Clement, 1997).

Magder (1993) asserts that throughout its history the Canadian economy has had “a heavy, almost exclusive reliance on foreign capital and goods. The Canadian political economy has been, and continues to be, the prototype of dependent industrialization among liberal democracies” (4). Canada as a case study is deserving of specific attention because “no country in the world probably is more completely committed to the practice of free flow in its culture and no country is more completely its victim” (Smith, 1980: 54). Without state protection and facilitation, Canadian cultural activities would succumb to commercial pressure from the marketplace leading almost inevitably to continental cultural integration (Magder, 1989).

The Canadian motion picture industry is one of the clearest examples of dependent development in the cultural sector. Examining the history of foreign control over Canada's film distribution and exhibition industries reveals that dependency on foreign cultural products remains a critical factor in Canadian cultural life. Canada has always been considered another section of the US theatrical marketplace (Magder, 1993). The Canadian motion picture industry was created by US media giants extending their industry further north. Canada's film industry was, therefore, designed, and has been maintained as, a branch plant of the Hollywood distribution, exhibition, and production system (Magder, 1993). Success of the Canadian exhibition industry is both fuelled and dictated by foreign product. Acland (2002) suggests that, while a passport may not be necessary to enter one, the Canadian movie theatre is essentially international territory because of a "near total integration with US cinema culture" that has been created by industrial structures of production and distribution and reinforced by US-based, "movie magazines, TV shows about movies, the advertising, the Hollywood press junkets, the star interviews, the awards ceremonies, the popular criticism, the scholarly analysis, and so on" (14).

Though there are defense mechanisms at a state's disposal to combat cultural imperialism including economic policies that support subsidization and protectionism, the efforts to develop an indigenous Canadian cinema have been hampered by media and cultural imperialism on the part of Canada's powerful neighbor and the dominance of the Hollywood product and industry. Political economy analysis reveals the political and cultural implications of this dominant/dependent relationship, the many mechanisms used to sustain this market dominance, the historical interaction between the industry and the state, and the state's involvement in the

spatialization process through both the enforcement and lack of enforcement of policies and regulation.

B. The Complexities of State Policy for the Cultural Industries

There exists a central difference between how Canada and the US perceive their respective media industries. In Canada, arts, cultural, and media all fall under the category of the ‘cultural industries’, while in the US media is part of the ‘entertainment business’ (Hoskins, et al., 1997; Grant & Wood, 2004). Even when presented as entertainment, all narrative media products express ideologies and reinforce gender and social roles (Wasko, 2005). Motion pictures in particular, are unique because they “carry ideas and have the power to impart them to the viewers” (Pendakur, 1990: 36). This uniqueness lies in the existence of external benefits: unintended positive side-effects which arise from consumption of the products.

For television and film to have external benefits, viewing by one person must generate benefits to other members of society through improved social interaction, an increased sense of identity, or awareness of community themes and values (Hoskins, et al., 1997). Governments which are motivated toward cultural intervention see these benefits as a bridge between the economic and cultural development approaches to public policy for the cultural industries (Hoskins et al., 1997). State level intervention within the cultural industries is motivated by two general objectives: sovereignty and economic growth (Groupe Secor, 1994). There is, however, constant debate between cultural development policies and the goals of the open market economy in Canada (Audley, 1994). Here the value of the cultural sphere is more than just its contribution to the Canadian economy; there exists an intrinsic belief that cultural products embody and express values of citizenry and nationalism (Acheson & Maule, 2003).

The 'cultural sphere' incorporates both the traditional arts (theatre, dance) and the cultural industries (television, news medium, cinema) equally. It is through engagement in these activities and cultural practices that we gain our identity and the awareness of others. Raymond Williams (1981) defines culture as "the signifying system through which necessarily (though among other means) a social order is communicated, reproduced, experienced and explored" (13). Culture is determined by the liveliness of the exchange of ideas, images, interpretations, and experience among those who share that culture with the world. Culture is important to society because of its function of creating social awareness and ideological values and distinctions (Magder, 1989). As Kunz (2007) claims, "...examinations of the cultural industries often times ignore the degree to which oligopolies control the production and distribution of motion pictures and other products that present values, ideas, and ideologies" (107). Though the world media marketplace is dominated by large and diversified transnational corporations, market forces are also dictated by the state which, particularly in Canada, "plays a crucial role in both the production and regulation of cultural products" (Magder, 1993: 10).

The Canadian government sees cultural and media institutions as "fulfilling an indispensable public purpose" (Mandate Review Committee, 1996: 25) and the principle instruments for social and cultural exchange (Canada, 1987). As instruments of cultural exchange, communications media have implications for how we imagine and experience place, define community, and constitute identity (Gasher, 2002). Films can be an important part of cultural heritage since they inherently promote a country's language, customs, and attractions, and can reach audiences worldwide (Litwak, 2004).

The Canadian state also supports film as a form of cultural expression. Canadian film policy has been driven by the belief that culture is important to us as individuals and as a nation

(Canada, 1998). According to the publication *Making Our Voices Heard: Canadian Broadcasting and Film for the 21st Century*:

We need Canadian programs and films to enable our citizens to understand one another, to develop a national and community consciousness, to help us shape our own solutions to social and political problems, and to inspire the imagination of our children and express their hopes (Mandate Review Committee, 1996: 23).

Collins (1999) points to a ‘double determinism’ that perpetuates the belief that audio-visual fiction, TV drama, and feature films are of huge importance to the identity of the Canadian citizen. In Canada there are two pervasive assumptions that, firstly, media consumption determines attitude and behavior formation; and secondly, that this cultural identity chiefly shaped by media consumption, determines political identity. Through this reasoning, failures of the Canadian media are believed to matter greatly because they are presumed to threaten the survival of Canadian nationalism.

Globerman (1983) states that “the most intrinsic form of argumentation for government intervention into cultural activities maintains that the promotion of culture is necessary for national survival and that the state has a responsibility for ensuring the survival of artistic markets” (37). Policy for the cultural industry is, therefore, necessary to make up for market discrepancies in supply or demand. Such policy rationale aims to create supply by funding artists and their works or create demand by encouraging the development of a larger audience. Typically, governments intervene in cultural production through a number of forms including benefits to investors to encourage national production, and grants and loans for individual visual artists and filmmakers (Litwak, 2004).

Canada’s cultural industries are subject to two different policy frameworks: cultural and industrial. Cultural policies are those which restrict foreign ownership and monopolies. They encourage domestic producers to concentrate on products intended for a local audience while

securing national self-expression and a diversity of ideas. Industrial policies, also known as economic or facilitative policies, are those which deliver support measures and direct government funding for various forms of cultural activity (Hogarth, 2002; Lormier & McNulty, 1996).

Within these two policy structures, the Canadian government guides the production and distribution of communications through four general modes of intervention. The state operates as a proprietor in the sense that it owns and operates production-based institutions such as the National Film Board (NFB) and public broadcasters the Canadian Broadcasting Corporation (CBC) and la Société Radio-Canada (SRC). It acts as a patron by directly funding privately owned cultural activities including the performing arts through such institutions as Canada Council for the Arts and Telefilm Canada. The Canadian state also acts to encourage financial investment in Canadian culture through the provision of tax incentives for Canadian businesses and private investors. Finally, Canada utilizes state media regulation and law to protect and promote Canadian cultural life and a sense of national identity (Magder, 1989).

Canada's cultural policy involves a series of protectionist and promotional measures which:

Have aimed at creating a Canadian market separate from that of the United States. These policies restrict the inflow of content from the US, either directly or indirectly, control foreign ownership of firms engaged in production and distribution, encourage the production of Canadian content and assure that it is given 'shelf-space' by distributors (Acheson & Maule, 2003: 2).

The structural remedies of film distribution that have been introduced include antitrust initiatives, proprietary policy measures, and indirect or direct subsidies.

To understand the motivations for state intervention in the cultural sphere one must consider the complexity of state objectives. Magder (1993) points to a difficulty in balancing cultural and industrial goals on the part of the Canadian state:

The problem of developing a suitable set of state activities is only exacerbated when cultural goals are linked to the goal of economic growth (or vice versa). For one thing, economic goals are much easier to pin down and quantify. Cultural goals resist easy classification and measurement. For another, cultural goals, such as an increase in Canadian feature film or dramatic television production, may exist precisely because the marketplace itself has failed to deliver the desired material in the desired amount. The attempt to resolve these competing objectives is a bureaucratic nightmare of the first order (11).

The role of the state is further complicated by the existence of social, economic, and political interests within a capitalist democracy which place limitations upon state intervention. Influential actors have had great opportunity to press their interests upon the state. Film industry players (distributors, exhibitors, and producers) act most often in their private interests – their values embody the pursuits of capital and the promotion of production and consumption, not the values of ‘cultural nationalists’.

5. Background Information: The Vertical Supply Chain

Examining the vertical supply chain of an industry reveals the different stages in producing and supplying a product to the consumer. Industry activities take place in an ordered sequence starting from the creation of the product then moving upward through the process toward its final consumption (Doyle, 2002). In the motion picture industry the vertical supply chain has three basic phases: production, distribution, and exhibition.

Other tangible retail products and films follow a similar path to reach their end consumers. All products undergo a research and development stage. When a film is referred to as being ‘in development’ this is the film’s initial conception phase of story and script, rights acquisitions, and the signing of creative players. The development phase sees many promising ideas shelved because investment in the final product is deemed to be too much of a financial risk. Since feature films are too expensive to produce without consideration of how they will reach and will be received by the public, this often due to a perceived lack of market interest.

It is important to note the difficulty in divorcing the film distribution and film exhibition industries. The relationship is so mutually dependent that decisions that ultimately affect one sector are often made by the other. It is now most often the distributor who assesses the variables of theatrical release. Theatre operators have varying degrees of control over the supply of pictures available to them and the strategies for their release. The timing of theatrical film releases and decisions as to whether a particular film is given a wide or a platform (single market) release are made primarily by distributors though the seasonal scheduling and the choice of particular types of films shown (genre, budget size, star power, etc.) and how they are grouped on their opening weekend also effects the exhibitor. Distributors also plan and execute the marketing campaigns for films though it is essentially these campaigns that bring audiences to the theatre. But both exhibitors and distributors alike rely on box-office hits in order to sustain profitability and the demands of both sectors drive and direct the progress of the film industry.

A. Exhibition: The Value of the Industry

Movie theatres represent the motion picture industry's primary and most significant point of sale. As no significant price difference or product differentiation exists between the various exhibitors, moviegoers are generally not brand conscious and usually choose a theatre based on its location, the films showing, show times available, and the theatre's amenities. In the past decade theatre auditoriums expanded, screen size grew, sound systems became clearer and louder, and picture quality got a technological overhaul. To circumvent the narrowing of the theatre audience because of increased leisure and entertainment options, exhibitors have turned to marketing an overall 'multiplex experience'.

For the greater part of the last century, two formerly American-owned firms have dominated theatrical exhibition industry in Canada: Famous Players and Cineplex Odeon. Together, the two chains have earned two-thirds of Canada's entire theatre revenues (Canada, 2000). These two chains were initially created by Canadians but were first sold to foreign ownership in 1930 and 1945 respectively.

Between 1920 and 1930, Famous Players was the biggest player in a "buyers market" and was able to exert tremendous power over the industry (Pendakur, 1990: 74). With a majority of Canadian theatres under Famous Players' control, maintaining a good relationship with this exhibitor was essential to the success of the major studios looking to exploit distribution opportunities in Canada. With a near monopoly position, the majors were not able to exercise their risk reduction practices of blind and block booking in negotiations with Famous Players, who retained the right to view and to reject film offerings (Pendakur, 1990).

Since there was no domestic motion picture production industry in Canada until the end of the 1960s, of the films shown in any given Canadian theatre during the first part of the century nearly 100 percent were imported products. Typically 60 percent were from the US and the remaining 40 percent were British or French in origin (Pendakur, 1990).

During the tax-shelter era of the 1970s, Famous Players and Odeon Theatres had dominant market power in Canadian exhibition (Pendakur, 1990). In 1977, Odeon Theatres was once again bought by Canadian interests. Two years later a new competitor appeared on the scene when, in 1979, producers Nat Taylor and Garth Drabinsky opened the first Cineplex theatre complex in Toronto's Eaton Centre. Cineplex was an 18-theatre multiplex – one of the first – but it faced a supply bias from Hollywood distributors who preferred to maintain their loyalties with Famous Players and Odeon Theatres and only provided Cineplex with second-run

films. In 1982, Drabinsky filed a complaint on behalf of Cineplex with the Restrictive Trade Practices Commission (Robinson, 2005).

The Commission was asked to order the studio distributors (Columbia Pictures Industries, Inc., Paramount Productions Inc., Universal Films, Warner Bros. Distributing (Canada) Ltd., United Artists Corporation, and 20th Century-Fox Film Corporation) to provide Cineplex first-run films and to adopt a more open process for distributing films (Acheson & Maule, 2003). A year and a half later, as the official hearing was to begin, the six major US distributors reached an agreement with the competition policy authorities and Cineplex.

In a joint statement, the studios promised to employ more competitive practices in the future (Robinson, 2005). The studios conceived an open bidding system that, on a picture by picture basis, would:

... make less expansive clearances, provide estimates of patterns and length of runs to all bidders, not tie exhibition assignments in one area to the granting of rights in other areas, not collude to limit runs after the first, hold independent auctions for different runs, and open additional facilities for exhibitors to view films before bidding on their exhibition rights (Acheson & Maule, 2003: 21).

As the new bidding system was to be implemented in 1984, Cineplex acquired Odeon's large chain of theatres. Competition for first-run Hollywood movies was once again effectively reduced to two major chains and the previous anti-competitive distribution practices "were gradually reinstated without eliciting formal complaints from other cinemas or from the competition bureau" (21).

A long series of mergers and acquisitions defined the history of Cineplex Odeon and Famous Players over the next three decades. After expanding into the US, Cineplex Odeon came under American control again in 1986 as it was vertically integrated by MCA, the parent company of Universal Studios, who acquired 49 percent of the company. Meanwhile, Famous Players was also integrated into an international media conglomerate, Viacom (owners of

Paramount Studios/Pictures), in 1994. Loews Theatres (under the Sony umbrella of companies) acquired Cineplex Odeon in 1998 to form Loews Cineplex Entertainment.

In 1998, former Cineplex Odeon executives Steven Brown and Ellis Jacob partnered with Onex Corporation to found new Canadian exhibitor Galaxy Entertainment. Soon after, in 2002, Onex acquired Loews Cineplex Entertainment and the Canadian assets of Cineplex Odeon were merged with Galaxy to create Cineplex Galaxy LP. Two years later, the new partnership's Loews Cineplex holdings in the US were sold to American ownership. Canadian control of Cineplex Galaxy LP was maintained and, in 2005, Cineplex Galaxy acquired Famous Players for \$500 million, changing its name to Cineplex Entertainment.

Concerns on the part of Canada's Competition Bureau soon arose. As a result of the Bureau's investigation, Cineplex agreed to sell 34 theaters in 17 key markets. The majority of which (27 locations) went to Empire Theatres. The Competition Bureau also restricted Cineplex from acquiring any new theatre chains for the next five years (Industry Canada, 2005).

Cineplex Entertainment gained a high degree of concentrated economic power after buying Famous Players in 2005. They now own multiple brands in all the key urban markets.³ The competing majority of the smaller chains and independents are located only in rural and suburban Canada, not in the key markets. [See Table 2]. What differentiates exhibition chains as dominant or minor players is not merely their total number of theatres or screens, but "the location of their theatres and their command of first-run US films" (Pendakur, 1981: 51).

One of the largest obstacles to the growth of cinemas is their dependence on distributors to bring them good movies. Waterman (1982) suggests that "A large market share is essential to

³ Cineplex Entertainment operates theatres under the following brands: Cinema City, Cineplex Odeon, Coliseum, Colossus, Famous Players, Galaxy, SilverCity, and Scotiabank Theatres. They are located throughout Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, and Quebec. See TABLE 2 for theatre ownership chart.

the exhibitor. Otherwise, good films are difficult to obtain from distributors at favorable prices, making survival in the market difficult” (18). Though the value of the motion picture industry is measured in the revenues from theatrical exhibition, distribution is the most essential step in the supply chain. In the motion picture industry, power comes with the dissemination of the content both for its economic and ideological value; distribution is the core process and source of power.

B. Distribution: The Nexus of Power

Distribution is one of the least understood aspects of the contemporary motion picture industry. While it is true that “the average filmgoer knows very little about distribution and the distribution function” (Hoskins et al., 1997: 52), the central role of the film distributor predates the introduction of *talkies*, the first films to incorporate sound and dialogue (Kunz, 2007).

Films are a high risk financial investment because the consumer value for a product is learned only after the production phase is complete. Nobody knows the value of a project until most or all of the financial resources have already been committed to it (Caves, 2000). Like other artistic and cultural products, films are experience goods with subjective value. In advance of viewing a film, it is difficult to observe its quality in relation to its cost. With each new stage of the supply chain, “one party makes a decision about sinking more resources into the project, while the previous contributors’ investments are wholly sunk. Decision rights efficiently lie with the party about to contribute still-fungible resources” (Caves, 2000: 15). The last investment stage, distribution, is in essence better equipped to make quality judgments on the final product. It is at this stage that key decisions are made regarding an individual film’s merit or entertainment value, potential viewing audience, marketability, and profitability.

What is encompassed by the term ‘distribution’ varies. It may include participation in developing, financing, marketing, advertising or promoting the film, or may only involve contracting with cinemas (Acheson & Maule, 2001). Essentially, the distributor acts as an intermediary between producer and exhibitor. Distributors acquire the rights to a film property and then sell the exhibition rights to, potentially, several different media markets (Globerman & Vining, 1987). Producers rely on distributors to sell their product to exhibitors, while the distributor negotiates with the exhibitor to acquire the best possible play dates and secure the greatest number of theatres on the best possible terms in order to maximize a film’s revenues (Weinzweig, 1987).

The logistics of film distribution require first and foremost that the distributor acquire the many materials needed to release a film. This involves the manufacturing of the release print – the actual reels of film that need to be produced for each screen on which the film will play. For a specialty film or a Canadian film that is scheduled for a limited opening release, six to ten film prints are ordered initially. For wide-releases the number will range from 30 to 200 prints for their Canadian theatrical opening. The distributor may handle the assembly of the film’s credit reel and the dubbing of the film into other languages (Weinzweig, 1987). Distribution is a crucial part of the film industry because, with no go-between, the scheduling, negotiation, and shipping costs for the many producers and exhibitors worldwide would be too large to be economically sustainable (Hoskins et al., 1997). This unifying role is what has led those in the industry to argue that while content creation and exhibition are essential to the process, “distribution is king” (Grant, 2007).

The marketing campaign for a film “attempts to both anticipate and create demand” (Drake, 2008: 66). In few other industries does the wholesaler have as much influence on the

amount of consumer demand for products. Distributors are responsible for a film's prints and advertising (P&A). Creating the number of film reels to be shipped to theatres and the marketing and publicity materials for a film is the sole responsibility of the distributor. Film marketing involves the creation of press kits, theatrical trailers, print advertising materials, dedicated Internet websites, and newspaper ads. Publicity involves arranging for cast and crew interviews with media outlets and film reviews. Promotion may also involve film-specific promotional campaigns such as contests and sponsorships (Weinzweig, 1987). Such publicity is usually free and is more trusted by audiences as it offers validation of a film's quality that is out of the distributor's control.

Since "marketing a film involves conceptualizing it as a brand", film marketing comprises the following activities: product marketing, advertising, and promotion; market research; publicity; and merchandising (Drake, 2008: 70). Marketing strategy involves the creation of promotional materials, taglines, advertising trailers (the most costly element), and buying media space (often outsourced to agencies/media buyers). The cost of a trailer can be upwards of \$250,000 (US) not including the 20,000 plus prints of the ad which need to be created and shipped to theatres. Airing a trailer on network television in the US can cost upwards of \$600,000 for a thirty second commercial spot (Drake, 2008). However, trailers are an essential marketing tool as they reach 100 percent of the target audience (Loewy, 1995).

For every film there is one important question the distributor must ask: "How much can we spend to give the film a decent chance, yet still leave ourselves room for profit" (Loewy, 1995: 59). Advertising outlays increase the film's cost of production, the prevalence of stars, and the awards it has won. Ad expenditure is often larger for comedies and action films in which content is easier to communicate through print ads and short clips on TV (Caves, 2000). The

central focus of the campaign is on the initial release date. The size of the marketing campaign has proven a successful indicator for opening weekend revenues, but longevity of the film's theatrical run depends heavily on word-of-mouth and reviews. It is the distributor's philosophy that after a few weeks in theatres a film should sustain itself. Therefore, further mass media advertising for a film is done only sporadically "to remind people it's there" (Cianciotta, 1995: 152). There is only one way to gauge the results of a marketing campaign release: "the money rolls in or it doesn't. By then it's too late [to rethink the marketing strategy]" (Loewy, 1995: 59).

There are two types of distributors: the major Hollywood studio distribution firms, which specialize in the distribution of internationally marketed big budget films; and the national and regionally focused distributors, who are more decentralized and use culturally adapted advertising and promotion materials (Acheson & Maule, 2001). For producers, the choice between selling a film to a large or independent distributor comes down to how knowledgeable they are. Weinzwieg (1987) suggests that the independent distributor in most parts of the world is "more knowledgeable about releasing pictures in their own market and may be more committed to producing a profitable result in the territory where they work and live" (158). Independent distributors have the advantage of less overhead, as they typically do not invest their own money in productions. Though independent films tend to aim at a specialized audience, there is always the potential for a film to exceed expectations and reach a mass audience, financially rewarding the independent distributor (Donahue, 1987).

To explain the skewed size of distribution firms in the creative industries, Caves (2000) distinguishes between two groups: pickers and promoters. 'Promoters' have extensive resources to provide large scale distribution and advertising services. 'Pickers' offer specialized and personalized attention to the product and advertise to a specific and localized market. The major

factor which differentiates their revenues is the varying degree of importance each group places on bureaucratic versus artistic goals or their inclination toward creative products with artistic value as opposed to purely commercial value.

The major studio distributors are far more than promoters and middlemen. Majors have large roles in the financing of a film from the early stages of creative development. As Strauss Zelnick, former President and COO of 20th Century Fox has said, “The bulk of our business is financing, distribution, and accounting. We have a huge staff that does nothing but licence our pictures in all markets around the world” (Quoted in Drake, 2008: 75). According to prolific Canadian producer Robert Lantos, control over distribution is Hollywood’s hold on this otherwise uncertain business:

By their own admission, the studios lose money on four out of five films. They can’t recoup their costs. It’s a terrible business if you look at it from that point of view. What makes it a business is the distribution side: distributing thirty, forty, or fifty films a year, acquiring a very modest portion of the production costs, charging fees off the top, and building a library to recycle the product. That’s how Hollywood makes money (Quoted in Spencer, 2003: 188).

Since moving away from in-house production, “studios essentially function as specialized banks, lending money to produce worthy projects and then distributing the finished product” (Litwak, 1994: 7). In fact, financial institutions will rarely invest in a production unless the producer has first procured a distribution agreement (Kunz, 2007). In 1921, John E. Barber, head of the First National Bank of Los Angeles, was quoted as saying: “... the distribution or marketing of pictures is of far more importance commercially than production. Films do not sell on their intrinsic excellence alone” (Quoted in Kunz, 2007: 112). With such financial influence, the majors are the ‘gate keepers’ of the film industry having the means to determine what is produced by whom and under what conditions (Audley, 1983; Globerman & Vining, 1987).

The majors know that distribution is a “critical factor in their global success” (Hoskins et al., 1997: 51), and strategize to ensure that their products reach the maximum number of

consumer markets as possible. Though key strategic business decisions including release strategy, play dates, and size of the theatrical rollout are determined by the parent studio's US headquarters, a studio's Canadian office fulfills several market-specific functions. Studio offices in Canada arrange viewings of films for Canadian exhibition chains and, based on these screenings, negotiate the number of screens and the placement of each film in specific theatres across the country. They track Canadian box-office revenues and collect statistics, coordinate and facilitate the shipping of film prints to Canadian theatres, and their publicity divisions implement localized promotional and advertising campaigns. To maintain good relations with both Canadian exhibitors and the Canadian government, studios feel it is best to have localized representatives who are knowledgeable of the Canadian marketplace, economy, and bureaucracy.

Access to large sums of capital allows the majors to enjoy several efficiency advantages. They can identify, promote, and adequately fund mass appeal 'blockbuster' films, and have the ability to choose, and have success from, wide theatrical release strategies (Simonoff & Sparrow, 2000). Major studios monopolize screen time by producing a limited supply of films themselves and distributing even less of those produced elsewhere by other majors or independent companies (Globberman & Vining, 1987; Pendakur, 1990). Each year a limited number of so called prestige pictures are produced. These films receive the marketing push of award shows and critical praise and help to establish and maintain the appeal of star actors and leading directors. Though some of these films do not attain success at the box-office, the award-caliber films grab the attention of the movie-going public (Litwak, 1987).

Majors also enjoy a cumulative preference by consumers for their products (Hoskins et al., 1997). Since consumers have no way of telling the quality of a film before viewing it, distributors have developed means to avoid potential problems with consumer demand. The first

method is using reputation as a proxy measure for quality (Hoskins et al., 1997). Initially the consumer seeks two main pieces of information about a film: its target audience and quality (Hoskins et al., 1997). The early Hollywood studios established brand recognition and brand identity through their specialties in genre. Later such studio branding became associated with a film's leading actors since each studio had contractual access to specific star performers.

Though the Hollywood star system has changed since the early days of studio in-house production, star power is still harnessed by studios through contracts which stipulate an actor's exclusivity to specific distribution firms (Litwak, 1987). In the 1980s, when his celebrity status was at its height, Eddie Murphy had a six picture deal with Paramount whereby his acting services were contracted out exclusively to Paramount-financed productions. The current norm is a three-picture deal between talent and production firms.

Consolidated studios, such as 20th Century Fox and Sony Pictures Entertainment, are able to easily funnel film projects through their subsidiary production firms. Output deals exist between Fox and certain filmmakers such as Luc Besson, but the vast majority of the films distributed are Fox-financed productions. 20th Century Fox does, at times, sub-distribute for smaller firms such as Walden Media and New Regency Productions.

When Bruce Willis finished his three-picture deal with Disney with the smash star vehicle *The Sixth Sense* (1999), Willis partnered with the former Disney executive who hired him, Joe Roth, to form Revolution Films. In 2000, with financial backing from Sony Pictures Entertainment, one of Revolution's first moves was to make a three-picture deal with actress Julia Roberts. Even actors who may not yet be household names are becoming fastened to studios. In October 2008, Sony subsidiary Screen Gems made a three-picture deal with *Star Wars* franchise actor Hayden Christensen. Talent also comes in packaged deals as exemplified

by the pairing of comedy actor Will Ferrell and director Adam McKay in a three-picture deal with Sony that saw the films *Anchorman* (2004), *Talladega Nights* (2006), and *Stepbrothers* (2008) released through Sony-owned Columbia Pictures. Such arrangements may point to the power and influence of Hollywood agents since the 1950s (Litwak, 1987). The large sunk cost of multi-film deals is a key motivator for studios to seek the optimum accommodations from exhibitors for their releases.

The major's perceived expertise in providing in-demand and star-driven products often prompts the exhibitor to rely on the reputation of the distributor "rather than the innate quality of an individual property" when making their purchasing decisions (Globerman & Vining, 1987: 62). Exhibitors are inclined to view the majors' exclusive rights to talent in addition to their expensive promotional campaigns as incentive to give them preferential treatment. A distributor's past performance is the only way to determine how well the distributor will represent their film, therefore, "since the major distributors have a good reputation with respect to their ability to market mass-appeal films, producers will prefer to transact with them" (51).

Canadian distributors and producers do not have such marketable claims to tradition and access to the same branding power as the major Hollywood studios. Foreign producers looking to reach the North American market may even take a lower percentage of box-office gross when signing with one of the majors as it is likely to better promote their film and earn higher revenues than a Canadian firm can within the Canadian or world markets.

C. Industry Negotiations

The motion picture distributor has both supply-side and demand-side functions. Each motion picture is an individual business venture, consequently, each film product is affected by a

new set of distribution and exhibition negotiations and the industry's supply structure is constantly negotiation between firm-level players. Supply-side activities consist of determining saleable characteristics of a film and acquiring rights to a broad range and steady supply of film product. Demand-side strategies are concerned with identifying the optimal distribution strategy for a film and capitalizing on the potential for audience demand (Finn, McFadyen, & Hoskins, 1994).

Historically Canadian distributors have faced challenges to procuring and maintaining a steady product line. Additionally there have been four main hindrances affecting the Canadian firm's demand-side possibilities: booking high demand release dates, booking key theatre locations, finalizing booking early enough to allow for an effective promotional campaign, and coordinating dates in different theatres for maximum promotional effect (Globerman & Vining, 1987).

The industry's unique system of organizational and negotiations arrangements, including film release strategies and the typical terms of negotiated distribution deals, are based on the historically solidified business practices that have been in place since the early days of the Hollywood film business. Working within the confines of the North American theatrical market has limited the decisions, negotiation strategies, and the supply and demand possibilities of Canadian distributors.

C. 1. Industry Profit Arrangements

In economics, the theory of contracts addresses why self-interested parties/actors structure contractual arrangements as they do (Caves, 2000). Business deals are generally constructed in the presence of asymmetric information where one party has more or better

information than the other. Negotiations often see an imbalance of power between parties based on privileged knowledge of the quality of the product. In the film business, the parties of contracts make investment decisions based on what Caves (2000) calls “symmetrical ignorance” because the quality and potential demand for the finished product cannot be known until opening night at the box-office (2).

a) The Distribution Deal

The distribution deal is the first step in the quest for box-office success. This document is the first indicator of how the profits of a film will be shared among the vertical supply chain. Finance and distribution deals are negotiated and defined on a film by film basis. The specific arrangements depend on such factors as the source of the production funds, which party is responsible for promotion and advertising, and at what point in the production the agreement is reached. There are five major types of distribution deals which are employed in the majority of cases. These categories help to structure the deal to meet the producer’s financial needs and to take the risk factor out of the distributor’s profit potential.

In-house production/distribution happens when a studio production is approved with financing support by a studio distributor in the development stage of the production. *Production-financing distribution* sees an independent producer bring a project already in the development stage to a studio distributor who provides production and distribution funds. The majority of the time the distributor is ‘the last money in’ at the production phase. This means that the distributor provides the last piece of the finance puzzle by giving a producer a distribution advance. The production uses that capital to get a bank loan for the rest of the budget needed to finance the film. The distributor then owns all distribution rights (across all markets) to the film upon

completion. An *acquisition deal* is arranged after the film is completed, and the role of the distributor is to package, promote, and deliver the film to theatres. In a *rent-a-distributor* situation nearly all costs of production and promotion are incurred by the producers and distributors take less responsibility for the profits of a film (Cones, 1997).

For independent producers the most common form of distribution is the *negative pickup deal* (Hoskins et al., 1997). Here the distributor only provides distribution, advertising and marketing costs, but this agreement helps the producer to secure third party production funding (Cones, 1997). In a negative pickup deal, the distributor will often agree to give the producer an advance of his share of the profits, as they are buying the film rights and the physical film itself (the negative) outright (Hoskins et al., 1997; Litwak, 2002). It may look like the producer is taking a gamble on the potential success and profits of the film, but “producers will want to obtain as large an advance as possible because they know they may never see anything on the back end of the deal (i.e., no profits)” (Litwak, 2004: 1) and they can use this money to repay investors right away.

From the studio’s point of view purchasing a completed film has the least amount of financial risk associated with it. In the negative pickup deal the cost of production is absorbed by the producer. The film is bought outright by the distributor which often negotiates the sale so that producers are not part of the profit arrangement from theatrical sales (Litwak, 1987). Negative pickups help the studio maintain inventory. These films often earn mediocre theatrical profits but studios will invest far less in the acquisition of a pickup than in an in-house production. Consequently, the independent pickup has the potential to produce a higher profit margin (Litwak, 1987).

Caves (2000) suggests that “postponing a film’s distribution deal until after completion results in a less uncertain product/investment as the distributor can fully appraise the film’s quality. This may give an advantage to the producer whereby they can elicit better terms of the deal” (111). This may also give advantages to the distributor if the film's quality turns out to be sub par. If the distributor had attached itself in the early stages of what turned out to be a commercially unappealing film, the producer can benefit from the distributor’s inclination to invest more resources into the marketing and promotion of a financially risky film to support their initial investment.

Though distribution contracts vary in terms of which stage in the production process they begin, each deal contains several standard ‘deal points’ to be negotiated (Weinzweig, 1987).

These include:

- The specific rights that are being granted to the distributor. The distributor’s right to exclusivity is spelled out in terms of the formats and various media on which they have the right to rent, lease, distribute, or generally handle a film.
- The definition of the distribution territory. Distribution in the Canadian market may be defined in such detail to include; “Dominion of Canada including its territories, possessions, dependencies, military camps, government installations and schools; hospitals and similar facilities, ships at sea and planes in the air flying the Canadian flag, oil company and construction company campsites in Canada” (166).
- The length of the agreement. Generally a minimum term of seven years. At the end of the agreement the rights revert to the previous holder (the producer).
- The delivery date of materials from the producer to the distributor. This includes the final negative of the film and the supporting print materials for promotion, soundtracks, etc.
- Licences and warranties must be provided by the producer. These verify that he/she controls or owns all rights granted to the distributor and that there are no, “claims, liens, or encumbrances against the picture which might in any way interfere with the distributor’s granted right to distribute the film in his or her territory” (167).

- The distributor's rights to transfer or sub-distribute the picture through subsidiaries, affiliates, or third-parties. This is commonly an issue for distribution into secondary windows if the distributor is theatrical only.
- Terms of nullification – called a default clause. This sets the terms whereby the deal could be legally broken (i.e. if the film is not delivered on time by the producer or if either party files for bankruptcy).
- And, most importantly, the share of the box-office receipts. The actual financial terms and conditions agreed upon by the distributor and producer.

Though motion picture distribution contracts between a film producer and a distributor contain several negotiated points, Weinzwieg states that “It is probably the only industry in the world where a contract just gives you the right to argue” (165).

Just as there is no standard distribution deal, there is no set agreement on what is defined as profit and how that profit is to be shared among the parties of said deals (Cones, 1997). In distribution agreements, the terms profit, gross profits, and net profit are often subjective terms defined within negotiations between those in the position of power to sell and promote the film (distributors) and those looking to recoup on their initial financial and creative investment (producers). Net profits are the remaining figures after the studio has recouped its expenditures from a film's gross receipts (Cones, 1997). Theatrical gross receipts is another contractually defined term which, in most instances, actually means all monies received by the distributor from the sale of the exhibition rights to a film (Cones, 1997).

The distributor's compensation from producers comes in two forms: an overhead charge known as the distribution fee and interest charged on financing loans to production companies. For independent films, distribution fees and expenses are typically the only deductions from the theatrical gross. For films financed by major studios, distribution expenditures usually include: distributor fees, distributor expenses, film negative costs, deferrals, and gross participation

costs which are made up of the percentage of profits that major players like actors and directors often take instead of up front payment for their services (Cones, 1997).

Profit arrangements between the distributor and producer can be set through a number of existing industry scenarios. The *50/50 dollar split* is rarely used today but was quite popular in the early days of Hollywood. Under this arrangement the producer finances 100 percent of the production, the distributor is responsible for all distribution costs, and, starting from the first dollar earned at the box-office, each party takes an equal share and equal risk. The terms of a *modified gross deal* entitled the producer to a financial advance. The distributor then recoups the advance and their expenses before sharing the remaining revenue equally with producer. A very common deal is the *70/30 major deal* in which, after providing a production advance, the distributor takes their expenses off the top then divides the revenues 70/30 in their favor. A variation of the 70/30 deal is the *sliding scale deal*, whereby distribution expenses are taken off the gross then a percentage of revenues is retained by the distribution in subsequent million dollar increments: 70 percent for the first million, 60 for the second, and 50 percent thereafter. The *50/50 net deal* is quite straightforward; the distributor takes their expenses off the top and the remaining net profit is split 50/50 between the parties. The most common deal is the *net deal*. After all distribution expenses and costs are recouped, the producer is given the remaining net profit. This is very risky for the producer if the film underperforms but with a smash hit it gives them the “potential for almost unlimited profits” (Cones, 1997: 31).

The distributor appears to benefit or be in the best position to benefit from each of these profit arrangements. Distributors argue that they are the party which takes on the most risk and it is, therefore, justified that their expenses are recouped first. In most instances this is not the case. Producers who do not get a distribution advance and make a negative pickup distribution deal,

for example, must take the financial burden and the risk of investing in a production upon themselves. It is only when films are privy to in-house production/distribution arrangements (most commonly seen within the major studios) that distributors take the brunt of the risk involved in production financing.

Canadian distributors minimize risk by requiring that producers arrange pre-sales to ancillary markets (mainly broadcast television) that equal any and all investment monies they themselves put into the film's production. The financial risk of distributing a Canadian film comes from their P&A expenditure.

b) The Exhibition Deal

Film exhibition has been likened to buying shelf space in a retail store (Grant & Wood, 2004); however, this comparison oversimplifies the product supply arrangements between the film distributor and exhibitor. In exchange for the right to show a film, the exhibitor gives the distributor a share of the gross box-office revenue. Exhibitors and distributors jointly negotiate the terms of exhibition deals as each distributor and each film has a different price range. It is felt that having a standard deal for all film products would not yield benefits in terms of profitability or efficiency. Standard deals made more sense in the early years of the industry when films had longer, and nearly guaranteed, theatrical runs. Since the current time frame for a film's theatrical life is shorter and less predictable, film-specific deals are more advantageous for both parties. The exhibition deal can see a profit ratio as high as 90:10 in favor of the distributor (Caves, 2000; Grant & Wood, 2004; Hoskins et al, 1997; Litwak, 1994). This *90:10 deal* is usually lessened based on sales percentage goals for each week the film is shown (Hoskins et al., 1997).

The exact terms of the deal depend upon “the quality of the film and the relationship between the distributor and the exhibitor” (58).

The exhibitor makes most of their money from sales at their concession stands but they do take an amount directly off the top of a film’s gross profits for exhibition expenses. This is referred to as the exhibitor’s ‘nut’ and is usually equivalent to ten percent of the box-office gross (Hoskins et al., 1997). Exhibitors receive more profit from films the longer they play in their theatres. Distributors typically receive 90 percent the first week, 70-80 the next two, 50 the next two, and subsequent weeks are negotiated on a week by week basis (Acland, 2003). If the profit arrangement results in the distributor receiving 80 cents on the dollar, the gross revenue will be divvied up thusly: 24 cents is for the distribution fee; 20 for advertising and promotion; 5 for transportation, prints, and taxes; and 30 for negative costs (Hoskins et al., 1997). The remaining pennies may even have to be split between the studio and distributor if there was an advance in financing for the production. As well, lead actors may have negotiated for profit participation in the film and also get a share of what is remaining. The producer will receive what trickles down after the distributor accounts for their expenses. In most cases the producer’s share of the profit will end up in the red (Hoskins et al., 1997).

Exhibitors will often give advances and profit guarantees to distributors for potential blockbuster films (Caves, 2000). Hollywood majors do not have to enter into unfavorable agreements or haggle over the negotiation terms. They negotiate from a position of dominance because of their strong market position and steady supply of product. According to Hoskins et al (1997), “their position is that if exhibitors want access to their films they must honour the standard contract” (58).

Decision rights of the exhibitor have the greatest effect on the distributor’s profits from a

film since exhibitors set the admission prices and have the final word concerning how long a film will play in their theatres. Ticket prices may be lowered by the exhibitor to entice greater theatre attendance without greatly affecting their profits. Distributors prefer a higher ticket price because monies from admission receipts are their sole source of revenue. Caves (2000) suggests that the repeated business interactions between distributor and exhibitor are “smoothed by promises of equitable treatment, they are also policed by threats of termination and the costs of re-contracting that follow it” (167-8).

Exhibitors exert further control of their relations with distributors by being “habitually and strategically slow payers” (168). The untimely payment of the distributors’ portion of the box-office revenue affects independent distributors the most since they are dependent on income from one film to fund the next production in the pipe-line. In *Reel Power*, Litwak (1987) observes that an independent distributor can be “told to wait four months or take a 25 percent [reduction]” in their box-office revenues (257). Distributors will often settle for smaller gross in order to speed up the process of collecting theatrical profits. Studio distributors can threaten to withhold future film offerings to the exhibitor if payment is not given its due process. Independent distributors have no such clout (Litwak, 1987). Majors, with continuous product flow, actually use this slow payment turn around as a form of working capital to secure finances for current productions (Caves, 2000).

C. 2. Distributor Supply-Side Negotiations

Competition for quality film products is fierce. In Canada there are too many players fighting for a limited number of products. Growth and stability are dependent on the availability of viable and profitable films. For successful returns, smaller Canadian distributors need to know

how to exploit niche markets well. Without large sums of capital, they must concentrate on acquiring smaller, artsy, films for the educated, sophisticated, and older ‘baby boomer’ demographic. The overall strategy is to maintain a steady supply of moderate successes in hopes that some will become major hits. Small successes keep moderately-sized Canadian distributors in business.

A film's intrinsic excellence is not the definitive factor in a distributor's choice to acquire it. Proponents of the meritocracy argument, and even their critics such as Gasher (1992), do not mention that the phrase ‘good films’ is not used within the industry itself. What distributors look for are not necessarily ‘good’ but ‘saleable’ films. For the most part, the characteristics of a saleable film are based on past performance indicators which are sought after in hopes of duplicating previous successes. The New Hollywood system of filmmaking since *Jaws* (1975) is “not a system designed to foster the production of movies of artistic excellence or popular appeal. Decisions are [therefore] not made on the basis of what will make a good film...” (Litwak, 1987: 303).

Simonoff & Sparrow (1999) examine numerous predictor variables of movie profitability and create economic prediction models for a film’s potential theatrical gross. There are numerous factors affecting the potential audience appeal and, consequently, the profitability of a motion picture. In the pre-release stage these include: the genre of the film, the film’s rating, star power or the appeal of leading performers, the production budget of the film, whether or not the movie is a sequel to an earlier movie, and the country of origin of the movie and the language of presentation (particularly if it is or is not an English-language film). While the other qualities ring true, as one medium-sized Canadian distributor says, we are “less concerned with the source

country of a film than whether the particular film is viable in Canada”. But what are Canadian consumers looking for in a film?

In 2005, the Department of Canadian Heritage, through their *Canadian Film and Music Opinion Study*, attempted to determine the attitudes and behaviors of Canadians toward Canadian-produced feature films. The study found that the most important influences on movie selection at the theatre are the story, what has been heard through word-of-mouth, and the actors starring in the movie (Canada, 2005). According to respondents, the least important factor that influences movie selection at the theatre is a film’s country of origin. Film origin also has little significance for exhibitors since “when large cinema chains have been owned by Canadian investors, their choice of films has not changed perceptibly from those owned by foreigners, at least as far as nationality of the films shown is concerned” (Acheson & Maule, 2003: 16).

a) Domestic Product Line vs. Diamond in the Rough

Every Canadian distributor needs domestic Canadian product in order to have a solid business plan. Canadian distributors only negotiate for completed foreign film products but with domestic films they are involved early on in the project, usually the development (script) stage. This gives the distributor more control over the creative process and the cost of the production.

These relationships are also more economical for a Canadian distributor than going to a major festival or market and only being able to compete for, and successfully purchase, one out of every 50 films that they screen. It makes business sense for a distributor to be involved in a project from the development stage because, according to a Canadian distribution executive, with a negative pickup you are “consistently looking for a diamond in the rough and the odds of

finding that on a continual basis are too high.” Access to domestic films gives an efficiency advantage to Canadian distributors because, as another industry insider states:

It takes a lot of resources and man power to go around the world looking [to acquire] films that are not owned by the studios and yet still have considerable audience appeal, buy those films and release them in Canada. at least in Canada the distributors have a little bit of a captured market in that, both CAVCO and Telefilm have said that a Canadian movie needs to be distributed in Canada by a Canadian distributor. So there is that universe of movies that is not available to [a studio such as] Paramount even if they wanted it.

It is also important for Canadian distributors to have good working relationships with domestic producers because those who make good films are likely to make more. In addition, loyalty to their supplier means that the producer’s choice to sign with the same distributor again might be based on more than just the dollar amount of the minimum guarantee.

b) Acquiring International Product

It is very hard and very rare for a Canadian distributor to acquire Canadian-only rights to a foreign-produced film. US distributors make a lot of money by including the Canadian rights in a North America-based deal. Accessing the US market is important to producers and North American rights are the most attractive to sell. More often than not an international producer will look for a US sale first. Since the producer’s revenues are tied to successful distribution of a film, they prefer to seek out distributors with a vast performance history. Producers are often “willing to accept less favourable terms (e.g. a lower percentage of box-office gross) from an established major than from a new entrant given the probability that the major will generate greater aggregate revenues” (Globerman & Vining, 1987: 51). The majors also buy up the supply of English-language films from American independent distributors well in advance of production and include distribution rights within Canada as part of their domestic market, thereby preventing a Canadian company from acquiring rights to these films (Canada, 1999).

Film festivals and international sales markets are not dumping grounds for second rate films. It is, however, very rare for a studio distributor to procure a film through these venues. Studio subsidiaries and well-financed US independents are usually the major bidders on the festival circuit. They send teams of bookers to film festivals and sales markets to compete for the next undiscovered gem and potential sleeper hit. As the Canadian division manager of a major Hollywood studio states, in general, “there tend to be less and less films picked up from or in bidding wars at festivals. [A film getting distribution at a festival] makes the news because it doesn't happen very often anymore. With studios having more niche labels comes more deals arranged beforehand.”

Canada does not have a distribution sales market equivalent to Sundance, Slamdance, Cannes, etc. The biggest Canadian film festival, the Toronto International Film Festival (TIFF), is known as an ‘unofficial market’ within the industry. It provides promotional and networking opportunities; however, only a minimal number of films screened at TIFF have not previously acquired distribution agreements.⁴ Canadian distributors need a domestic film marketplace. It has been proven many times over that they cannot compete with the mini-majors for negative pickup deals at world festivals. The legislation of a distinct Canadian film market could bring about greater procurement opportunities and easier access to sellers.

C. 3. Distributor Demand-Side Negotiations

The job of a distribution booker is to sell a film, to research the markets, and to have a plan to keep their film on theatre screens for as long as possible. The success of a theatrical

⁴ This statement is supported by executive interviews conducted for this study and by Noah Cowan, Co-Director of the 2005 TIFF, who states in an interview with *IndieWire* that the festival always has the, “public audience in mind... We have never been interested in becoming an official ‘market’ with booths and screenings for buyers...” (Hernandez, 2005: 1).

release depends on whether “the correct decisions have been made about the most appropriate theatres for the picture and the most appropriate date” (Weinzweig, 1987: 176). As Cianciotta (1995) states, the distributor must always “be aware of ‘what is right’ for the film, ‘what is open’ in terms of dates and theatres, and ‘who are you competing with’” (151). When a major distributor releases a big-budget film they are privy to the best release dates as well as a certain amount of committed playing time (Pendakur, 1990). Though there may have been a time when Canadian exhibitors resisted showing Canadian films, that does not exist anymore. Exhibitors need a lot of product to fill their screens but at the same time there is a high turnaround as many films do not last more than a week in theatres. The biggest concern now for Canadian distributors is securing key theatrical play dates and maintaining a film's theatrical shelf life.

a) The Seasonality of Demand

Theatrical release strategy is based on one key principle: attracting the largest amount of the key movie-going demographic when that demographic has the most leisure time. Strategies for theatrical release are first and foremost dictated by what Moul & Shugan (2005) refer to as the “seasonality of demand” (81). The release date bears more importance than the actual characteristics and quality of the movie in terms of revenue potential. It is, therefore, the most difficult and studied decision of the distributor (Moul & Shugan, 2005; Pendakur, 1990).

The seasonal peaks are holiday weekends. These include the weeks of New Year's Day and Christmas; Memorial Day, Independence Day, and Thanksgiving in the US; and in Canada, Victoria Day and Labour Day. The average non-holiday week box-office gross in the US was roughly \$167 million in 2002; holiday weeks brought in upwards of \$255 million (Moul

& Shugan, 2005). The other factor in seasonal demand is just that: the season. A summer time release adds millions to the expected box-office of a film (Moul & Shugan, 2005).

The reason why certain seasons bring more theatrical revenue is simple: when children and youth are not in school and adults aren't working, they're more inclined to go see a movie. Any movie released on a key holiday weekend will make more money than when released in a non-holiday week. According to Moul & Shugan (2005), "Holiday weeks have higher receipts in part because of the higher consumer demand that results from more free time and in part because that is when higher expectation movies are released" (86). For this reason it is important for distributors and exhibitors to track the year's scholastic calendar. The problem with seasonal demand is that it creates over clustering with the release of "too many high quality movies at high-demand times and too few at relatively low-demand times" (126).

In the North American market, studios control release dates not independent or Canadian distributors, or exhibitors. The release date of a studio film is set by the studios and planned amongst the studios; it is not negotiated with the exhibitor. Studios claim play dates well in advance of their release. Long term dates are preferred because they allow the distributor time to determine if the picture is better or worse than expected, to arrange for merchandising tie-ins, and to avoid direct competition from films looking to draw a similar target audience on the same date. The commercially attractive release dates in Canada's main theatre chains are claimed at least eight to eighteen months in advance of the release of a US major's picture (Pendakur, 1981, 1990). For Canadian distributors with a studio output deal, if there is a set US release, the Canadian release is scheduled for the same date. However, there is a long standing and industry-wide tradition, that Canadian films do not get holiday and peak period theatrical releases.

The victims in this system of preferred booking are the independent and Canadian distributors. Canadian-produced films are left to wait for a hole in the schedule of the exhibition chains and work around the early claims on key opening weekends. This anti-competitive booking strategy is in a similar vein as blind-bidding since the studio distributor is essentially obtaining a release date though the theatre operator has not had a chance to see the film since it may not even be in production at this point.

On the other side of the coin, having time to build demand and audience recognition for a film is a privilege most Canadian films do without. Canadian distributors do not start negotiations with the exhibitor until they have a completed film, the makings of an advertising campaign, and they have shown the film at the various trade shows or festivals. As one experienced Canadian distributor states, in a career that has seen tenures at several prominent firms:

I haven't found it difficult getting Canadian films on screen... but a lot of times we don't know what day or in what theatre we are opening on until the Monday before the [opening] Friday...at the eleventh hour. If you don't know when or where you are releasing your product, it doesn't matter how good your marketing plan is, you are set up to fail... It's almost a Catch-22, if the exhibitor were to give you the best theatre and the best screen in Toronto on the Monday before the Friday you are not going to do well because you will not have enough time to alert every one that the film is there. It is hard when an exhibitor says that your film didn't perform when you've only had four days to get people to their theatre.

A Canadian distributor is often happy with at least one month advance notice in order to prepare advertising, far less than the majors.

b) Getting the 'Right' Theatre

Getting the 'right' theatre for the film is also a central goal of the distributor. Even though they deal with nationwide exhibition chains, distributors sell the film city by city and theatre by theatre. Different theatres cater to different audiences. Location and demographics are

extremely important and theatres come in all shapes and sizes. Since location often determines demand in the exhibition industry, each theatre can come with a unique set of negotiable terms. Minimum play weeks and the target box-office receipts in order to remain in a specific theatre vary by theatre and even by screen.

For repertory theatres, also known as 'rep houses' or second-run theatres, the negotiations process is simple. They book by calendar date for one or two nights and receive a flat fee or percentage per screening. Cianciotta (1995) states that "the dollar values aren't high, a few hundred per film at most, but those dollars add up over the years" (144). Toronto's Carlton Theatre is the city's best known second-run theatre. As Cianciotta states (and the newspaper listings for any given week reveal), it is the theatre where "most Canadian films are released" for their opening weekend – a second-run theatre (144).

c) Negotiations with Canadian Exhibitors

Though it has been said many times that networking and informal relations are at the heart of activity in the industry, it is still a dollars and cents business. While distributors come to negotiations trying to get as much out of the exhibitor as they can, exhibitors come to the negotiations trying to spend as little as possible for the film. Most distributors approach each Canadian exhibitor directly. When distributing to a few smaller chains in a market, studios like to negotiate with them all at the same time.

Exhibitors and distributors are partners in the planning process. Exhibitors try to match the type of film and the accompanying marketing campaign to the appropriate market or theatre. Distributors tell the exhibitor how they plan to release their film and how many theatres they

would like. Exhibitors can only show a film in as many theatres for which the distributor provides prints and for which they fund an appropriately sized advertising campaign.

Theatre screens need to be filled 365 days a year so exhibitors need the product, but it is a question of where and on how many screens the product will play. Individual theatres in each market need a different mix of films that are the ideal consumer options for a specific geographic market. Major distributors may make decisions pertaining to film release dates in an internal studio competition for the best play dates but what theatres and the number of screens a film plays on is solely at the exhibitor's discretion.

Advertising budgets and supply potential are the main factors considered by exhibitors when making scheduling choices for their available selection of films to screen. There are no incentives that a distributor can provide to get a better share of screens or choice of market because there is no standard marketing strategy. Therefore, anything that appears to be above and beyond is still just part of a good marketing strategy. "Every film comes with a specified campaign. There is no one size fits all," says a Canadian exhibition executive. New marketing initiatives created or used by distributors are merely part of a growing industry. What the exhibitor looks for is a well-planned and well-financed strategy. A rational exhibitor gives the best play dates and best theatres to films with the most drawing power. Independent films, though they may be critically acclaimed, often have a minimal advertising budget. The majors' films have large enough advertising budgets to at least guarantee a good opening weekend.

Though release dates may be claimed well in advance, negotiations are never finalized without a complete film to show the exhibitor. Normally there is a screening of the film for the exhibitor two weeks ahead of the release and final negotiations on the number of theatres and locations are made at that point. While representatives of studio distributors agreed that it is

indeed possible for exhibitors to renege on their deal at this point, as one studio's Canadian executive simply states, "they won't." What may change after the screening is:

If [the exhibitors] find that the film is really good they might want to put it on more screens, or if it is a film that is really bad, instead of going on twenty screens in the Toronto area, they might reduce that to sixteen or seventeen and that is what you negotiate. Most of the time they play everything everywhere.

Though all arrangements must be mutually satisfactory, as a representative from one Canadian exhibition chain plainly states, "At the end of the day, they are our theatres and we own them."

Exhibitors, therefore, have the final say in all negotiations.

C. 4. Exhibitor Decisions and Distributor Loyalty

Ultimately, the commercial success of theatres depends on choosing among available films, their relationship with a distributor, and deciding when to end a particular run. Exhibitors argue that policy and popular opinion tend to overlook the fact that they are for-profit businesses. Because of the uncertainty and unpredictability of the business, it is their top priority, and their main way to minimize risk, to maintain strong relationships with established distributors. Exhibitors realize that they do not always play just the 'best' films but sometimes their priority distributors do bring them good films that more than makeup for any mediocre offerings.

Cinemas depend on the distributor to maintain a flow of good 'lottery tickets'. They play all films from a major supplier as part of relationship they have with them. Exhibitors are "constantly playing a short game and a long game", says a studio's Canadian executive. Distributors may be offering a product now that is questionable in terms of profitability but the distributors may have a series of potential blockbusters scheduled for the future. The exhibitor is, therefore, inclined to screen the less profitable product as well. Exhibition bookers are willing to

gamble on a film if they know that there is potential for a future hit property from the distributor. This loyalty between a distributor and an exhibitor facilitates adjustments in returns among a set of films and may explain the unwillingness of cinemas to threaten such a relationship to accommodate the sporadic offerings from smaller distributors (Acheson & Maule, 2001).

Former Canadian distribution executive Cianciotta (1995) states that both the distributor and exhibition booker “have to do the right thing politically...The buyer will not want to alienate a major supplier just to satisfy me” (150). Negotiations for screen time are a compromise – mostly on the part of the Canadian distributor. It is important to maintain good working relationships, so the distributor is too often inclined to accept less than desirable accommodations for their film. But if a film which began its theatrical run in limited release connects with the audience, it demonstrates its worth to the exhibitor right away. A release has the ability to grow and, though a distributor is selling a brand new film each time they approach the exhibitor, “a profitable film today, makes you more welcome tomorrow” (151).

Exhibitors prefer to deal with an experienced and successful distributor. The negotiations process is less about selling as it is about doing one’s research. The distributor’s negotiating style changes based on their track record. Distributors also try to influence their negotiating position based on comparing themselves to their competitor’s track record. Exhibitors explain that it is simply good business sense that a preferred customer has preferred access. Therefore, the longevity of a successful relationship with a distributor also plays into negotiations.

Faith on the part of the exhibitor that the distributor has the ability to get the job done and that they will be able to do it again is extremely important. Studios have a steady supply chain with the resources and financial capital to guarantee future film properties to the exhibitor. The exhibitor knows that the studios bring them between 15 -20 films a year and they need that

product to come through their theatres. Studios and US mini-majors meet the product demands of the Canadian exhibitor better than any other source. Canada's largest exhibitors, therefore, do their best to accommodate them.

a) Theatrical Shelf Life

Relationships also come into play when making decisions to end the theatrical run of a film. Each weekend sees the release of a new lineup of films. This constant infusion of product results in a relatively short product shelf life. While it is the distributor's goal to hold onto a theatre or a popular screen for as long of a run as possible to maximize their investment, the exhibition booker "has no incentive to hang on to a film and every incentive to play something new" (Cianciotta, 1995: 146).

For exhibitors, every Monday morning is 'booking day'. This is when the decision to keep a film or drop it from the theatre is made. The decision to remove or reassign a film to a different theatre is based primarily on the opening weekend box-office receipts as well as the number and types of films coming out the next week. Every theatre has a 'holdover figure' – a target amount of earnings a film must see over the weekend in order to keep the theatre another week.

Bookers can usually tell by the first matinee on Friday if a film will or will not return for a second week. Box-office figures are reported instantaneously. Box-office data for specific zones, films, theatres, and individual screenings are constantly collected. Such information is analyzed to rate the performance of each title and each distributor. Exhibitors and distributors meticulously track the performance of their films and those of their competitors. Consequently, there is no way to hide success or failure at the box-office. However, if a film is threatened with

being pulled in its first week there are strategies to have it remain in theatres. A distributor needs to do their homework. If they know what other films are coming out and have the potential to replace their film, they can negotiate a transition into another theatre or another market.

Though a Canadian film may be doing well at the box-office and remaining profitable that is not enough to guarantee a long theatrical run. The independent Canadian distributor may have a film that is doing fairly well but when a predetermined release date comes along for a studio film, though profitable, the Canadian film is more often than not dumped to accommodate the new US offering (Pendakur, 1990).

When the major US distributors release a big budget picture their contracts with the exhibitor call for a certain amount of 'committed playing time'. This clause locks in not just the best dates, but almost the entire 52 weeks of a year. Occasionally, a major's film does not do as well as was expected at the box-office. The exhibitor may then request that the distributor remove the picture from their theatres. But the exhibitor is still committed to the agreed playing time in the contract. The US distributor may wish to release a new film to cover those remaining weeks or agree to use the weeks at another time (Pendakur, 1981). Only the studios and the biggest films are privy to a guaranteed number of weeks (Cianciotta, 1995). Studios have the leverage and the power to acquire a minimum run of at least two weeks. Canadian firms do not have that power. For the vast majority of them, the opening weekend is do or die, make or break.

Ultimately, the customer decides what films remain in theatres. Exhibitors argue that they play the product that is brought to them and people vote with their purchasing dollars. As one exhibition executive states:

Consumers don't know where films are made. They are not drawn to a film or to make a purchase decision based on the nationality of the film. They are drawn to it based on stars, genre, and interest level. If I'm in the mood for comedy, I'm not going to watch a Canadian drama. Government criteria identifies a film as Canadian. It is not consumer criteria.

Since exhibitors do not have a cultural mandate, there is no onus on them to play Canadian films. They understand corporately that they do have to have their doors open slightly. A Canadian distributor might not always get the best release dates or theatres but if that distributor has a limited marketing plan for the film why would they? Consumer demand may be the number one indicator of what movies continue to play past a minimum commitment but the leverage is all on the part of the exhibitor, who has the final say as to what movies are on and stay on their screens.

6. The Five Channels of the Canadian Motion Picture Distribution System

Within the North American theatrical film market, this thesis identifies five distinct product distribution structures: the unimpeded import channel, the obligatory domestic middleman: Quebecois sub-distributor, the obligatory domestic middleman: Canadian sub-distributor, the subsidized and protected domestic channel, and the export channel. [See Appendix A].

The original motion picture distribution structure within North America was a unidirectional export of US-produced products into Canadian-owned theatres. Created by the uncontested corporate extension of Hollywood studios into Canada, this distribution structure is identified as the ‘unimpeded import channel’, wherein the films of Hollywood studio firms have open and unrestricted access to Canadian theatres.

Attempts to politically renegotiate the flow of motion pictures between US and Canada in the 1980s are directly responsible for establishing further channels of distribution. The Quebec Cinema Act resulted in a unique distribution channel that sees all US non-MPAA member firms and English-Canadian distributors use a provincially-based sub-distributor, or obligatory domestic middleman, to reach theatres in the province of Quebec.

The Investment Canada distribution policy directive of 1988 became the first national initiative to significantly reshape the structure of the distribution industry. After the failure of two earlier national proprietary rights policy initiatives, the National Cinema Act and the Federal Distribution Bill, the Industry Canada directive effectively prevented US independents and mini-majors from directly accessing Canadian theatres. This policy statement created another obligatory domestic middleman through which non-studio US distributor's contract out their lucrative product supply to Canadian-owned firms in order to reach Canadian audiences. These long term sub-distribution deals have been an important part of the Canadian distributor's business model for over twenty years.

The Canadian state's continued support of industrial policies and subsidization for the domestic production industry has brought with it structural limitations of its own. A subsidized and protected domestic channel of distribution resulted from Telefilm Canada's requirement for its publicly-funded Canadian films to have a Canadian distributor attached to the project. Though Telefilm is the principle funding body for the Canadian production industry, it is also a policy tool for the distribution sector. Its multi-dimensional mandate, strict distributor eligibility criteria for its Canadian Feature Film Fund (CFFF), and attempts to push the Canadian industry toward the ancillary distribution markets have had great influence on the structural makeup of the industry.

While the previous channels are concerned with the distribution of films into and within the Canadian market, the fifth distribution structure is the exportation of Canadian films into the US marketplace. There are no political barriers to entry for Canadian motion pictures into the US. However, unlike the direct and vast supply of Hollywood studio films into Canada, Canadian-produced pictures are rarely distributed to US theatres. The limited nature of the export

channel is due to the US's internally-focused and anti-competitive media system that is resistance to foreign-produced media products. The existence of an import bias against foreign film products is reflective of the unequal and nonreciprocal relationship among these two long standing trade partners.

The following critical historical analysis reveals the political and economic motivations behind each channel and examines how they have led to an elaborate structure of resource distribution and cultural exchange. For Canadian-produced motion pictures the consequences of this distribution system are numerous. These structural arrangements influence the market possibilities of Canadian film distribution firms and the market access of Canadian-produced motion pictures. The five unique distribution channels within the North American theatrical market ensure the continued supply of US and Hollywood motion pictures into Canada and both legitimize and sustain the dependency of Canadian exhibitors and distributors upon foreign products.

A. The Unimpeded Import Channel: Hollywood Studio Films into Canada

The initial group to occupy and establish itself in a market is generally able to gain control of resources allowing it to attain advantages over, and restrict the threat of, competitors. Between 1920 and 1930, as if there were no borders between the two countries, the US freely extended their film industry into Canada. Since few Canadian financiers were ready to take on the advanced Hollywood apparatus, from the early history of Canadian cinema, "Canadian theatre circuits became conduits for imported films" (Pendakur, 1990: 48). This decade saw no independent Canadian-owned players in the distribution sector that did not operate solely as the subsidiaries of major studios. By 1925, 95 percent of all films exhibited in Canada were supplied

by the major Hollywood studios (Pendakur, 1990). These same foreign corporations had 40 years prior to the birth of a domestic Canadian film production industry to establish and negotiate the industry's terms of practice in their own favor.⁵

Currently the concentration of economic power is quite evident in the film industry. In 2006, the top ten US box-office earners were Sony Pictures, Buena Vista Pictures, 20th Century Fox, Warner Bros., Paramount, Universal Pictures, Lions Gate, New Line Cinema, The Weinstein Co., and Focus Features respectively. The top six firms (all major studios) accumulated 80.9 percent of the domestic US market share. The remaining four distribution firms are considered mini-majors; together they represented 10.8 percent of all US box-office revenues for 2006 (Nusbaum, 2007). In total, ten firms account for 91.7 percent of all US industry revenues. From 1986 to 1993, the majors represented only 15 percent of all distributors in Canada while taking in 85 percent of all distribution revenues earned (Canada, 1998).

The dominant market position held by the Hollywood majors reinforces their economic stability (Hoskins et al., 1997). Studios are better equipped to handle the uncertainty of the industry because they have the advantages of large sums of capital to produce a large scale of products (Grant, 2007). Hollywood's dominance over the Canadian exhibition sector was solidified, and is presently maintained, by the use of extensive political lobbying and a series of risk reduction strategies devised and employed by the majors.

A. 1. The Role of the MPAA

⁵ The first step in the creation of a motion picture industry is film production. The attempts by Canadians to produce feature films throughout the early part of the twentieth century were sporadic at best. The creation of the National Film Board (NFB) in 1939 did not signal the birth of feature filmmaking in Canada since the main role of the NFB filmmakers was to create propaganda films prior to WWII, not to inspire the birth of a domestic feature film production industry (Canada, 1998). A feature film production sector did not come into being in Canada until the creation of the Canadian Film Development Corporation (CFDC) in 1967.

Political actors have had great influence in shaping the current structure of the North American motion picture industry. No single group has been more forceful or has accomplished so much in their interest as the Motion Picture Association of America (MPAA). Pendakur (2008) asserts that the phenomenal growth of Hollywood as an export industry is due first and foremost to “the MPAA’s sustained diplomacy around the world, and also by pressure tactics and, when necessary, the whole weight of the American presidency being brought to bear on that process” (184).

The MPAA is an export cartel that promotes favorable state and international policies toward trade, often through direct trade negotiations with foreign governments. Its central goal is “clearing the way for the international sales of Hollywood products” (Wasko, 2005: 14). The parent organization, the Motion Picture Association (MPA), was created under the Webb-Pomerance Export Trade Act of 1918.⁶ This legislation “grants exemption under US antitrust law to American exporters who are permitted to group together under its protection to cope with foreign export cartels that operate in all developed countries” (Pendakur, 2008: 185). This law applies only to international business activities. With no exemption given under domestic US law, foreign markets are open game (Pendakur, 2008).

Through this Act, the US Congress effectively preserved the motion picture industry from foreign competition and allowed for monopoly practices, collusion, and price fixing among US firms “as long as such monopolization was limited to their trade practices abroad and did not impinge on competition in domestic trade” (185). Long standing MPAA president Jack Valenti, admits that:

...Without the embrace of Webb-Pomerance, the US film and television industry would have

⁶ The Webb-Pomerance law is still a valid piece of legislation. An amended version of its provisions can be found under the Export Trading Company Act of 1982.

been seriously, perhaps fatally, crippled in its efforts to win the admiration and the patronage of foreign audiences...The crucial point is that without Webb-Pomerance the American film industry would be an invalid, and we would not be able, as we are now, to return to the US each year some \$800 million in a surplus balance of trade” (As Quoted in Pendakur, 2008: 185).

Without this export cartel, the US would see “strong negative impact” on international rental receipts (Waterman, 1982: 25).

Current MPAA members include Paramount Pictures, Sony Pictures Entertainment Inc., 20th Century Fox Film Corporation, NBC Universal, Walt Disney Studios Motion Pictures, MGM, and Warner Bros. Entertainment Inc. Their subsidiaries, including studio specialty divisions such as Fox Searchlight, Miramax, New Line, and Sony Pictures Classics, are also members (MPAA, 2007). It should be noted that the MPAA sees no distinction between the Canadian and US theatrical box-office markets (Hoskins et al., 1997). Canada is considered by MPAA member companies to be part of the US domestic market for purposes of revenue calculations as well as the payment of residual fees to filmmakers and actors.

Canada’s counterpart to the MPAA is the Canadian Motion Picture Distributors Association (CMPDA). The CMPDA is a powerful lobby group for American-owned distribution companies operating within Canada. The CMPDA does not represent Canadian distribution firms; it is an advocate for market access and content protection for the MPAA member companies. However, whenever Hollywood studios have become unhappy with proposed changes to industry practices within Canada, either through policy or regulation, the MPAA has directly exerted pressure on the federal government or threatened to withdraw their members’ films from Canada. Canadian policymakers and bureaucrats, fearing public outcry over the loss of American films, have historically given in to the MPAA's demands. As this report’s analysis of proposed proprietary policy and legislation for Canada’s motion picture industry will reveal, the influence of this single foreign organization has driven several policy

decisions.

To demonstrate the political power held by MPAA and its leader Jack Valenti during his 38 year tenure, Pendakur (2008) offers a quote by a Democratic senator from Connecticut who interrupted his introductory statement at a hearing of the Senate Foreign Relations Committee when spying that Valenti was in attendance. Valenti was present to address the Committee on intellectual property piracy. With an air of familiarity the Senator joked:

Hey, Jack. It's great to see you. You [other] guys are important, but not as important as Jack. Jack, it's hard to believe they're talking about you leaving. You know, I mean you're taking off... I'm here to find out where you're going to live... When we get to you, I'm going to put you under oath and find out where you're going to be living, 'cause I want to know where to hang out (US Senate, 2004 – Quoted in Pendakur, 2008: 191).

It is significant to note that the adoring Senator in this anecdote is Joseph Biden, the current Vice President of the United States under the Obama administration.

A. 2. Risk Reduction Strategies

The motion picture industry has a reputation for being a unique and risky business. According to Hoskins et al (1997), when you have a business that deals in art and culture there is a high level of uncertainty. Industry demand for a product is easy to predict but, for individual products, “a high degree of risk translates into a high rate of failure” (51).

Though financial risk is a constant force within the industry, the business of filmmaking is preserved by a disciplined adherence to risk avoidance. Risk is handled very well in the industry through the use of historically engrained risk reduction strategies. It is, therefore, important to analyze the specific business practices and industry techniques through which the major studios control the performance of entire North American industry.

Though control mechanisms such as product patents or licenced production techniques are not in place in the industry, through risk reduction measures Hollywood majors have been

able to manage financial uncertainty and contain threats of competition (Globerman & Vining, 1987). Entertainment attorney John W. Cones (1997) claims that “the pervasive market power of the major studio distributors in the United States (the MPAA companies, generally) has been gained and is maintained by engaging in numerous questionable, unethical, unfair, unconscionable, anticompetitive, predatory, and/or illegal business practices” (1). These industry business practices prompt the debunking of the meritocracy argument which insinuates that all you need to do is make a great film to make a profitable hit movie.

Industry arrangements and practices have come to seem entirely natural (Boyd-Barrett, 1977). The establishment of the dominant practices and patterns of film distribution and industry ownership concentration have enabled the export of the Hollywood product, solidified its global industry dominance, and helped convey the political and cultural influence of the US upon the rest of world.

A. 3. Ownership Concentration, Block booking, and the Paramount Consent Decree

The golden age of Hollywood saw success through control over the entire filmmaking process. The owners of the original Hollywood studios established a distribution system that not only allowed for a steady supply of product but also ensured them unrestricted market access and limited competition for revenues (Hoskins et al., 1997). The majors have “customarily tried either to exclude others from the business or to deprive competitors of resources” (Globerman & Vining, 1997: 21).

The major studios originally included Warner Bros., Loews/MGM, Paramount, RKO, and 20th Century-Fox. Each was vertically integrated to make certain that their in-house productions were guaranteed entry into theatres (Hoskins et al., 1997). Other large studios were

regarded as the 'mini-majors'; they include United Artists, Universal, and Columbia Pictures (Gasher, 2002). These eight firms, though many now operate under parent corporations, have continued to dominate the North American film industry.

The major studios have historically employed corporate consolidation strategies as a means of protecting their economic interests and the stability of their products across the North American marketplace. As Hoskins et al (1997) state, the media industry trend toward ownership concentration is in essence designed to "lessen effective competition [whereby] the greater monopoly power can be exploited to increase profits" (22).

To minimize competition from the independent theatre chains, the majors created the industry practices known as 'block booking' and 'blind bidding'. Block booking is the selling of motion pictures as a group, or block, but with no consideration of the commercial appeal or technical quality of each individual film in the package (Hanssen, 2000; Pendakur, 1990). Requiring exhibitors to bid on forthcoming films without an opportunity to view the film is known as blind bidding (Hoskins et al., 1997).

The Supreme Court twice banned this practice on the grounds that they were used to force exhibitors to purchase films that did not want in return for those they did. Distributors argued that it was actually a way of eliminating problems of over searching for product and inventory management on the part of the exhibitor (Hanssen, 2000). Since the viability of cinema depends on a continuous supply of films with commercial promise, the demand of exhibition chains for films is high. Blocks of films were distributed to the exhibitor as a whole. But block booking also allowed distributors to spread losses over several films and gave second rate films a better chance to reach a larger audience (Pendakur, 1981).

The Paramount Consent Decree of 1948 was supposed to effectively end the vertically integrated film industry controlled by the major Hollywood studios (Acland, 2003). Of the eight distributor defendants in the Paramount trial, five were integrated with theatres. In 1943-1944, these five integrated majors accounted for a substantial portion of the North American market share. They maintained 73 percent of domestic rentals, 50 percent of total US box-office earnings, 24 percent of all theatres in the US, and 72 percent of all first-run theatres in 92 cities with populations over 100,000 (Waterman, 1982).

Through legal action against Paramount Studios, the American Justice Department ruled that all major studios were to cease the ownership and operation of both distribution firms and theatre chains. Restrictions were also placed on the anti-competitive practices of blind bidding and block booking (Hoskins et al., 1997). According to Dorland (1998), "The shift away from studio control over exhibition gave independent distributors greater play and briefly opened up new niches in international markets, affording non-Hollywood films more opportunities" (vi). No such precedent, however, exists in Canada. The Paramount Decree of 1948 did not state that vertical and horizontal integration or conglomerations were illegal per se (Kunz, 2007) and by the early 1960s Universal, Warner Bros., and Paramount had merged into large media conglomerates.

The industry structure changed after the Paramount Consent Decree of 1948 and the birth of the industry's main competitor, television. With anti-trust restrictions on vertical integration, the studios saw "reduced control over cinema exhibition chains" (Drake, 2008: 66). The studios' focus turned from in-house production toward control over industry financing and distribution networks. The 1970s saw a large drop in theatrical attendance. The Hollywood studio system was over and the industry became characterized blockbuster films, "conglomerate control

provided the financial depth of resources to be able to shoulder the increasing financial risk associated with [this] new filmmaking strategy” (Hoskins et al., 1997: 54).

A. 4. New Hollywood and the Blockbuster Film

As Wasko (2005) argues, the majority of risk in the business has, in fact, been created within the industry itself, most notably from the skyrocketing costs of the blockbuster production. After the Paramount Decree, the primary basis of a studios’ profitability shifted from integrated control over production, distribution, and theatrical exhibition, and the talent they had under long-term contracts to obtaining and widely disseminating commercially successful films (Caves, 2005).

The current model of industry success owes a great deal to the surge in box-office performance of big budget action films from the 1970s which “redefined the nature, scope, and profit potential of the blockbuster movie” (Schatz, 1993: 10). Steven Spielberg’s *Jaws*, was a significant factor in the modern blockbuster boom that has defined the past three decades of exhibition. Schatz (1993) credits the success of *Jaws* with single-handedly illuminating and revitalizing “the profit potential of the Hollywood hit” (17). The release of *Jaws* on June 22, 1975 became a US-wide cultural event. Its powerful, wide-reaching, and expensive marketing campaign established the consumer desire needed to sustain the most significant example of a blanket release strategy to that date, opening in its first weekend on 409 screens.

The term ‘new Hollywood’ is referred to by such film and cultural studies theorists as Thomas Schatz and Toby Miller to describe both the historical period of American cinema after WWII and the collapse of the studio system of filmmaking, as well as, the recent emphasis on large budget blockbuster films as the cornerstone of the industry. “The key to Hollywood’s

survival," writes Schatz, "... has been the steady rise of the movie blockbuster. In terms of budgets, production values, and market strategy" (1993: 8). Success is maintained through an embrace of the blockbuster content model which focuses on generating a handful of hits that are supported by huge investments in advertising and promotion.

The contemporary Hollywood product is associated with what Wyatt (1994) refers to as 'high concept' filmmaking. The commercial interests and marketing campaign behind filmmaking began to influence what films were put into production (Drake, 2008). Since the early 1980s, film branding has influenced the elements of cinematography style and narrative structure. So called blockbuster films, were 'high concept' in that their plot could be easily summarized and involved a commercialized look. Wyatt suggests that in such films as *Beverly Hills Cop* (1984) and *Top Gun* (1986), we can see how, "film marketing began to directly feed into production and aesthetic decision-making" (Drake, 2008: 69). For current major studio releases, "marketing and advertising strategies are formulated during pre-production and constantly revised throughout" (70).

New ways of maximizing revenues, specifically the use of wide release strategies and large marketing campaigns, were then introduced. This effectively changed the structure of the industry, making it more capital intensive and increasing the importance of the theatrical opening weekend and necessitating success in ancillary markets as way to recoup extravagant expenditures on P&A.

A. 5. The Wide Opening Release Strategy

Another such risk reduction measure employed by the majors is the wide opening exhibition release strategy. Until the first modern blockbuster, *Jaws* (1975), films were

distributed via a platform release strategy in which they were first given ‘rolling openings’ or ‘gradual rollouts’ in a few major cities before being offered in other markets in order to test consumer response and build word of mouth publicity for the film (Drake, 2008; Grant & Wood, 2004; Hoskins et al., 1997).

Finn, McFadyen, & Hoskins (1994) note that a dramatic change has taken place in the distribution intensity of films. In the pre-blockbuster era, distribution intensity increased over time as films began their theatrical life with exclusive first runs in one theatre per regional market. With the film’s wide release dependent upon success in the preceding local theatrical markets, the profitable release would next expand into a handful of second-run theatres before finally going to wide release in the regional market. The platform strategy is rarely used by Hollywood majors unless they are distributing an artistic or ‘prestige picture’ (the type of film one would associate with directors Woody Allen or Robert Altman, for example). The new optimal distribution model is the saturation model. Most studio films now have their widest distribution in the first week of release. As a film’s box-office earnings decline, the film begins to occupy fewer theatres. In the current optimal industry product release model, the distribution intensity declines over successive weeks.

The wide-opening is now automatic for large-budget film releases. By 1995 major and studio films typically were released to 800 or more screens on its first exhibition weekend. Acheson & Maule (2001) state that “the breadth of releases has increased to take advantage of saturation television advertising. The average saturation point during the life cycle of North American blockbuster releases increased from 1582 theatres in 1994 to 2074 in 1998” (18). By 2000, films commonly had their first screening on 3,000 screens across the US and Canada (Drake, 2008). In 2001, *Harry Potter and the Sorcerer’s Stone* was released in the US market to

a “record- breaking 8,200 screens, nearly a quarter of all theatres in North America” (Grant & Wood, 2004: 76).

The studio distributor’s release decisions are affected by the fact that they have a portfolio of movies to release (Moul & Shugan, 2005). Decisions about release size – whether the film will be shown on theaters across the country or first released to smaller test markets to gauge its potential – are based on a diverse distribution slate strategy. The majors do not always aim for, or expect, a blanket release for each film they handle. Every film has an individual release pattern decided by the parent studio office. The decision relies heavily on the budget of the film. According to one studio’s Canadian VP, “You have an idea of different campaigns and campaign sizes. When you roll out slowly it actually ends up costing you more because your media buys with newspapers and TV ads are more expensive than buying them on mass in one swoop. If the campaign is not working, the gradual roll out strategy also gives you time to spend differently.”

Each movie also has its own level of quality: ‘worse than expected’, ‘better than expected’, or ‘expectations of quality were met’ (Moul & Shugan, 2005). The distributor needs to maximize profits from all three types of product so “launching strategies are largely determined by the movie’s expectations” (Moul & Shugan, 2005: 93). Release decisions boil down to how to best sell these three types of film. For ‘better than expected’ movies, the distributor can count on positive word of mouth publicity. Ideally the limited release/gradual rollout strategy is used as the marketing expenditure for a truly great film need not be large. The film will expand as consumer demand spreads. With ‘worse than expected’ films, to avoid negative word of mouth, it is best to attract as many consumers to the film on its initial launch as possible. Though wide releases are expensive, for films of questionable quality they are the more

profitable option given the potential for negative consumer feedback after their initial viewing. When a film's 'expectations of quality are met', either option is viable. A limited release would be a good way of confirming audience demand for the film. The distributor can then expand or minimize the release as necessary. Opting for a wide release could create immediate impact and launch a blockbuster hit. As Moul & Shugan (2005) state however, "if such a planner were concerned with consumers' opinions after seeing a movie (rather than with profits), all movies would begin with a limited release" (93).

The wide opening strategy brings several advantages. Most importantly, it maximizes the effect of marketing and promotional campaigns. In 1997, of films with a wide release of 600 screens or more, 37.3 percent of total box-office revenue came in their first week in theatres (Acland, 2003). Wide releases garner media industry attention. Much like a book or CD that is on a best-seller list or top 40 chart, film industry box-office figures and revenue milestones work to legitimize the entertainment product as being worthy of one's money and time. According to Caves (2000), they also act as catalyst for 'follow-the-leader' consumer interest. Phrases like 'The #1 Movie in Canada' that accompany blockbuster films with wide releases make consumers want to do what everybody else is doing. Yet another advantage is that a film's box-office statistics are often a selling-point for its release in secondary exhibition windows (Grant & Wood, 1997).

In "Predicting Movie Grosses", Simonoff & Sparrow (2000) state that, "It is on the strength of the opening weekend of general release that all major decisions pertaining to a film's ultimate financial destiny are made" (12). Theatre owners do not want to commit to a film that doesn't 'have legs'; therefore, "the decision to keep a film running [is] based on the strength of its opening weekend" (12). The traditional profit arrangement between distributor and exhibitor

is another reason that so much importance is placed upon a film's opening weekend gross. A wide opening release puts more profit in the hands of the distributor. The distributor will receive roughly 70 percent of a film's overall box-office revenue, but it is customary for exhibition deals to entitle the distributor to upwards of 90 percent of the opening weekend box-office sales (Hoskins et al., 1997).

The selection of new films released into theatres on the same weekend is also meticulously planned by the studios. Groups of films are released together in an effort to offer viewing choices that appeal to a variety of audiences. To avoid direct competition between potentially large box-office draws, each new wave of films is anchored by large-budgeted potential blockbuster release. These films are referred to as 'tentpole' movies. The expectations and costs of a tentpole film are high. Two or three tent pole releases are needed each year to sustain a studio's success and to organize their other films around. Studios release critically acclaimed prestige films and other smaller budget or niche market films as compliments to the tentpoles.

The major studios talk with each other to plan their tent-pole release dates. But there are some unwritten rules and general expectations as well. For example, as an executive at Canadian distribution firm states, "If you have a Will Smith movie, you own July 4th. You have owned July 4th for the last three years. Chances are there will be a Will Smith movie on July 4th." This release strategy subscribes to the industry axiom that past performance is indicative of future performance.

The current use of planned group releases of theatrical films does bring to mind the controversial industry practice of block booking which was banned through the Paramount Consent Decree of 1948. Since the film itself has yet to be completed, exhibitors are often

expected to take studio films with few indicators of quality such as the film's plot, stars, and creative personnel in hopes that they will be receive a potentially successful picture. In essence the current industry practices of advanced scheduling and guarantees given to distributors for potential blockbuster films are forms of blind bidding.

For US distributors, decisions about theatrical release in the Canadian market are made as part of a North American strategy. For the majority of US films brought into Canada, promotion and advertising campaigns are designed and implemented for a continental market – with no separate marketing campaign for the Canada. Blockbuster movies in particular, are given saturation television advertising to generate high levels of awareness before opening simultaneously in all North American regional markets (Finn, McFadyen, & Hoskins, 1994). Unless there is a unique target community or demographic in Canada that may be a more receptive audience for a film, the same materials for in-theatre (trailers and posters) and television advertising are used on either side of the border.

Studios point to 'ad-bleed' – whereby consumers are exposed to advertising which is part of media content originating in another country – as an essential element within the success of US films in Canadian theatres. Ad-bleed includes the impact of both direct and indirect consumer advertising that flows from the US into Canada as part of the television programming, radio signals, and publications originating in the US that are freely accessed by Canadians. Indirect ad-bleed can include the free publicity of a film through the appearance of a star actor on a talk show, interviews in a celebrity magazine, or in articles posted on an Internet fan site. From a geographic standpoint, the US still generates the majority of the films that create the most amount of awareness in Canada. Due to the geography of the two countries and

presence of US content in the Canadian broadcasting system and advertising world, US films often garner similar box-office revenues in Canada as they do in US theatres.

A. 6. Canadian Films and the Platform Release

As previously indicated, great importance is placed on the success of a film's opening weekend release into theatres. However, in Canada the vast majority of domestically-produced films receive sporadic distribution and are first released to 'test markets' in major urban centers while studio imports employ a 'blanket launch strategy' with widespread, nearly universal, distribution into theatres across the country on the same date that is supported by heavy multi-platform advertising and merchandising tie-ins. Canadian films are rarely privy to a blanket release strategy and an accompanying multi-million dollar P&A campaign.

The cost of P&A may be the decisive factor in the size of a film's release and what justifies the use of the gradual rollout of Canadian films. Advertising is an essential tool in the effort to attract a film audience but a large marketing expenditure for Canadian films is rarely justified given their long history of limited access to theatrical screen time. The cost of prints is one of the largest distribution expenses. A single print typically costs around \$2,000 (US). If a distributors release 2,000 prints the print cost is \$4,000,000. This does not include the packaging and shipping expense (Cones, 1997). The average cost of film prints for MPAA member firms in 2006 was \$3.82 million (US) while per film average industry expenditure on advertising was \$30.71 million (MPAA, 2007). In Canada, smaller distributors simply cannot afford the costs of P&A needed to support a wide release in theatres (Grant, 2007). While the cost of marketing for the studio is paramount, the cost of additional prints and their shipment costs are rarely a limiting factor in their release strategy.

The platform release is frequently used for Canadian films, no matter how much promotional marketing has preceded the release. Finn, McFadyen, & Hoskins (1994) assert that this is because, "Few Canadian movies have attracted the distributor confidence and exhibitor support necessary to use this wide release blockbuster strategy ... [They] have failed to find an audience in a premiere market and, as a result, never receive theatrical distribution in the others" (8). They go on to suggest that, given the poor track record of many Canadian films, the domestic industry could benefit from the, "Identification of the factors which determine the [industry's] optimal distribution strategy" (8). This merit based argument is refuted by even the most powerful of industry insiders. During the late 1980s and early 1990s, even Canada's most commercially successful distribution firm, Alliance Atlantis, felt as if they were playing within a game controlled by foreign interests. According to Alliance distribution executive Anthony Cianciotta:

In a country with close to 800 screens, there are only 18 to 20 theatres, including independents and rep houses, that will play Canadian movies. We occasionally get a wide-appeal film that gives us access to more theatres, but 20 theatres is the norm. The reason, of course, is the American domination of Canadian screens. There have been various attempt to change that, and there will be more, but until they succeed we live with it (1995: 144).

The main reason for the limited amount of Canadian theatres willing play Canadian-produced films during this time period was the resurgence of industry consolidation and the studios' move back into ownership of theatrical exhibition.

A. 7. The Industry Merger Boom

The US film industry merger boom of 1986 was a swift response to the Reagan administration's revision of corporate ownership guidelines between 1982 and 1984. This revision "placed an emphasis on the efficiencies, technological change, and other factors that had mitigated the anti-competitive effects of mergers" (Kunz, 2007: 108). This view did not reflect

the notion that excessive concentration promotes undemocratic actions (Kunz, 2007). The first major acquisition that year was MCA/Universal's purchase of 48 percent of Cineplex Odeon (Acland, 2003). The \$159 million purchase gave them priority access to Cineplex's 1176 North American screens. The deal between MCA and Cineplex Odeon "was widely recognized as the spark that ignited the rapid move [on the part of distributors] back into exhibition" (97). MCA continued to strengthen its hold on the industry as, under the Cineplex Odeon name, they acquired eight other exhibitors, adding more theatres and screens to the company portfolio (Acland, 2003).

Numerous other acquisitions followed: Paramount received a total of 472 new screens from the purchases of Mann Theatres, Festival, and Trans-Lux; Warner Bros. purchased 50 percent of Paramount's theatres for \$150 million, and created the jointly owned Cinamerica; a merger took place between USA Cinemas and Cinema National; and, later that year, Tri-Star/Columbia bought Loews Theatres (Acland, 2003). The acquisition frenzy of the mid-eighties had exhausted itself by 1987 and "by the end of the decade, the majors' ownership of [exhibition] chains accounted for 10.7 per cent of the 23,000 screens in the United States" (98). By 1998, the top four distributor-owned exhibitors had 35 percent of the total number of North American screens while 57 percent of all screens were owned by the top eight theatre chains (Acland, 2003). The majors then used their newly acquired theatre subsidiaries to show their own film products.

Kunz (2007) argues that there are no independent distributors and few independent US producers anymore because of the major studios' ownership concentration activities and contractual arrangements with smaller specialty distribution firms. Several US independent production firms have out-put deals with studio distributors. As of June 2005, Universal Studios

had production and distribution subsidiaries including Focus Features, Good Machine, USA Films, Gramercy Pictures, and October Films. James Cameron's Lightstorm Entertainment Co. once had a five-picture North American deal with 20th Century Fox as well as global deals with the UK's United Intl. Pictures (jointly owned by Paramount and Universal), Nippon Herald Films in Japan, Artisi Associati in Italy, and Jugendfilm for Germany (Rothman, 1993).

Smaller distributors affiliated with 20th Century Fox included Fox Searchlight, Fox 2000, and 20th Century Fox Animation. Columbia Pictures specialty divisions included Screen Gems and Sony Pictures Classics. Independent films were handled for Warner Bros. through Newmarket Films, Warner Independent Pictures, HBO Films, Fine Line Features, and New Line Cinema. Four of the biggest names in 'independent' cinema: Miramax Films, Dimension Films, Hollywood Pictures, and Touchstone Pictures operate under the Walt Disney Pictures corporate umbrella. Such allegiances allow the majors to have access to some of the better scripts that come through the pipeline and first access to potential hit productions. This risk reduction ownership strategy has resulted in the earnings from global theatrical market being divided between a few blockbuster releases and all others (Globerman & Vining, 1987). In 2006, five MPAA member company films earned more than \$250 million in international receipts. On average, a mere five percent of all Hollywood films produced each year earn 80 percent of the industry's entire revenues (Grant & Wood, 2004).

With industry consolidation on the rise, in 1999 the US Department of Justice reopened its investigation on block booking and also looked at the new matter of 'clearances'. "Clearances occur when theatres receive an exclusive first-run engagement of a particular film in a protected area" (Kunz, 2007: 110). The investigation looked at whether clearances were a reasonable business practice or an attempt to eliminate competition. Hoskins et al (1997) state that "despite

being outlawed in over twenty US states, these practices continue because they provide a method of market control for distributors and security of supply for exhibitors” (55-6). The Canadian government has not enacted laws to address ownership concentration and the reemergence of vertical integration nor the questionable practices of block booking and clearances within the Canadian market.

A. 8. Hollywood’s Direct Access and Contractual Obligations

The existence of first-run allocation arrangements between Canadian exhibitors and US distributors is the most common explanation as to why Canadian films have continually been unable to secure screen time in Canada’s two largest theatre chains: Cineplex Odeon and Famous Players (Gottselig, 2000). It is a well held notion that, even before operating under the same corporate banner, these presumed competitors have shared the exhibition rights to the major Hollywood studios’ films in an arrangement designed “to keep intra-industry rivalry contained among competing theatre chains” (Pendakur, 1990: 98- 99).

In *Canadian Dreams and American Control*, Pendakur (1990) asserts that major exhibitors in Canada have historically shared exhibition rights to Hollywood studio films. Their arrangements are designed to evenly disperse studio films among these competing firms in an effort to limit industry rivalry. Cineplex Odeon and Famous Players may have competed to attract people to their theatres but they did not compete for film products to screen.

This is a logical assumption since Canada’s theatre chains were integrated by the major studios. If Cineplex Odeon theatres and Universal Studios were owned by the same parent company, then clearly Universal’s films have had privileged access to screen time in Cineplex Odeon theatres. Similarly at Famous Players theatres, owned by the same parent company that

owns Paramount Pictures, Paramount's films would be expected to have preferential treatment. The deal between the two exhibitors saw Famous Players receive exclusive first-run rights in Canada to all new Buena Vista (Walt Disney), MGM, Warner Bros., Paramount, and United Artists films. Cineplex Odeon attained exclusive first-run rights to all Columbia and Universal Studios films. The two chains shared 20th Century Fox films 66.66 percent for Famous Players and 33.33 percent for Cineplex Odeon (Pendakur, 1990). With further contractual obligations to the other major studios, under these arrangements, there is little screen time left for the non-studio films (Gasher, 1992).

Though referenced as current industry practice by Acland (2003), Gasher (1992), Gottselig (2000), and Magder (1996), Pendakur accredited this information to personal interviews with industry insiders and an unpublished industry report from 1978. There is no concrete evidence to suggest that such formal or contractual agreements currently exist.

Historically the major studios have aligned themselves with one of the dominant major Canadian exhibitors but these arrangements were out of practice by the 1990s, long before the acquisition of Famous Players by Cineplex Odeon in 2005. As the industry has changed, it is understandable that this practice has changed. When such arrangements were said to have existed, the majority of theatres consisted of only a few screens. With multiplexes, the number of screens per theatre alone requires much more product than the studios can produce.

Famous Players and Cineplex have argued that because of their long history, their allegiances with major distributors are merely a reflection of long-standing and healthy business relationships. They maintain that there is nothing anticompetitive about "traditional allegiances that have built up in business partnerships where certain distributors and studios decide to play with certain exhibitors" (Acland, 2003: 225).

While percentages of screen time allotment are not openly published by exhibitors, Cineplex Galaxy Income Fund's (the parent company of the Cineplex Odeon and Famous Players brands) *Annual Information Form* describe how vital maintaining open and accommodating relations with studios is to the success of their company:

In 2007, seven major film distributors accounted for approximately 92% of the Partnership's box-office revenues, which is consistent with industry standards. The Partnership depends on maintaining good relations with these distributors, as this affects its ability to negotiate commercially favourable licencing terms for first-run films or to obtain licences at all. A deterioration in the Partnership's relationships with any of the major film distributors could affect its ability to negotiate film licences on favourable terms or its ability to obtain commercially successful films, which could adversely affect the Partnership's business and results of operations (2008: 59).

The issue of supply and demand is so prevalent that the business relationships between exhibitors and studios are no longer contractual and negotiable but, instead, traditional and continual because of their co-dependence.

It would stand to reason that smaller and independent Canadian chains would be more inclined to extend greater exhibition opportunities to Canadian distributors; however, Canada's regional exhibitors have actually enlisted the large industry players such as Cineplex and Famous Players to negotiate on their behalf for exhibitions rights to the major distributors' films.

Canada's Stinson, Landmark, and Empire Theatres have all at one point had one of these two major chains bid on studio films for them (Acland, 2003). Prior to 2000, Quebec-owned Guzzo Cinemas paid Cineplex Odeon \$300,000 to negotiate their exhibition deals, in hopes that Cineplex's greater market pull would give them an advantage when bidding on the right to screen potential blockbusters. After ending this arrangement, Guzzo found that they had a hard time attaining attractive film products from the major distributors on their own (Acland, 2003).

Since a continuation of the steady inflow of US films into Canada is in the economic interest of Canadian exhibitors, "early attempts at market protection were greatly resisted" (Boyd-Barrett, 1977: 122-3). Canadian exhibitors continue to feel that their livelihoods would

be threatened if they were obliged to show only Canadian films. In addition, the powerful studio lobbying efforts have hindered the facilitation of such measures as quotas, tariffs, or proprietary rights policy from being placed on their cultural exports throughout the last three decades.

B. Obligatory Domestic Middleman: Quebecois Sub-distributor

The Canadian state has been attempting to renegotiate the structure of the industry through proprietary rights policies since the early 1980s. The aim of proprietary rights policy is to influence the redistribution of capital and control within a market (Acheson & Maule, 2001). A proprietary right refers to a relationship between a distributor and a film product based on three main conditions: ownership of copyright at the time that photography begins, the size of investment in the film, and/or control of world distribution rights. If none of these conditions are realized, the film is non-proprietary to the distributor.

The boldest moves toward proprietary policy for Canada's distribution and exhibition industries were the Quebec Cinema Act (*Le Régis du Cinema*) which came to light in 1982, the recommended National Cinema Act in 1983, and the proposed federal distribution bill in 1987. The biggest lesson to be learned from Canada's history of proprietary rights initiatives is that "the policies will either not be implemented if no exemption is granted to the majors or will protect them if one is granted" (Acheson & Maule, 2001: 32).

B. 1. The Quebec Exception: The Quebec Cinema Act

The one exception to the poor penetration of Canadian films within their own domestic market is within the province of Quebec. The highest grossing feature films in the history of the Canadian industry have succeeded through a wide acceptance in the French Canadian market.

The situation appears to be that Quebecois audiences will watch Quebec-produced films whereas the rest of Canada leans toward the Hollywood studio films and ignores its own national contributions to the world of cinema.

Historically, Quebecois films have averaged a higher percentage of annual box-office revenues than English-Canadian films (Canada, 1999: iii). French-language films such as *Les Boys* (1997), *Le Confessionnal* (1995), and *Jesus de Montreal* (1989), rank as some of the most popular films in the history of Canadian cinema. Marketing and promotional efforts are credited for Quebec films' domination of Quebecois theatres (Canada 1999: 1). While there is a more local promotional focus within the province that attracts greater audiences, the key to their higher amount of consumer support is two fold.

Firstly, the Quebecois have been able to preserve their French-language culture and traditions in the face of globalization. Quebec has its own distinct media system and cultural production industry within Canada. Embracing indigenous arts, entertainment, and heritage has made Quebec a culturally rich province. The distinct Quebecois culture was officially recognized in a motion passed by the House of Commons on November 22, 2006. This motion introduced under Prime Minister Stephen Harper officially declared the province of Quebec and those of Quebecois heritage as a distinct nation existing within Canada.⁷

Legislation is the second method through which Quebec has successfully maintained its cultural industries. Quebec has used legal and political means to fight cultural erosion from globalization and cultural imperialism by enacting language laws and limiting the amount of foreign control over Quebecois companies.

⁷ The Canadian government is using the word nation in a "cultural- sociological" rather than in a legal sense. SEE: CBC News. "House Passes Motion Recognizing Québécois as Nation," CBC.ca. November 27, 2006. Online Posting: <http://www.cbc.ca/canada/story/2006/11/27/nation- vote.html>.

a) The Act VS. The MPEAA

The current incarnation of the Quebec Cinema Act was last revised in 1995. Its central ambitions are to ensure the development of a uniquely Quebecois cinema that is accessible by its citizens in all parts of the province and to maintain and encourage the creation of independent Quebecois exhibition and distribution firms. The greatest repercussions of Act are that Quebecois distributors have the ability to freely acquire and distribute films in both the English-Canadian and Quebec markets and the increased availability of French-language films because of its provision that distributors of English-language films into Quebec must also make available an adequate number of prints dubbed into French. The Quebec Cinema Act, however, may have in fact given Hollywood studios “more privileges in Quebec with respect to English-language films than any other foreign distributors and, ironically, than any Canadian distributors from other provinces” (Acheson & Maule, 2003: 5).

The Quebec Cinema Act was first tabled in the National Assembly in December 1982 by representatives of the separatist Parti Quebecois which had held power in Quebec since 1981. The Act sought to restructure the Quebec distribution industry by requiring any distribution operation doing business in the province to be at least 80 percent Quebec-owned. The presence of the major studios in Quebec embodied a serious threat to the erosion of the French language and culture in the province. The aim of the Act was to give open access to its indigenous filmmakers to theatres. Through this proposed legislation, Quebec attempted to differentiate itself as a separate market from that of the North American film industry.

Several institutions were created to support and enforce the Act: Le Regis du Cinema functions as the regulatory body, approving and assigning licences; L'Institute Quebecois du Cinema performs the role as advisor to government on matters relating to the Act; and Societe

Generale du Cinema oversees the Act stipulated funding and support measures for Quebecois artists.

The Motion Picture Export Association of America (MPEAA), now known as the Motion Picture Association (MPA), saw the Act as a specifically targeting their member companies. The Act threatened to dramatically infringe upon their operations and reduce their profits from the Canadian market. It took months of lobbying and deliberations and the third reading of the bill in the National Assembly, for a compromise to be reached between the members of the MPEAA and Quebec's Minister of Cultural Affairs. The bill became law in June 1983 after several modifications to the original proposed legislation. Instead of requiring all distributors to be 80 percent Quebec-owned, under the Act studio distributors were instead allowed to operate in the province as long as they met a special licencing requirement for their film products. This licence would only be issued to firms who had a 'substantial interest' and financial investment in the production of the film being distributed or who held worldwide rights to the film.

It is through the granting of two distinct distribution licences that the Act distinguishes between indigenous and foreign-owned distributors. A distributor's licence may be classified as either 'general' or 'special'. A general distributor's licence is granted only to a distribution firm with its principal operations and establishment located in Québec. This distribution licence, which authorizes the holder to commercially distribute feature films in general, is valid and renewable for two year periods. Special licences are granted to non-Quebecois distributors and to the distributor of a film produced under a government recognized co-production agreement. The special licence is issued on a per film basis. A producer is currently defined by the Act as the holder the copyright on the completed film, not by specific financial interest in the film as first proposed by the original Act.

Over the years, persistent lobbying on the part of the MPEAA and several political power shuffles in Quebec resulted in a renegotiation of the Act in the form of an official agreement between the MPA and the Quebec government. In late 1985, the MPEAA took aim at the sections of the Act that were the most detrimental to the Hollywood studios. The MPEAA's Jack Valenti and the federal minister of communications at the time, Francis Fox, signed an agreement that not only gave studio distributors equivalent rights to those previously enjoyed, it also ensured their continued presence in the province. Through the agreement the major studios could now distribute a non-English-language film for which they had incurred 100 percent of the cost of the film negative (Pendakur, 1990). Majors regained the right to distribute English-language films for which they possessed world distribution rights⁸ and had made 50 percent of the financial investment in the film or a minimum of \$4.5 million (CDN).⁹ The agreement added to the power of the current MPA-member studio distributor by providing them with the right to distribute the films of another member in Quebec. This was a surprising provision considering the Cinema Act's original intent was to improve competition among distribution firms. The agreement applied to MPA member firms in operation in Quebec as of January 1, 1987.

With respect to non-English-language films, however, the MPA members do not have a preferred status but are subject to the general condition applicable to all non-Quebec-based Canadian distributors: "No licence may be issued" if the MPA member has "not invested 100 percent of the costs of production" unless the member produces a certificate issued by the

⁸ For the purposes of the agreement, investment was defined to include negative production costs, negative pick-up costs, and costs for prints, advertising, publicity, and promotion. World rights were defined as the rights to Canada, US, the European Economic Community countries, Japan, Australia, and New Zealand excluding the country of origin of the film. For distributors that are not part of the agreement between Quebec and the Hollywood majors, world rights exist only if the rights to distribute the film throughout the entire world are held (section 105(2) of the Cinema Act, R.S.Q., chapter C-18.1, updated to 21 November 1995).

⁹ The investment was to include such costs as negative production costs, negative pick-up costs, and costs for prints, advertising, publicity, and promotion (Acheson & Maule 2003, 6; Pendakur 1990, 263).

Minister of Cultural Affairs. The Minister will issue a certificate only if he or she is satisfied “that the application is justified considering the size of the member’s investment in the film” (Le Regis du Cinema, 1995).¹⁰

The MPEAA had also successfully argued against section 109 of the original Act which stipulated that all non-Quebecois distributors would be required to invest 10 percent of income earned in the province into the production of Quebecois films. Section 115, which sought to increase competition among Quebec exhibitors, was also eliminated. It had targeted priority access by exhibitors to studio films, stipulating that once a film finished its first week’s run at a Quebec exhibitor (specifically the once studio-owned Famous Players and Cineplex Odeon chains) the distributor had an obligation to lease the film to any qualified and willing Quebec exhibition chain thereafter.

b) The Effect of the Quebec Cinema Act on Distribution

From 1993-1998, the grandfathered Hollywood studios accounted for between 65 and 80 percent of the annual Quebec market share (Acheson & Maule, 2001). In 1998, films from the US represented 91.9 percent of the Quebec market for films shot or dubbed into English and 78.2 percent of the Quebec market for French-language films (Acheson & Maule, 2001). Such figures reveal that the Quebec Cinema Act, as a means of limiting the monopolization of theatre screen time by Hollywood films, is therefore ineffective.

Through their extensive negotiations and the eventual grandfathering of the MPA-member companies, “...the majors gained a definition of proprietary rights for English-language films that allowed them to distribute most of the films that they had handled before the Act”

¹⁰ SEE: Revised Statutes of Quebec, Cinema Act, chapter C-18.1, Section 105.1

(Acheson & Maule, 2001: 4). Moreover, according to Section 9 of the Memorandum of Agreement the definition of a MPA member “means the original signatory, its successors, its subsidiaries, entities under its direct or indirect control, entities belonging to the same control group, and any other entity continuing the distribution business of the original member” (6). This definition gave irrevocable power to the major studios within Quebec since it stipulated that even future acquisitions and a company’s successor in the event of a corporate takeover would be allowed to distribute freely in Quebec as well.

While most of the Hollywood studios have decided to set up offices in Quebec, others have opted for voluntary subcontracting as a means of entry into the Quebec marketplace. Buena Vista, Disney’s main distribution arm, hired France Films to book its films in Quebec (Acheson & Maule, 2003). MGM sought the services of a Quebecois firm so that advertising and publicity for the French market would be tied in together. MGM uses Equinoxe Films as a sub-distributor into the Quebec market. MGM Canada provides them with marketing resources. Equinoxe translates the MGM advertising and does the French dubbing of films.

Though the majority of current studios had operations in Quebec before the 1987 cutoff date, the growing number of US independent and mini-major distributors which were established since then have been denied direct access to the Quebec market. Indirect access is, however, easily procured through partnerships with Canadian-owned firms. Since there is a certain variance in the appeal of Hollywood star actors in the Quebec market, the success of Hollywood films is less predictable. Quebec’s sub-distributors, therefore, assume a large portion of the risk incurred by releasing the picture to Quebecois audiences.

Reaching the Quebec market is important for all Canadian-produced films. Montreal in particular is a key market; one of the largest in Canada. Though English-Canadian films do not

necessarily do well in Quebec theatres, there is a potential opportunity for an English film, once dubbed into French, to benefit from further ancillary sales to Quebec television and home video retailers.

Canadian exhibitors do not perceive any substantial impacts or changes to the way they acquire or schedule films in the Quebec market because of the Quebec Cinema Act. The only apparent difference is that a different slate of films is brought to theatres by different players. The Act did, however, disadvantage English-Canadian distributors because it “only permits Canadian distributors not based in Quebec to obtain special licences to distribute films for which they have proprietary rights if they were doing business in Quebec on December 17, 1982” (Acheson & Maule, 2001: 5). As of 2005, “... no non-Quebec-based Canadian firms currently operating qualify for special permits. Consequently, these Canadian distributors cannot distribute any films in the province” (Acheson & Maule, 2001: 5). Since English-Canada’s distribution firms cannot directly access Quebec theatres, the provincial market has been made less competitive and the overall Canadian industry is further inhibited.

B. 2. Proposed National Proprietary Rights Policies

a) The Proposed National Cinema Act

In 1982, the minister of communications commissioned a task force to examine the policy options for a new national film and video policy framework. The task force recommended a National Cinema Act. The Act was to call for the licencing of film distributors and exhibitors in Canada. All foreign-owned or controlled distribution firms would only be able to import and distribute films in Canada for which they had proprietary rights. Under the proposed policy, Canadian-owned firms could import and distribute any motion picture in Canada with a limit of

60 percent of its supply of films to originate from one company (Acheson & Maule, 2001). It was also recommended that the Act set guidelines for a new system of territorial zoning for Canadian exhibition whereby one first-run feature film could not be released on more than 75 percent of a single theatre chain's screens in major or mid-size territories.

The intention was that, by limiting the penetration of studio films, more theatrical screen time would open up for Canadian distributors. There was, however, no attempt to distinguish Canada as a unique market from the US or to establish quotas for a Canadian presence in domestic theatres like the Canadian Radio-television and Telecommunication Commission (CRTC) had done with radio and television. Though the task force rejected the notion of adopting screen quotas, it "suggested the act contain language making screen quotas available to the Canadian government, if needed" (Pendakur, 1990: 252).

The suggestions of the 1983 task force were not acted upon. While the task force's report exposed structural problems within the industry, as Pendakur (1990) concludes, its rejection of protectionist measure in favor of resolution by the free market only helped to increase the vulnerability of Canadian cinema:

The task force clearly recognized how the lack of competition in the exhibition and distribution markets adversely affected Canadian film producers and distributors but it only suggested a minor alteration of the relationship... The report acknowledged that the Canadian film industry structure was dominated by foreign oligopolies in collusion with major circuits and was harmful to Canadian filmmakers, but on the other hand, it suggested the already tried and failed solution of the market performing its own magic. In the long run it meant that essential control of the Canadian market would remain in the hands of American-based transnational corporations and their allied theater circuits in Canada (253).

In 1984, the National Film and Video Policy was announced minus a plan for quotas, distribution licencing, or territorial zoning for theatres.

b) The Federal Distribution Bill

Formally known as 'An Act respecting the importation into Canada of Film and Related Products', the proposed federal distribution bill of 1987 had been inspired by a government commissioned Film Industry Task Force report in 1985 entitled, *Canadian Cinema: A Solid Base*. The report revealed three major structural hindrances facing the Canadian film industry: control of film and video distribution by foreign entities, historically under-funded domestic production firms, and concentrated ownership and vertical integration among distribution and exhibition firms.

Though the 1985 task force report does not claim that the three hindrances are directly related to each other, it clearly states that it would be futile to enact policy to address one area without also addressing the others. The report stresses that each individual issue poses enough of a challenge that one of these issues alone is enough to impede the growth of the domestic Canadian motion picture industry. The report proposed a solution to all three problems in the form of "control of distribution by Canadian-owned companies through legislative and regulatory measures" (Pendakur, 1990: 264). The task force recommended a clear federal policy statement that emphasizes Canadian control over all film distribution rights in Canada through legislative and regulatory measures. This stance was supported by Canada's lengthy history of cultural policy for its other communication and cultural industries.¹¹

In February 1987, Flora MacDonald, Federal Minister of Communication proposed a new federal film distribution policy that would officially declare Canada a separate distribution territory from the US and require that all motion pictures distributed in Canada have a Canadian

¹¹ Canada's newspaper and press, radio and sound recording, television broadcasting, and book and magazine publishing industries are all governed by regulation and policy that prioritizes the Canadian ownership of their production and distribution activities.

distribution contract as opposed to a North American wide deal. MacDonald's proposed legislation:

...intended to change the American film industry's practice of treating Canada as part of its domestic market and thereby create an opportunity for Canadian investor to profit from film marketing in Canada. In addition, the government hoped that some vertical relationships would develop between Canadian producers and distributors so that distributors would automatically invest their profits in production (Pendakur, 1990: 266).

The proposed federal distribution bill would require a distribution licence for motion pictures imported into Canada. The terms of this proprietary policy would be quite similar to the special licence required of foreign distributors under Quebec's Cinema Act but would apply to all foreign distributors including Hollywood studios. Canadian companies would be entitled to a general licence but no filmed audiovisual products could be imported into Canada without a licence.

The terms of the planned licencing system allowed the Minister the ability to deny a licence if the applicant failed to possess at least one of the following criteria:

...a contract granting the right to distribute the film in the territory of Canada without any linkage made in the contract or through ancillary contracts to the purchase of distribution rights in other territories; ownership of the rights to distribute the film in all media throughout the world either when principal photography was finished or the film was imported; or an investment in the film covering at least 50% of its production costs incurred before the film was printed (Acheson & Maule, 2001: 10).

While most Canadian-owned distribution firms supported the bill, some feared that the legislation would potentially affect business relations and partnerships with US suppliers (Pendakur, 1990).

The federal distribution bill died because it became a potential deal breaker for the federal government's move toward free trade with the US which had begun in the early 1980s.

The film distribution policy, which would essentially place restrictions upon access to the Canadian market for US firms, became a thorn in the side of free trade negotiations.¹²

The MPA and its Canadian cohort, the CMPDA, lobbied both the Canadian and US government for the continuation of the status quo. They insisted that the success of for-profit Canadian theatres depended upon their product supply from the US distributors which their association represents. In addition, the CMPDA believed that the Canadian public had become accustomed to the Hollywood product, and therefore, “it would be a serious mistake on the part of any government, federal or provincial, to interrupt the flow” (Spencer, 2003:168).

These lobbyists also had strong allies in the form of Canada’s largest exhibitor: Cineplex Odeon. At the time, Cineplex was 50 percent owned by MCA (the parent company of Universal Studios). Business for both corporations would be greatly affected by the proposed policy. As Pendakur (1990) states, “What was best for the majors was best for Cineplex... profits for Cineplex Odeon were entirely dependent on the regular supply of first-run feature films from the American majors” (273). Cineplex CEO and majority shareholder Garth Drabinsky spoke out against the proposed bill in numerous forums as an advocate for the benefits of transcontinental trade and an opponent of nationalistic policy measures on commerce. Drabinsky’s incessant lobbying exemplified Pendakur’s assertion that the interests of Canadian corporate elites are “not necessarily in the best interest of Canada” or Canadian culture (274).

¹² It has been suggested that the motion picture industry and its chief US lobbyist the MPEAA were in fact the driving force behind the Canada-US Free Trade Agreement (CUSFTA). In an article in *This Magazine* from 1986, author Joyce Nelson “asserts that the idea of free trade was planted in Canada by American ambassador Paul Robinson to preserve the MPA’s control over the Canadian film industry. Corporate solidarity was first achieved by way of Sam Hughes, president of the Canadian Chamber of Commerce, who held meetings with Tom d’Aquino, president of the Business Council on National Issues -- a lobby group representing 150 blue-chip corporations, and Roy Phillips, executive director of the Canadian Manufacturers Association. They apparently did the necessary political work to put the free trade idea on the national political agenda” (Pendakur 1990, 304). See: Nelson, Joyce “Losing it in the Lobby,” *This Magazine*, 20 October- November 1986: 14-23.

The MPA's president Jack Valenti focused his lobbying efforts on his country's highest level of influence: the US Senate and the White House. In an overwhelming response to concerns that Canada's proposed Federal Distribution Bill may hinder the ratifying of the Canada-US Free Trade Agreement (CUSFTA), the US Senate passed the following resolution:

Resolved by the Senate of the United States of America –

...that proposals by the Government of Canada to impose discriminatory limitations on the ability of foreign companies to distribute motion pictures in Canada reflect a highly protectionist trade policy aimed primarily at US motion picture distributors, and

... such measures are totally at odds with concepts of free trade between nations and could result in an absolute bar to the successful completion of negotiations and Senate approval of a Free Trade Agreement between the US and Canada (Quoted in Pendakur, 2008: 188).

In January 1987, the US House of Representatives sent a letter to Canadian Prime Minister Brian Mulroney in which 54 senators voiced their objection to the protectionist policies put forth in the federal distribution bill. The Senate Finance Committee, which had the power to reject the passing of the CUSFTA, brought a resolution before congress which “sent a clear signal to Canada that if it went ahead with the distribution bill, the Senate would not ratify the Free Trade Agreement” (Pendakur, 1990: 271). The resolution declared that Canada's proposed limitations on foreign distribution was aimed primarily at US motion picture distributors and contradicted the concept of free trade and, therefore, “could result in an absolute bar to the successful completion of negotiations and Senate approval of a Free Trade Agreement between the US and Canada” (271). With little fanfare, the Mulroney government quashed the federal distribution bill before it could be tabled in the House of Commons. With that, states Pendakur, “The US lobby – within and outside Canada – had accomplished its goal” (1990: 275).

B. 3. The Impact of Trade Relations upon Propriety Rights Policy

International agreements increasingly influence what sovereign states can do to regulate the flow of media products across their borders and the media activities within their borders (Magder, 2006). Governments are major players in lobbyist groups designed to open up communications and cultural markets around the world to competition and transnational investment (Hogarth, 2000). International trade and investment agreements bring with them implications for government supported policy actions for Canada's film industry. Such agreements can create restrictions upon the Canadian film industry's quest for protection of its culturally expressive products.

Conflict has arisen because what Canada sees as the preservation of Canadian culture in its own domestic market, the US views as discrimination against their entertainment products. Global trade regulators in turn see Canada as seeking special treatment for its cultural industry when it comes to meeting agreement obligations. For the US, challenging Canadian cultural protection is an important first step to eliminating public policy limits on its investments around the world. Thus, Canada's participation in global trade regimes further, perhaps irreparably, jeopardizes its own policies regarding public access to domestic communicative resources (Hogarth, 2000). By adhering to the rules of international trade treaties, Canada has limited its opportunity to regulate its domestic film industry by way of quotas, taxes, or tariffs on imported films.

a) The North American Free Trade Agreement

The signing of the Canada-United States Free Trade Agreement (CUSFTA) was delayed by the possible implementation of cultural protectionist regulation for the feature film industry in Canada. American lobbyists were highly influential in making this a key debate and prevented

Canadian legislation from being enacted on the issue. Canada chose to exempt the cultural industries from CUSFTA altogether. The cultural exemption was subsequently incorporated into the North American Free Trade Agreement (NAFTA) (Acheson & Maule, 2001). NAFTA currently contains both a cultural protection clause and a retaliation amendment whereby Canada can set restrictions on trade in culture (quotas, tariffs, and taxes on incoming products). But as Hogarth (2000) states, this is “hardly an ironclad protection of cultural or public communication policy in Canada” because the US is allowed to retaliate if they can prove that such restrictions have caused setbacks to its industry’s operations within Canada in any way (210).

The decision to form this accord has weakened existing federal policies. This is grounded in Audley’s claim that “While cause and effect are not always easy to demonstrate the government has not proceeded with the promised legislation to strengthen Canadian-controlled film distribution... since the Free Trade Agreement was negotiated not a single new federal or provincial initiative has been taken which did not conform to the FTA despite the existence of a cultural industries exemption” (1994: 335). The US is also able to use the regulations of the World Trade Organization (WTO) as a way of over stepping this NAFTA ruling.

b) International Trade Treaties: GATT, GATS, and WTO

Canada’s cultural industries are not exempt from international treaties on trade such as the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the World Trade Organization (WTO). Under these international agreements, members who face policy barriers to trade are afforded rights to retaliatory measures.

The original GATT was signed 1947 part of the postwar effort to stabilize the international trade and financial system. GATT was based on two core principles of world communication: the freedom of individuals to communicate across borders and the right of the state to regulate and police the flow in international communication. It set out to reduce tariffs and barriers to trade, to eliminate discriminatory treatment in international commerce, and to specify an international regulation system for the cross-frontier movement of media and cultural artifacts (Magder, 2006). Article IV of the original GATT pertains to provisions relating to 'cinematograph films'. It gave the member parties the right to establish or maintain internal quantitative regulation in the form of screen quotas requiring theatres to exhibit films of national origin with a within minimal proportion of screen time.

The WTO, which stems from the Uruguay Round of the 1994 GATT, regulates the international trade of "goods, services, intellectual property, and investment" (Goldfarb, 1999: 11). Canada is major player in WTO negotiations but under this trade agreement there is no cultural exemption clause.

Since proprietary policies for film distribution have the ability to affect the international trade in goods, the importation of films from foreign countries can no longer be limited by national policies. Film import quotas are, therefore, no longer permitted (Magder, 2006). Attempts to enact such policies are susceptible to disciplinary action under the WTO's Most Favored National (MFN) clause which seeks to prevent its member countries from creating nationalistic protectionist policies. As Stated in Article III: 4 of GATT:

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use (GATT, Geneva, July 1986).

GATT and GATS require that products distributed between its members receive the same treatment as those of the importing country. In 1994, a binding dispute resolution mechanism was introduced as part of GATT. This created a judicial process whereby member disputes would be addressed through binding arbitration.

Canada's effort to create a MFN exemption for their film and television production treaties was challenged by the other member of the WTO including the US. They do not believe that Canada should reserve the right to domestic regulation policy separate from this global agreement that is concerned with the regulation of the international distribution of goods and services including various forms of media. According to Acheson & Maule (2001), though Canada has the freedom to set film distribution policy, "the other [WTO] countries [have the] freedom to respond" (20). All WTO member countries are committed to the MFN obligations, "unless they entered exceptions before the agreement was finalized" (30). Lobbying efforts on the part of the MPA ensured that Canada did not act to exempt existing film distribution arrangements with the US studios. Though Canada was able to enter an exception for its film and television co-production treaties, "Canada did not enter an exception for the grandfathering of the majors in the Investment Canada directive nor for the similar treatment in Quebec's agreement with the MPEAA under its Cinema Act" (30).

The most prominent example of the WTO's ability to limit protectionist policies for Canadian media is the debate between US and Canada over split-run magazines in 1997 (Magder, 2006). The WTO ruled against Canada's proposed legislation that would regulate the importation of US magazines with little to no Canadian content. Twice the WTO turned down Canada's proposed policy which sought a lowered postal rate for US publications and an allotment of more space for Canadian advertisers within US-based magazines that are exported

to Canada. The US objected to Canada's policy measure to protect and promote its domestic magazine industry. Under WTO rules such legislation was found to be discriminatory. The ruling forced Canada to redesign its magazine policy from the ground up.

After the WTO's ruling on magazines, Canada spearheaded the International Network on Cultural Policy (INCP). This NGO consisting of 16 countries called for a legally binding convention on cultural diversity to be administered by UNESCO. Its two main objectives are to reduce the importance of the GATT and GATS as instruments governing the flow of media and cultural content across borders and to advance the idea of cultural diversity as a principle of world communication (Magder, 2006).

In its most extreme, the critical scholarly view of international governance over the trade in culture view such agreements as full-scale victories for transnational media and telecommunication firms and their efforts to commodify and privatize public expression (Magder, 2006). International agreements bring together sovereign states, entities with long history of using law backed by the use of force to establish and maintain their interests within, across, and in the making of, borders (Magder, 2006). They therefore aid the spatialization of corporate giants in cultural production and distribution.

Acheson & Maule (2001) point out that the anti-protectionist rules of international trade which bind both the US and Canada are overkill in terms of securing market access for US motion picture distributors within Canada. The grandfathering and special treatment of the major Hollywood studios under Canada's two current proprietary rights policies for the motion picture industry – the Quebec Cinema Act and the Investment Canada Directive of 1988 – have made retaliation by the US over future Canadian film policy measures “unnecessary” (29).

C. Obligatory Domestic Middleman: Canadian Sub-distributor

As noted by Magder & Burston (2001) building new alliances with foreign partners is something Hollywood is learning to do and that Canada has always had to do. Since February 1987, new US distribution firms have been barred direct access to the Canadian marketplace. To get their product seen in Canada, a profitable foreign market, they subcontract the services of Canadian distributors to act as the domestic distributor of their entire exported product supply:

Newer, smaller companies, like New Line and Harvey and Bob Weinstein's Miramax Films, did not have the option [of distributing in Canada]. They built their business around acquiring North American rights to films, distributing the titles in the United States and then selling rights to even smaller Canadian companies... (Seguin, 2008a: 1).

The most successful Canadian distributors are such because they work within the system politically defined for them – a system that sees Canadian distributors live and die by their US output deals. This distribution channel is a direct result of the 1988 Industry Canada film distribution directive, the first successful implementation of proprietary rights policy for the Canadian motion picture industry.

C. 1. The Investment Canada Directive of 1988

In 1988, Investment Canada issued a policy statement on the ownership of film distribution entities in the Canadian marketplace. The Investment Canada Act has always required that foreign investors in the film and video industries adhere to national economic and cultural policies. The new policy, however, specifically addressed foreign investment in the Canadian film distribution sector.

Non-Canadians who acquire control of an existing Canadian business or establish a new unrelated business in Canada are subject to the terms of the Investment Canada Act. For takeovers of firms in Canada's cultural industries, the CRTC administers these policies for the

television and radio industries while the Department of Canadian Heritage (DCH) administers the Act in regard to motion picture production and distribution activities. Section 6 of the Act defines which cultural businesses are covered by the legislation. Section 20(e) states that the investment must be compatible with cultural policy objectives enunciated by the government and section 21 refers to a test requiring that the investment provides 'net benefit' to Canada. No ownership restrictions apply in the case of the sales or rentals of videos and DVDs or the provision of Internet services (Acheson & Maule, 2003).

The foreign investment policy guidelines established in 1988 support the denial of foreign takeovers of Canadian-owned and controlled film distribution businesses, the restricting of foreign distribution firms from distributing films for which they do not own or control proprietary rights, and the mandatory review of proposed takeovers of distribution businesses operating in Canada by foreign investors (Canada, 1998; Investment Canada, 1988). Indirect and direct takeovers of foreign distribution businesses operating in Canada are allowed only if the purchaser reinvests a portion of its Canadian earnings in accordance with national and cultural policies. While these criteria conformed to the cultural exemptions provided for in the CUSFTA, the policy was made retroactive to February 13, 1987. Only applications to Investment Canada made after this date are subject to the new policy (Investment Canada, 1988).

This film distribution directive was merely a statement on film policy and was not part of any legislation. According to Canadian administrative law and practice, discretion can be exercised in the case of a policy statement that is not embodied in legislation and the decision that results from the discretion is non-reviewable (Acheson & Maule, 2003). A foreign distributor entering the Canadian market after the cutoff date for grandfathering was subject to the Investment Canada review process to determine if the investment is of net benefit to the

country. Such criteria allow “large latitude for discretion” (Acheson & Maule, 2001: 11), and no further qualification has been made to this policy since 1988.

Though the Film Distribution Policy adopted in 1988 was intended to “encourage better market access for Canadian productions” (Canada, 1998: 6), since Hollywood studios were grandfathered under the policy provisions, this policy did not affect the current market situation and has since had little impact on the importation of foreign, especially US, films into Canada.

The Investment Canada directive of 1988 benefited the majors in several ways. It allowed the studios the right to transferability of the grandfathered status in a takeover. This was the case when Viacom acquired Paramount in 1994 and “Investment Canada approved the transaction including the transfer of the grandfathered status after assessing the ‘net benefits’ to Canada” (Acheson & Maule, 2001: 30). And, most importantly, since the Hollywood studios which had been operating in Canada were grandfathered under the policy, it protected the majors’ interests in Canada from competition on the part of emerging foreign distributors by effectively restricting the activity of independent US distributors in Canada and keeping foreign independents out (Acheson & Maule, 2001).

Restricting the mini-majors and small US distributors from direct access to Canadian theatres changed the structure of the industry by creating a unique product flow in the form of output deals between these US firms and Canadian sub-distributors. Since the 1988 Investment Canada directive, output deals with US firms have become a significant and coveted part of the Canadian distributor’s business model.

C. 2. Large Canadian Distributors and Their Output Deals

At present, the US mini-majors are big players in their own right. Of the ten highest earning US distribution firms in 2006, mini-majors Lions Gate, The Weinstein Co., New Line Cinema, and Focus Features ranked seventh through tenth respectively (Nusbaum, 2007).¹³ Consequently the firms handling their pictures in Canada are some of the country's highest earning distributors as well.

a) AAC / Alliance Films

Over the years, Alliance Atlantis Communications (AAC) – Canada's lone domestic integrated distribution firm – became Canada's most prolific motion picture distributor. As of just recently, AAC is no longer 100 percent Canadian. In January 2007, AAC's distribution division was reintroduced as Alliance Films after its parent company was laterally integrated by CanWest Global Communications Corp. and the US private equity firm Goldman Sachs Capital Partners. As well as being the largest Canadian film distributor, AAC owned 13 specialty television channels including: Showcase, Discovery Health, the Food Network, HGTV, History Television, and the Life Network.

CanWest Global is an international media conglomerate. Their corporate profile indicates that their interests include: "Broadcast television, publications, radio, specialty cable channels, outdoor advertising and interactive operations in Canada, Australia, New Zealand, Malaysia, Singapore, Indonesia, Turkey, the United Kingdom and the United States (CanWest Global Communications Corp., 2006). According to CanWest CEO Leonard Asper, this current merger will be good for Canadian cultural products: "The combined expertise of CanWest and Alliance Atlantis will enable us to produce even better Canadian content, promote it more effectively, and

¹³ First through sixth were Sony Pictures, Buena Vista Pictures (Disney), 20th Century Fox, Warner Bros., Paramount, and Universal Pictures (Nusbaum 2007).

provide greater access to more viewers across more platforms” (CBC News, 2007: 1). Alliance Film’s recent business activity does not support this claim however. This is due primarily to their exclusive output deals with US and foreign studios including Miramax, New Line Cinema, Artisan Entertainment, Focus Features, October Films, Destination Films, Remstar, and Canal Plus.

In September 2007, Alliance Films started bulking up with a deal to release Overture Films’ titles in Canada through 2010. Overture is a US firm that distributes its titles internationally through an agreement with Paramount Pictures. Alliance will distribute Overture’s catalogue of films to theatres, DVD and Canadian pay-TV channels. Playback Daily calls the Overture deal: “The latest in a fast-changing Canadian distribution sector looking to provide homes for newly emerging US film studios backed by equity investment” (Vlessing, 2007: 1).

In April 2008, Miramax ended its 14-year relationship with Alliance. One month later, Alliance Films was greatly threatened by AOL/Time Warner’s decision to handle the world distribution of films from their subsidiary New Line Cinema. The New Line output deal had been “a cash cow for many years” for Alliance but was expected to expire at the end of the year (Seguin, 2008a: 1). This arrangement had accounted for nearly double the volume and profits of their next largest output deal (Seguin, 2008a). In an unexpected change of heart, AOL/Time Warner decided against distributing directly to Canada and signed on with Alliance until the end of 2009.

To bolster their product supply line, in September 2008 Alliance finalized three more multi-year distribution deals with US firms Relativity Media, Grosvenor Park, and Freestyle Releasing. Commenting on these deals, Alliance Chairman and CEO Victor Loewy stated that

“I’m very pleased that Alliance will represent the best of the new Hollywood in Canada” (Vlessing, 2008b: 1). As a sub-distributor, Alliance will release approximately six films annually on behalf of Relativity in both Canada and the UK while Grosvenor Park and Freestyle Releasing are expected to supply Alliance with between three and five pictures annually.

In 1995, Loewy, stated why this Canadian distributor puts “more effort into routine American product and less into films we can be proud of” (51). The answer is simple; they favor quantity (US majors) over quality (Canadian and independent film suppliers). With a high overhead and a large staff that needs income, AAC needs to consider their bottom line above all else (Loewy, 1995).

In total, Alliance is expected to release around 69 movies in Canada, another two dozen in the UK, and 22 in Spain in 2009. Handling a steady stream of Hollywood films has given Alliance, at present, 15 percent share of the Canadian market. Though this is less than the major studios, it is enough to put Alliance out in front of the other Canadian players such as Maple Pictures and Entertainment One (E1).

b) Maple Pictures

Maple Pictures defines itself as a “Canadian ... genre-savvy independent film company making a mark on the industry through its grassroots acquisition, production and distribution of diverse and distinctive filmed entertainment”.¹⁴ As a full service distributor, Maple distributes film properties to theatrical, home entertainment, television, and new media outlets including Apple products and video game consoles. Maple Pictures has positioned itself as key player in the distribution game chiefly through its exclusive arrangement with US distributor Lionsgate

¹⁴ SEE: http://www.maplepictures.com/corporate_about.aspx

Entertainment, based in Los Angeles. Lionsgate is a mini-major with strong corporate ties to international distribution systems, annually distributing upwards of 45 films in 2007 and 2008.

In April 2005, Lionsgate divested its distribution division in the Canadian market. Two former Lionsgate executives formed Maple shortly thereafter. Lionsgate films are received by Maple through contractual arrangements that have been in place since Maple's inception. Some of the key Lionsgate titles which Maple handles in the Canadian market include the large budget Lionsgate-produced films *Rambo* (2008), *Saw IV* (2007), *Employee of the Month* (2006), and theatrical films to which Lionsgate holds the US distribution rights such as *Transporter 3* (2008), *W.* (2008), *The Bank Job* (2008), *3:10 to Yuma* (2007), *Good Luck Chuck* (2007), and the Academy Award-winning film *Crash* (2005). Through their partnership with Lionsgate, Maple is able to better position itself with Canadian exhibitors. This is best exemplified through its procurement of a Christmas Day release, one of the most coveted release dates, for its Lionsgate property, *The Spirit* (2008).

In November 2008, Maple was the beneficiary of the fall out between Miramax and Alliance Films who had ended their long-running sub-distribution deal just months previously. Maple will release all Miramax titles in Canada to all exhibition windows. Miramax, a subsidiary of Disney, releases eight to ten titles annually. These films, according to Michael Burns, Vice-Chairman of Lionsgate, will make Maple "an even stronger force in the Canadian distribution industry" (Vlessing, 2008c: 1).

Maple currently releases between 25 and 30 films per year across all media platforms. Since Lionsgate produces a limited number of films, Maple also looks to Canadian-produced films to further its distribution catalogue each year. However, as of November 2008, Maple's 50 most recent releases included only five Canadian productions. These include the theatrical

releases *Young People Fucking* (2007) and *Love and Other Dilemmas* (2006), and the DVD releases of *Jekyll + Hyde* (2006), *Murder in My House* (2006), and *Canada Russia '72* (2006). Only two of these films were released theatrically with just one (*Young People Fucking*) receiving national distribution.

c) Entertainment One (E1)

Formed in August 2007, Entertainment One's (E1) Canadian feature-film distribution unit gained entry into the English-Canadian and Quebec markets as well as the international distribution realm through vertical and horizontal integration and by acquiring several output deals with US-based and international distributors.

Originally founded as Records on Wheels Limited (ROW) a Canadian CD and video retail business in 1973, E1 became a film industry powerhouse in Canada through a series of acquisitions in just the past five years. Starting in August 2004, E1 acquired Video One Canada Ltd., Canada's largest home-movie distribution business at the time. This was followed by the firm's entry into US distribution through its acquisition of Koch Entertainment in June 2005. E1 was busy in 2007 first landing one of the largest distributors of TV content in the UK, Contender Entertainment Group, then acquiring RCV Entertainment an independent film distributor operating in the Benelux region and the Montreal-based distributor Seville Entertainment. 2008 saw E1 acquire distributors Oasis International, Maximum Films, and Maximum Film International and vertically integrate several Canadian production companies including Barna-Alper Productions and Blueprint Entertainment (Playback Online, 2008).

Through Seville, E1 has an output deal with Summit Entertainment to distribute both the UK and Canadian rights to their titles. Maximum Films brought E1 output deals from US firms

Lakeshore Entertainment, Cinetic Media, and IFC Films (Vlessing, 2008b). In December 2008, E1 continued to add to its long list of lucrative output deals by making long term arrangements with Yari Film Group and ThinkFilm (Seguin, 2008a). In addition to purchasing the rights to ThinkFilm's Canadian assets, E1 will also distribute their foreign-produced titles in Canada through 2010 (Vlessing, 2008a). As of January 2009, E1 inked a deal with California-based Lightning Media to handle the rights for theatrical distribution, DVD, TV and other platforms in Canada and UK through 2010 (Playback Online, 2009).

C. 3. Output Deals: Competitive Advantage or Risky Business

The most apparent, and frequently cited, source of competitive advantage for a Canadian distributor is their alignment of resources with a US-based distribution firm. Canadian distributors are dependent on their output deals in the sense that these deals contribute more to the bottom line of these companies. Output deals with US partners are “prized in the Canadian market” because, “a successful theatrical release for Hollywood movies helps establish a [Canadian] distributor's track record and a line of credit, and drives ancillary markets” (Vlessing, 2008b, 1). These supply arrangements also ensure that Canadian distribution firms are not competing for the same film products.

E1's consolidation activity was a direct response to the perceived oligopolistic market structure of Canadian film distribution. Four large companies earned 70 percent of total national distribution revenues in 2005. These companies also earned 93.8 per cent of all profits reported by Canadian distributors – a hefty increase from the 65.2 percent that the top four earned in 2004 (Statistics Canada, 2007). For Quebec-based Seville Pictures, the merger with E1 was a way to grow in the face of a limited supply market. As Seville co-founder David Reckziegel

states, "In Canada for the past 15 years or so, Alliance has owned 90 percent of the indie market - they were so far ahead in the game it was hard to compete" (Binning, 2008: 1). Of all Quebecois firms, Alliance Atlantis' Vivafilm distribution arm did have the largest share of Quebec box-office revenue in each year from 1993 to 1998 (Acheson & Maule, 2001). While output deals are the bread and butter of Canada's largest distributors, even small niche players such as Mongrel Media have a stake in the sub-distribution game. Mongrel currently has a major output deal with Sony Picture Classics. Though Sony is based in New York, the products supplied by them are from all over the world.

Exclusive product supply through output arrangements, whether with a Hollywood or independent US firm, is an important asset to a Canadian distributor. Exclusivity is a huge benefit to a distributor with the rights to a hot Hollywood commodity. However, output deals have a high element of risk since they are capital intensive and often result in the Canadian party committing to films they have not seen if they have a long range deal for all the output of the US distributor.

Output deals with Canadian distribution firms and other strategic alliances with international distributors enable US firms to "sell each film at a different price and maintain arm's length control over international film markets by regulating the supply and timing of their products" (Drake, 2008: 81). Through Canadian output deals, US distributors are able to spread out their risk "by pre-selling the rights to established distributors who front the capital for production. The distributors share the risk in exchange for local content ownership" (Seguin, 2008a: 1).

Canadian firms may not sign output deals but instead work on a film-by-film basis and build relationships with a US firms over time that see them consistently approach the same

people to access the Canadian market. Output deals involve more participation in the marketing and scheduling of a film by the original rights holder than the typical arrangement by a studio and a subcontracted distributor. Output deals therefore entitle the film's foreign market distributor greater advances on the film. The output deal can see the US distributor sell the Canadian rights to the Canadian distributor for as much as 50 percent of what they've paid the producer for the North American rights. Canadian distributors may pay a percentage of the acquisition cost or a percentage of the budget. This is paid as an advance fee to the US distributor. In exchange they own the distribution rights throughout Canada. Such deals usually span a two to four year time period.

If a film flops theatrically, the Canadian distributor is likely to lose millions on the deal. What is more, output deals are not cross-collateralized meaning that if they get ten films from the US distributor, the Canadian firm cannot cross-collateralize their losses with their winnings. They must pay the full distribution advance to the US distributor each time no matter if the previous film was profitable or not.

Output deals boil down to safe commodities and safe business practices that often see the Canadian party piggyback on the foreign release of the film while the foreign company dictates everything from the marketing materials used to the release pattern for the film itself. Canadian distributors who place more value in their output deals than acquiring domestic products have been accused of having a short-sighted business strategy. As a former executive at both a Canadian exhibition chain and distribution firm states:

If you are distancing yourself from the Canadian marketplace, you are distancing yourself from a very solid revenue stream that is going to really help your company at the end of the day. If you live and die by your sub-distribution deal with the American company all it takes is [the US-based firm] to have a bad year. To not look at the longer picture and see how you could best balance your business is bad business.

A dependence on output deals limits the opportunity for a Canadian film to be handled by the larger players in the domestic market. It also has the tendency to make the marketing of Canadian films lax because the Canadian distributor does not have a consistent need to utilize those skills.

D. The Subsidized and Protected Domestic Channel

Foreseeing the benefits, but also the risks of entry into the well-established film business, Canada's federal government created public institutions and a series of economic support systems to build a domestic motion picture industry. The incessant undercapitalization of Canadian films was not significantly addressed by the federal government until the birth of the Canadian Film Development Corporation (CFDC) in 1967. Until that time, Canada did not have a domestic feature film production industry. Through its diverse roles as industry builder, investor, and negotiations arbitrator, this public institution (now known as Telefilm Canada), has been able to inspire growth within Canada's feature film production industry. At the same time, Telefilm has been a policy tool used to initiate changes to the film industry's vertical supply chain and to renegotiate the historically restrictive structure of the Canadian motion picture industry.

Though Telefilm Canada is an incubator for film and video production, its importance to the industry is much more than just a source of production funding. Telefilm has the ability to enable and constrain growth, and shape the structure of the feature film distribution sector. By encouraging industry consolidation, dictating terms of distribution negotiations, and rewarding the commercial success of firms, Telefilm itself has created several control mechanisms within the distribution industry.

The fourth distribution channel is a direct result of Telefilm's eligibility criteria and obligation for films produced through its Canada Feature Film Fund (CFFF) to use a Canadian distributor for their domestic theatrical release. It has been argued that, in essence, requiring a Telefilm-financed production to use a Canadian distributor results in a product supply subsidy for Canadian distribution firms (Acheson & Maule, 2003). The CFFF Canadian distribution obligation may therefore be responsible for perpetuating subsidization in the Canadian motion picture industry and, as argued by Acheson & Maule (2001), for limiting the profit potential and market possibilities of Canadian-produced motion pictures.

To understand Telefilm's power over the distribution of resources, it is necessary to examine how its bureaucratic objectives and guidelines have affected market forces and the overall structure of Canada's motion picture industry. To determine if Telefilm's history of spearheading industry change is a direct result of institutional objectives or if its actions are merely made in response to existing market forces, it is important to first observe the trials and tribulations of the organization's early days.

D. 1. Telefilm Canada: A History of Spearheading Structural Change

In Canada, cultural policy comes to the forefront of political priorities only during times of great economic prosperity (Dorland, 1998; Siegel, 1996). In the early 1960s, "Canada was experiencing one of the highest levels of economic prosperity in its history and one of the highest rates of industrial expansion in the world" (Dorland, 1998: 37). In 1967, after successful lobbying for federal support of feature film production, the Canadian Film Development Corporation Act was passed through Parliament. The CFDC was aware from the onset, that

adequate distribution and exhibition would be essential to the success of the films they supported:

The founding members noted that the major distributors and exhibitors might display a prejudice against Canadian feature films and continue to promote the traditional fare of the Hollywood majors... While they hoped that the dominant interest in exhibition and distribution would cooperate and promote a significant number of Canadian films, federal officials were also aware that these corporations operated according to strict market criteria, a market in which monopoly practices such as block booking were common. The bottom line was commercial success (Magder, 1993: 131).

In 1971-72, the CFDC had invested in 64 films with a total budget of \$17.7 million. Only three of the 64 films made a profit and the CFDC recovered a mere \$600,000, or nine percent, of its investment (Magder, 1993). The CFDC had learned that production and distribution deals with US firms were not a guarantee of healthy commercial returns.

The participation of the major US distributors in such early CFDC supported films as *Act of the Heart* (1970) and *Face Off* (1971), which were both distributed by Warner Bros., left the CFDC feeling that it had been used after not receiving any money back on these Canadian-produced but US distributed films. The CFDC, "gave up on the majors some time around [*The Apprenticeship of*] *Duddy Kravitz*" because it was made with only Canadian financing but was sold to Paramount for distribution (Magder, 1993: 139). *The Apprenticeship of Duddy Kravitz* (1974) was nominated for an Academy Award for Best Adapted Screenplay and in the Best Foreign Film category at the Golden Globes. The approximate production budget for the film was \$910,000 and it went on to gross \$3,308,255 at the box-office but the film did not generate any profits for the production end.

In November 1971, the CFDC's second allotment of federal funding came with a mandatory request from the Canadian Parliament that the CFDC establish a review committee to set a clear set of investment criteria (Magder, 1993). In April, 1972 the CFDC's *General Statement of Policies* laid out an objective to fund films with "entertainment potential,

guaranteed to some extent by distributor involvement” (142). This put the onus on the production sector to produce films with greater mass appeal. The CFDC insisted that this new approach would help Canadian films to find their audience (Magder, 1993).

As Michael Spencer, the CFDC’s founding executive director, states by 1975 recoupment figures for the Corporation clearly revealed that for some time to come Canadian feature films “...would have to depend on the continuing support of the federal and provincial governments” (2003: 133). In total, 75 films gave the CFDC returns on their investment. Of these, nine films returned more than \$50,000 to the CFDC and another sixty-four productions were yet to be profitable but were able to pay back a small amount of their funding. Fifty-six CFDC titles had not, and it was felt would most likely never, return profits to the corporation (Spencer, 2003).

The CFDC had learned that US involvement in the distribution of low-budget Canadian films was of no benefit to either the US distributor or the Canadian producer. There were three main lessons learned:

First, that the American majors were generally uninterested in distributing Canadian films; second, that when they did, there were expert at hiding any profits from Canadian producers or the CFDC; and third, that in a market dominated by monopoly practices, independent Canadian distributors did not have the necessary clout to secure adequate release dates or times for Canadian films (Magder, 1993: 139).

With its motivation to meet financial objectives and see returns on its investments, the CFDC sought to create risk reduction strategies of its own. As a result of the perceived structural barriers for Canadian-produced films, the CFDC made a conscious change of focus toward television distribution, viewing it as a market “in which inexpensive productions could recoup much of their cost” (139).

D. 2. Toward a Television Dependent Production Industry

Canadian policymakers turned their full attention to the small screen in 1982 when the national broadcasting regulator, the CRTC, first licenced pay TV in Canada. The CFDC was in favor of the decision as it was “expected to give a boost to the revenues of Canadian producers” (Spencer, 2003: 166).

The following year came the creation of the Canadian Broadcast Program Development Fund (commonly known as the Broadcast Fund). With the CFDC as its administrator, the Broadcast Fund was to be the vehicle to drive the development of a strong Canadian film and video production industry, with a focus on high-quality productions and international appeal. With its origins in two policy papers, 1982’s *Report of the Federal Cultural Policy Review Committee* (known as the Applebaum-Hebert commission) and *Towards a New National Broadcast Policy* (March 1983), the Broadcast Fund was created with the goal of making a viable and “solid core of attractive Canadian programming in all categories” (Quoted in Hoskins & McFadyen, 1986).

The Applebaum-Hebert Commission stressed that the objectives of the 1968 Broadcasting Act were not being achieved in the current broadcast industry. The role of the Canadian broadcasting system, as laid out in the Act, is to provide programming ‘using predominantly Canadian creative and other resources’. Though Canada was one of the first countries to setup a substantial cable infrastructure, domestic programming was getting lost in the shuffle as a plethora of US-based channels became available to the Canadian audience. Domestic broadcasters consistently aired a majority of foreign programming content during peak viewing times. Between 1978 and 1979, Canadian programming aired on CTV accounted for only six percent of the total prime time schedule from the hours of 8 and 10:30pm. In 1983, data for programming shown between the prime time hours of 7pm and 11 pm, reveals that on any

given week Global and CTV's prime time schedules included approximately 23 percent (or 6.5 of a total 28 hours) and 19 percent (5.5 hrs) of Canadian content. CBC's totals were much better as nearly 71 percent of prime time scheduling went to indigenous shows (Hoskins & McFadyen, 1986). The Commission also recommended that the federal government increase the CFDC's annual budget to \$50 million starting in 1983 (Spencer, 2003). The reasoning behind such a large jump in funding was so that the CFDC could take "bolder initiatives in financing Canadian film and video productions on the basis of their cultural value and professional quality" (quoted in Spencer, 2003: 168).

The initial plan for the Broadcast Fund was to divide the total allotment in half with 50 percent of all resources reserved for the CBC and the remaining half for Canada's private broadcasters. The Fund was only available to private Canadian production companies and independent producers. The Fund would match up to 49 percent of a producer's financial investment in a project. The very minimal funding criteria only required that a producer obtain a licence agreement with an over-the-air (OTA)¹⁵ Canadian broadcaster who would agree to air the program within two years of its production. The original government investment of \$35 million per annum in the Broadcast Fund, the forerunner of the current Canadian Television Fund (CTF), would grow to \$60 million annually by 1989.

a) The Re-branding of the CFDC

In 1984, with the Applebaum-Hebert report as his guide, Communications Minister Francis Fox announced to parliament Canada's new National Film and Video Policy. As Spencer (2003) states, the central theme that emerged from the new policy was a "new direction

¹⁵ Over-the-air (OTA) channels are those which are available to consumers via terrestrial analogue signals and therefore do not require a subscription to a cable provider in order to be viewed. At present, Canada's national OTA broadcasters include CBC, CTV, and Global.

of government assistance to the film industry. Television would become the chosen medium” (175). To better reflect the new economic conditions and government policy that saw media production in Canada go from the big screen to its accessible broadcasting alternative, in 1984 the CFDC was re-named Telefilm Canada.

At the 1984 Festival of Festivals (now the Toronto International Film Festival) reviews of Telefilm’s intentions for the Broadcast Fund were mixed. It was suggested by one industry insider that the festival’s main trade forum called ‘Producing Partners’ would have been best described as ‘How I learned to Love Television and Stop Worrying about the Theatrical Film’(Cinema Canada, 1984: 27). It was reported that the forum’s large attendance was indicative of how successful Telefilm had been at reinvigorating the production industry, but as a “TV-driven business” (27). Distributors in attendance, however, criticized Telefilm’s new initiative as a “smokescreen that *everything* is for TV” (44). Their main worries were that Canadian broadcasters would provide little in the way of development financing and that recouping production funding in just one market was nearly impossible. According to Rene Malo of Malofilm the central problem with the new Telefilm directive was that “a film for television goes to TV. A film produced for theatrical distribution will go to theatre, home video, pay TV, and Television...Instead of one market it will go to four markets” (Cinema Canada, 1984: 45). It appeared that the industry consensus was that, though there was a significant infusion of cash for Canadian television programming, the National Film and Video Policy came up short in its attempt to provide a concrete action plan for feature film distribution (Spencer, 2003). These sentiments were echoed in the 1985 report of the Film Industry Task Force which noted that at that time:

Virtually all funds currently available to the [film and video production] 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 Telefilm’s 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 percent of their revenue is derived. The financing in feature films depends on this situation and must be specifically addressed (Canada, 1985: 10).

The reason behind Telefilm's attempt at restructuring the industry is best summed up by the Crown Corporation itself:

Filmmaking is a costly and risky business. Unlike television programming, which can be simulcast across the nation, feature film exhibition is limited by the number of available prints and screens. In a country such as ours, which is geographically and linguistically dispersed, the domestic market is often too small to recover the cost of production. There is the added complication of the domination of the Canadian theatrical landscape by American interests (Telefilm Canada, 2005: 3).

The motivations for this were, therefore, twofold: risk reduction and overcoming theatrical distribution limitations.

Pendakur (1990) points to the Canadian government's failed attempts to convince theatrical exhibitors to voluntarily adopt quotas for Canadian feature films as the motivation for Telefilm to refocus its efforts on the TV medium. He alleges that "these policies were consistent with the Canadian government's laissez-faire approach to developing a film industry" (214). The economic incentives may have been limited in television, but doing business with broadcasters versus theatrical exhibitors seemed much more feasible for Canadian distribution firms. This was supported by the fact that in 1983, 40 percent of distribution revenues from conventional television went to Canadian distributors (Globerman & Vining, 1987).

As a result of new Canadian content rules created by the CRTC in the mid 1980s, "feature film took a back seat to the TV production financed by the Television and Broadcast Fund" (Spencer, 2003: 190). Telefilm now assisted TV producers to sell their products in international markets and negotiated a new trade treaty for Canadian programming. What the industry discovered was that "television provided a more stable source of funding than feature films and a solid based on which to build a profitable company" (192).

b) TV's Cancon Regulations: A Driver of Production

In Canadian law, broadcasting airwaves are public property and are to be used in the public interest (Meisel, 2001). Canada's Broadcasting Act sets forth a series of goals to promote and protect the availability of Canadian content on Canadian television. The CRTC was given the role of implementing Canada's broadcast policies. The main functions of the CRTC are to set definitions of Canadian-made programming, specify quotas on television and radio broadcast time for Canadian content, impose taxes on program distributors, and limit the number of foreign specialty channels supplied by cable television broadcasters (Stanbury, 2006).

The initiative to increase the amount of domestic content broadcast in Canada came to be known as 'Cancon'. Through established content quotas, the CRTC has ensured the availability of a significant amount of Canadian programming on television and radio: overall 60 percent for TV and 35 percent for radio (Hogarth, 2000). The Cancon regulatory framework created a continuous need for product supply from within Canada. Canadian films can account for a large part of broadcaster's required Cancon programming hours as set forth by the CRTC.

Broadcast regulation and Cancon definitions were established to meet cultural policy goals. Cultural policies encourage domestic producers to concentrate on products intended for a local audience while securing national self-expression and a diversity of ideas (Hogarth, 2000; Lormier and McNulty, 1996). To circumvent the complicated task of defining what it means to be 'Canadian', the Canadian Audio-Visual Certification Office (CAVCO) devised a point system to determine which television and film productions qualify as Cancon or Canadian-made programming. Points are assigned to the major creative role players and performers of a film or television program. The participation of a Canadian director or screenwriter earns two points per

position. One point is awarded for each of the following roles filled by a Canadian: lead performer¹⁶, second lead performer, production designer, director of photography, music composer, and picture editor. Telefilm and the CRTC utilize this same point system when determining eligibility for Canadian funding opportunities and to meet programming requirements of Cancon legislation. To meet Telefilm's current classification as a Canadian film said film must accumulate six out of ten CAVCO points and be under Canadian ownership, financial distribution, and creative control (Grant & Wood, 2004).

c) The Significance of Broadcast Pre-Sales

More than just being an enormous machine that eats up programming, broadcasting also gave certain insurances to distributors and funding bodies looking for a safer bet for their financial investments. The broadcast window has always been an important part of the feature film industry. Ancillary markets ensure that risk is minimized for most films. When looking at a moderately budgeted film, sales to ancillary markets can cover as much as 80 percent of the cost of production, substantially lowering the financial risk of the venture. Cable television pre-sales can amount to upwards of 50 percent of the production budget (Litwak, 1987).

Changes to broadcasting, in terms of both service and business activity, affect Canadian film distribution firms indirectly yet they are of consequence because changes to CRTC regulation affect the financial viability of the broadcasters who are important customers. For the small Canadian film distributor, broadcasting represents the majority of firm revenues. Distributors earn their highest profit margins from the sale of a film's rights to broadcasters this is due to the low cost of supplying them the product since there are usually only one or two

¹⁶ This is defined in terms of the amount of their remuneration, position in the film's credits, and amount of screen time in the film.

physical master copies of the film to be delivered and the broadcast window requires no packaging or marketing expenditure on the part of the film distributor. The bulk of a distributor's marketing dollars are spent on the theatrical market.

Broadcasting is a unique business because the TV viewer doesn't pay a fee per each show they watch. Since there is often a predetermined licencing fee, the distributors' profits are not affected by the audience ratings for the broadcast airing of their film. With theatrical films, people either show up and pay for admission or they don't. It is cut and dry since the consumer votes with their pocket book.

The funding protocol for Telefilm's Broadcast Fund, whereby producers applying for funding were required to possess a licencing agreement with an OTA Canadian broadcaster, spilled over into the film industry – not as a Telefilm funding requirement per-se, but as an important indicator of the commercial potential and market viability of a proposed feature film. After the tax shelter years at Telefilm when a lot of films funded did not see the light of day, Telefilm decided they needed a guarantee that a publicly subsidized film would reach an audience. The pre-sale of a film's broadcasting rights, therefore, became an industry safeguard that was introduced from a policy standpoint.

Evaluating risk is an important part of Telefilm's role as a go-between for producers and distributors. Producers and distributors looking to apply for Telefilm assistance were soon required to provide a commitment letter from a broadcaster to help support their applications for funds. Even though producers are not required to have a distributor attached to a project in order to be eligible for the Low Budget Independent Feature Film Assistance Program, the program guidelines for 2006-2007 clearly state that Telefilm encourages applicants to seek out broadcast pre-sales with Canadian broadcasters. A commitment letter from a broadcaster also helps support

the producer's application for other major funding programs in Canada such as the Harold Greenburg Fund for script development. The broadcaster commitment symbolizes market interest in the film and thus acts as a risk reduction measure for government investment.

In the Canadian film production system, the broadcaster is not just an important customer or a marketplace gatekeeper in terms of product quality – the broadcaster is the most likely source of the greatest amount of financing before a film is completed. According to one Canadian distribution executive, pre-sales to broadcasters are more than just a risk reduction measure: “Licence fees are very generous... If it wasn't for the broadcasters and the Cancon regulation our industry would be dead... there wouldn't be a business plan to hang your hat on.”

Pre-sales of a film's broadcast licence become legal tender and a guarantee for other sources. The party selling the rights to the film needs to make a great sales pitch to the broadcaster. It is best to approach broadcasters in the development phase because when selling a completed film there is no incentive for them to pay more than a token licence fee. Usually distributors want to handle the pre-sale arrangements themselves. This is, however, decided on a case by case basis, depending on the particular distributor or producer's relationship or track record with the broadcaster since one or the other could potentially leverage a better fee. But to a Canadian distributor being approached by a producer with a broadcast pre-sale in hand is proof that the film is a viable commodity.

If the producer is the party which arranges the broadcast licencing deal, those licences are most often assigned to the distributor and the promised monies from the broadcaster do not go toward production financing. What goes toward the production financing is the distributor's advance payment to the producer in order to acquire the rights to distribute the film. This

advance from the distributor is referred to as a minimum guarantee. For a Telefilm-funded project, this amount is the equivalent of five to ten percent of the film's total production budget.

Distributors use the broadcast pre-sale as collateral or an insurance policy for their minimum guarantee. Distributors often require that the producer attain an equal dollar amount as their minimum guarantee in the form of pre-sales of the film to broadcasters before they will attach themselves to a Telefilm project. What results is far less risk for the distributor since the amount of the licencing deal is almost always equal to the minimum guarantee that the distributor provides the producer. If a producer wants \$350,000 as a minimum guarantee then the distributor will want the producers to have acquired the equivalent in pre-sales to broadcasters. Having the minimum guarantee covered by the pre-sale means that if a distributor were to lose money it would solely be from the film's marketing expenditure.

Pre-sales of Canadian films to broadcasters and other media make no difference to theatrical exhibitors. Such arrangements have no impact on a film's ability to do well theatrically. However, theatrical exhibitors do realize the importance of television in the Canadian market. They are, therefore, inclined to help Canadian films meet the requirements often set within broadcaster licencing deals or by Telefilm and other government funds which call for the film to play for a specified minimum length of time in Canadian theatres.

d) The Canadian Documentary Tradition and TV

In 1985, changes were made to the operating policy for the Broadcast Fund. Telefilm's equity investment in programs would be treated as subordinate to other private investment by Canadians in Fund eligible programs. Telefilm would only recoup on their investment after private investors claimed their share of the returns (Hoskins & McFadyen, 1986). To qualify for

the maximum Fund subsidy, programs were required to obtain a 10 out of 10 CAVCO points for Canadian content. And, for the first time, documentary programs became eligible under Fund criteria (Hoskins & McFadyen, 1986).

The decision to allow documentaries access to the Broadcast Fund forever changed the relationship between informative and topical reality-based content and the media consumer. Television became the medium most associated with the Canadian documentary. The documentary has been credited as inherently promoting public expression, providing diverse information, and supporting collective interests of Canadian citizens (Hogarth, 2000). These qualities explicitly echo the cultural and national aims of Canadian broadcasting policy. Since such programming can be efficiently produced by an array of independent production companies, documentaries more than ever began to appeal to the Canadian broadcaster as a less capital intensive way to meet their Cancon quotas. What this signaled, however, was the dramatic departure of the theatrical documentary.

According to the CFTPA, of the 96 Canadian feature films produced for the theatrical market in 2007, only six were feature-length documentaries (CFTPA, 2008). In comparison, 435 full-length Canadian documentaries were produced directly for broadcast television or other release markets. Documentaries accounted for the highest increase in film and video production volume in 2006-07, but this was due “almost entirely to a jump in the production of documentaries for television” (CFTPA, 2008: 28). The value of documentary production increased by 17 percent in 2006-07 to a total of \$435 million. In fact, 98 percent, or \$428 million, of this was from Canadian television documentary production (CFTPA, 2008). One of most pressing recommendations of the CFTPA’s *Profile 2008* was for the creation of a fund to encourage the presence of more Canadian long form documentaries in the theatrical market.

e) The Broadcaster's Film Schedule and Role in Film Production

Though television was to be the new go-to delivery window for Canadian films, the medium itself may have been a catalyst for both the creation and popularity of the Hollywood blockbuster trend. According to Litwak (1987), television in North America is a persistent vehicle for reassuring consumer interest in the Hollywood film product:

Television is largely responsible for the rise of the blockbuster film. First, it reduced the market for ordinary movies by providing similar entertainment at home for free. The market for movies today is for that which cannot be obtained at home – largely either specialized fare that can be distributed profitably in a limited release, or mass-appeal potential blockbusters released in a great many theaters simultaneously. Second, television has given rise to the blockbuster by providing the means to promote it through television advertising. Third, television has encouraged blockbusters by paying handsomely for the right to broadcast them (307).

Though feature films are a prominent part of the Canadian broadcast schedule, it is mostly imported Hollywood studio films that are aired. Since they are often the first outlet for production financing, Canadian broadcasters have a great deal of power in determining which films see the light of day. They are, however, rarely part of the feature film production process and their schedules too often reflect Litwak's claim of a symbiotic relationship between broadcasters and the Hollywood film product.

Canada's public broadcaster, the CBC, does not produce feature-length films. And as far as airing Canadian theatrical features, the CBC has "lost its way", according to a June 2008 press release by Friends of Canadian Broadcasting.¹⁷ This industry watchdog tracked feature films aired on CBC between August 27, 2007 and April 24, 2008 and found that the CBC aired 197 foreign films during that eight month period. That is nearly four times the number of Canadian movies, 56, shown in the same time frame. Of the 39 films CBC presented during prime time viewing hours, only three (or roughly eight percent) were certified Canadian productions (Friends of Canadian Broadcasting, 2008).

¹⁷ Friends is self described as "a watchdog organization dedicated to the preservation and promotion of Canadian culture and identity on radio and television". www.friends.ca.

Currently, CityTV is the only Canadian OTA broadcaster that is required by the CRTC to air Canadian feature-length films. As a condition of its broadcast licence it is to provide at least 100 hours worth of domestic films in primetime per year. However, according to the Canadian Association of Film Distributors and Exporters (CAFDE), in the nearly two years since CityTV (formerly owned by CTV) was acquired by Rogers Communications in June 2007 they have purchased the broadcast rights to only one domestic film production (Strauss, 2009).

In other countries TV plays a much bigger role in the funding and exhibition of domestic cinema. According to Hill (1996), with Britain's dramatic fall in feature film production activity in the late 1970s and early 80s, "Television was destined to become the most stable and significant source of UK production finance" (105). Since the mid 1980s, Britain's Channel 4 and BBC have not only been proponents of airing domestically produced films but are also active participants in the production of feature films intended for both the broadcast and theatrical markets.

The appropriately titled Channel 4 (the UK's fourth national television channel) was launched in 1982 with a public service mandate to appeal to a wide variety of tastes by offering alternatives to current television programming models. Channel 4 did not itself produce in-house content; instead all programming was purchased from independent production firms. At the time, this was a unique and innovative supply strategy for a British broadcaster.

Taking a page from German television stations ZDF and WDR, Channel 4 viewed independent feature films as a way to meet their mandate (Hill, 1996). The Channel adopted a policy of investing in films "intended not simply for broadcast but also proper theatrical release" (105). From 1982 to 1994, Channel 4 invested £90 million in 264 feature film productions including two of the UK's most successful productions: *The Crying Game* (1992) and *Four*

Weddings and a Funeral (1994). As of 1996, six to seven percent of Channel 4's annual budget was earmarked for film production (Hill, 1996).

Other broadcasters were encouraged by Channel 4's film successes. The BBC entered film production in the mid 1980s. By 1994, the BBC was committed to producing five films annually for theatrical and domestic video release. The ITV group of broadcast channels, that includes Thames, Central, and Granada, produced a total of twenty feature film productions from 1985 to 1989. Granada was responsible for one of the UK's greatest theatrical accomplishments: *My Left Foot* (1989). By 1989, television's role in feature film production financing in the UK was solidified. While only four percent of productions accessed TV funds in 1982, by the end of the decade 49 percent of all indigenous feature films were backed by broadcaster monies (Hill, 1996).

Hill notes that Channel 4's successful venture into film production was due primarily to "its insulation from purely commercial considerations" (106). Very few of its films have made significant profits; however, the channel is committed to supporting film productions because of their cultural importance. Like Canada's CBC, Channel 4 is not dependent on advertising revenues for financial sustainability and has similar policy based aims to cater to public interests.¹⁸ The CBC's commitment to indigenous cinema is, however, far from the Channel 4 benchmark.

f) Film and TV: Two Different Animals

¹⁸ Channel 4's funding source and mandate were direct stipulations the UK's Broadcasting Bill of 1981. Channel 4 is predominantly funded by a fee paid by Britain's ITV group of companies as a percentage of their net advertising revenues. The Bill declares that Channel 4 was established to, "encourage innovation and experiment in the form and content of programmes" (Broadcasting Bill 1981, 13). CBC has a mixed market approach in that it directly solicits private advertising revenues in addition to receiving substantial public financing. For the 2009-10 fiscal year, the CBC's \$1.3 billion budget includes \$930 million in public funds (Barmak, 2009:1).

Though its dedication to the film medium is questionable, broadcast television has proven to be a major industry gatekeeper and essential exhibition window for Canadian films throughout the last three decades. In an ideal publicly regulated broadcast system, the CBC and Canada's private broadcasters would have a mandate to show indigenous films. If one were to address the conspicuous absence of Canadian films on Canadian television, the CRTC would be the place to start. Specialty channels that were previously not allowed by the CRTC to air feature films have now been given that right. There is, however, no incentive for these networks to invest in or show indigenous movies since there is nothing in the Broadcast Act or CRTC regulations about the funding or broadcasting of Canadian films.

It was federal policy that spearheaded the refocusing of the Canadian production industry toward broadcast programming but the one issue that has never been sufficiently handled by Canada's cultural policy scribes is how to use Telefilm Canada and the CBC as a way to bridge the television and theatrical production sectors. Though obvious dependencies exist, within Canadian film and video policy, television and film are treated like two different animals altogether.

D. 3. Telefilm: an Incubator of Distribution?

a) Telefilm's Early Distribution Industry Initiatives

The transformation of the CFDC into Telefilm Canada in the mid 1980s was accompanied by the creation of two new funding platforms to assist in the production and distribution of Canadian theatrical feature films: the Feature Film Fund, which was aimed at supporting works by Canadian filmmakers, and the Feature Film Distribution Fund which made credit lines available to Canadian distributors.

The two funds were intended first and foremost to support fictional films “with significant Canadian creative elements including Canadian stories, themes, talent and technicians, and which reflect Canadian society and cultural diversity” (Grant & Wood, 2004: 155). The Applebaum-Hebert Committee had noted that: “The major foreign-controlled distributors in this country have not shown sufficient interest in Canadian films to assure a promising future to a truly indigenous production industry” (Quoted in Spencer, 2003: 168). The committee recommended that Canadian distributors be given the opportunity to successfully market Canadian films through increased economic resources. In response, the Department of Communications created the \$85 million Feature Film Distribution Fund in 1988.

Historically it has been the view of Canadian Heritage, and subsequently Telefilm, that having a few dominant players and strong performers is of benefit to the entire industry. As one former head of a Canadian distribution firm and frequent contributor to film policy papers states:

It improves the lot of producers to have more than one strong distributor... The industry goes through cycles of consolidation and growth. In some way there are too many distributors. I'm not sure how many of them are actually making money. Not too long ago there were too many distributors and they weren't making money. It was government policy to have fewer distributors. The government would put companies out of business. Telefilm did that – it forced them to sell because they felt that the country was too small to support a lot of distributors.

As Spencer states, the original goal for the Distribution Fund was to “create a handful of studio-like Canadian companies” (2003: 188). It was believed that a small group of profitable distributors would be more able to handle US product coming into Canada and reinvest a portion of revenues from sub-distribution arrangements into domestic film production. Fifteen distributors were chosen to receive Fund monies. Of this, six firms were to receive the “lion's share” of funding (188). These included Malofilm, Cinemaplus, Simcom/Norstar, and Cinepix. None of these firms are in operation today.

The undemocratic nature of these funding allotments soon sparked criticism from industry players who feared that the creation of six big distributors would lead to an uncompetitive environment. The other concern was over the fact that the federal government through the Distribution Fund was, in essence, using the Canadian public's money to assist firms in the acquisition and distribution of foreign products into Canada. Lobbying efforts on the part of the less favored Canadian distributors were successful. The Fund's allocation process was restructured to be less discriminating among its beneficiaries.

The Canadian government originally granted Telefilm \$31million annually to support the Feature Film Fund. That amount was increased by \$11.4 million as a supplementary fund two years later. Telefilm was to use ten percent of this money for administrative purposes leaving \$37.3 million a year for the Fund. However, having control over their internal allocation of its government funding, Telefilm spent only a portion of these monies on the Film Fund. The remainder was put toward other internal Telefilm projects (Mandate Review Committee, 1996). The total governmental allocation for these two ventures reached \$146 million in 1989-90 (Mandate Review Committee, 1996). However, these initiatives did not produce their intended results.

By the 1990s concerns arose that the Film Fund's resources were not being used to effectively support Canadian films. Over 80 percent of all films produced in Canada did receive some support but, from 1990-91 to 1994-95, there was a dramatic decline in the production budgets of Telefilm assisted films. The average budget for French-language films went from \$2.9 to \$1.5 million, while English production budgets were further depleted from \$4.2 to \$1.6 million. By 1994, Telefilm had reduced the Film Fund to 43 percent of its original size (Mandate Review Committee, 1996).

The philosophy behind the creation of the Distribution Fund was that well-funded distributors would make better decisions about the quality and audience appeal of film projects. They would then be better positioned to see profits at the box-office (Spencer, 2003). However, it appeared that Canadian distributors receiving Distribution Fund monies were not interested in handling films which had been produced under the Film Fund. By 1994-95, only one-third of all minimum guarantees from Canadian distributors went to films with Film Fund production support. Canadian distributors put a mere \$5 million of the \$14.6 million they had received from Telefilm into distributing films produced through its production fund (Mandate Review Committee, 1996).

b) Toward the Canada Feature Film Fund

In the decade following the creation of Telefilm's Feature Film Fund and Feature Film Distribution Fund, the Canadian film industry witnessed further decline in its market competitiveness (Telefilm Canada, 2005). Despite critical successes including *Dead Ringers* (1988), *Le Declin de l'Empire American* (1986), *I've Heard the Mermaids Singing* (1987), *Jesus de Montreal* (1989), *Léolo* (1992), *The Red Violin* (1998), and *The Sweet Hereafter* (1997), Canadian films annually achieved roughly one to two percent of the domestic market box-office receipts (Telefilm Canada, 2005).

This extended underperformance at the box-office led to a review of Telefilm's distribution support policy. Telefilm realized that "feature films could not reach moviegoers without the market influence of a distribution company", therefore, instead of eliminating distribution funding altogether, "subsidies for minimum guarantees were eliminated in favor of support to marketing costs for prints and advertising" (2005: 7).

In October 2000, the Minister of Canadian Heritage announced what was to be a turning point in Canadian feature film policy. The publication *From Script to Screen: New Policy Directions for Canadian Feature Film* marked the cumulative efforts of several cultural agencies who had responded with vigor to calls for industry input on the direction of Canada's film industry in the new millennium. The policy report set four main objectives which would best serve the federal government's funding support to the industry. These goals were: to develop and retain talented creators, foster the quality and diversity of Canadian feature films, build larger audiences at home and abroad for Canadian feature films, and preserve our collection of Canadian films for future audiences (Canada, 2000).

Central to the recommendations of *From Script to Screen* was the declaration of a new industry goal of capturing a five percent share of the domestic box-office within the next five years. This was to be accomplished by fostering an increase in average production budgets to at least \$5 million and encouraging more comprehensive national and international marketing campaigns by promoting an increase in average marketing budgets to \$500,000 (Canada, 2000). Along with a performance-based incentive for Canadian filmmakers who achieved domestic box-office success while maintaining a significant level of Canadian content within their films, this policy framework would now place a much needed and long awaited emphasis on the role of a distributor in the success of a film. To ensure that good films were released and promoted to achieve their full box-office potential, solid cross-platform marketing plans, sizable advertising commitments, and a fair minimum guarantee of return from a distributor would be required before projects would be green-lit by Telefilm.

In response to the new Canadian feature film policy, Telefilm consolidated the Film Fund and the Distribution Fund forming the Canada Feature Film Fund (CFFF) in late 2000 with a

sizeable government funding allotment of \$100 million (Telefilm, 2005). The many components of the CFFF include: development, production and marketing programs; the Writer's First Program; the Low Budget Independent Feature Film Assistance Program; and complementary activities including Canada Showcase; the Versioning Assistance Program; the International Marketing Program; and the Alternate Distribution Networks Program. These initiatives were created to support the overall goal of increasing the theatrical audience for Canadian films.

c) Telefilm CFFF Distribution Criteria

Before the creation of the CFFF, Telefilm-funded films were being produced without a distributor attached. Such films rarely achieved notoriety let alone a return on investments. Telefilm's CFFF came with new stipulations relating to the distribution terms and conditions for the Canadian films it finances. This was intended to be a safety valve for an industry without guarantees. It would at least give insurances that a Telefilm movie would be distributed.

For CFFF productions with budgets of \$1.25 million or higher, Telefilm requires an agreement be made between the eligible Canadian producer and a Canadian distribution company. Telefilm insists that the distributor fees be reasonable, consistent with industry standards, and permit the possibility of recouping on their investment. The distribution deal must guarantee a theatrical release for the film and the distributor must commit to at least a minimum expenditure on the film's P&A (Telefilm Canada, 2006).

To qualify as a CFFF-eligible distributor, companies must first meet an extensive list of the eligibility criteria. The firm must have been active in theatrical distribution in Canada for the last two years. In that time, the company must have released at least twelve films, two of which were Canadian. As a demonstration of its expertise and abilities, the company must have one or

more senior executives with five years of distribution experience and currently hold the rights to at least three films pending release within the next eighteen months (two of which must be Canadian). A start-up distribution company that does not meet these requirements may access production financing only if it has one or more senior executives with five years of distribution experience and provides Telefilm with a copy of their corporate business plan which outlines how the company will grow to meet the above eligibility requirements. Telefilm reserves the right to revoke or suspend the eligibility of a distributor at any time (Telefilm Canada, 2008a).

Films with budgets less than \$1.25 million may apply for CFFF production funding without an existing deal with a distributor; however, a Canadian distribution company should be attached to the project by the time of the film's final edit (Telefilm 2006, 3). For a film's international distribution, Telefilm allows the film to be distributed by either a Canadian or international company. An eligible international sales company must demonstrate to Telefilm that they have a financially viable business plan, participate frequently in major international sales markets, and have a proven commitment to the distribution of independent films.

For international co-productions, the distributor has to prove to Telefilm that they have the experience, financial assets, and dedication to a film before Telefilm will approve their participation. This is because of the co-production's ability to travel and achieve success internationally. A lot is at stake for co-production films; specifically at risk is Telefilm's reputation as a production partner and their continued access to international co-production opportunities. In any case, Telefilm has final approval on the choice of the distribution company for the films it funds. And, in all agreements with funding applicants, Telefilm requires that it be permitted free access to the books and records of the distributor(s) of any production which benefits from its financial support (Telefilm Canada, 2006).

d) Telefilm's Role in Producer-Distributor Negotiations

The largest source of domestic Canadian productions is Telefilm's CFFF. With the intent of putting in place standards of operating practice for Canadian distributors, Telefilm has set requirements for potential distribution partners in the projects it funds and plays a role as a negotiations arbitrator between participating producers and the attached distributor.

Telefilm places considerable emphasis on three aspects of the distributor's participation in Telefilm-funded productions. The first consideration for Telefilm is the preliminary marketing and distribution strategy for the proposed project. Telefilm requires the distributor to provide a detailed analysis of the project's "potential for success in the domestic and, if applicable, international theatrical marketplace" (Telefilm Canada, 2006). The distributor's marketing plan must detail the target demographic, the proposed theatrical release strategy, and the performance of comparable films. It must also describe the type of advertising buys, marketing tie-ins, and cross-promotions sought; and give projections of how the proposed P&A commitment will maximize revenues. By setting requirements and giving final approval of a CFFF distributor's marketing campaign, Telefilm aims to ensure that "good films are not subject to perfunctory release strategies and that they are released and promoted aggressively to achieve their full box-office potential" (Telefilm Canada, 2003a: 3).

Telefilm reviews the distributor's proposed marketing plan at several stages. At the screenplay stage the attached distributor shows Telefilm a 'positioning statement' and in the later stages of development the distributor is required to provide a broad marketing plan. When the film is ready for production, Telefilm reviews the final marketing plan that includes a very detailed release schedule and the intended theatres for film's theatrical release. They look for

specific details on the advertising expenditure including the types and cost of print media and television coverage the film will receive.

Telefilm provides a standard pre-approved template agreement which sets their minimum requirements of a distribution deal. All distribution fees or commissions proposed to be charged by a distributor or sales agent are subject to Telefilm's review and approval. Telefilm sets an industry standard for how much of a film's revenues a distributor can take maximum of their distribution fees and expenses, and gives distributors a pencil sketch of what constitutes acceptable expenses. The size of the distributor's minimum guarantee is limited to a certain percentage of the cost of the project. Telefilm states that they attempt to ensure that the minimum guarantee is larger than the domestic television pre-sales of the film so that "the distributor has real money at risk at the front end of the project" (3). However, it is the distributor's goal to attain enough broadcast pre-sales to match their minimum guarantee.

Telefilm executives consider their negotiations with distributors to be a 'frank conversation'. They view their participation in negotiations as performing an advisory role with the purpose of ensuring that arrangements are equitable. However, Telefilm is an equity investor and seeks a return on their investment. As such they are responsible to their stakeholders and, consequently, all distribution and sub-distribution agreements between Telefilm CFFF applicants must be submitted to and approved by Telefilm. If the distribution contract provisions do not meet Telefilm's standards, they reserve the right to request modifications to said distribution contracts.

On the whole, Canadian distributors find Telefilm's CFFF distribution requirements to be overly restrictive. They feel that Telefilm is inclined to protect the producers' rights because distributors have historically been viewed as deceptive or crooked. As one Canadian distribution

executive states: “Whenever I am about to make a deal with a producer who has or is about to pursue Telefilm equity, I am always surprised at how Telefilm polices the contracts and the deal memos that I send to the filmmakers.” Telefilm is able to approach the distributor with a massively redlined version of the proposed distribution deal calling for the lowering of fees and changed terms of the agreement. “These are not suggestions,” says the experienced distributor, “they are absolutely mandatory for the deal to go through. It makes me wonder, is that really their place?” Even though the distributor is required to meet a stringent series of eligibility criteria; submit detailed budgets, plans, and reports; and maintain complete financial transparency, in these CFFF negotiations there is no third party looking out for the distributor’s rights.

Though access to Telefilm-funded properties involves dealing with a unique series of bureaucratic requirements and objectives, this product supply is indispensable to the Canadian distributor. This guarded product line gives the Canadian distributor a level of creative control and freedom that is rarely attainable in the international marketplace.

e) Case Study: *Foolproof* (2003)

The first multi-million dollar film to come out of this new funding program was *Foolproof* (2003).¹⁹ *Foolproof* was the brainchild of writer/director William Phillips. Phillips emerged from Ryerson University’s film studies program in 1990 through which he produced the award-winning short drama, *Milkman*. In 1998, Phillips completed the director’s residency at the Canadian Film Centre. His first feature film was the quirky independent film *Treed Murray*

¹⁹ *Foolproof* was in fact the second film produced under the new CFFF guidelines. The first film made under the new rules was *Mambo Italiano* (2003), a modestly budgeted niche comedy about an Italian immigrant to Canada who struggles to reveal his homosexuality to his parents (IMDB). Though having minimum production and promotional budgets, *Mambo Italiano*, would go on to earn nearly tenfold the profits of *Foolproof*.

(2001). This film earned him a Genie Award nomination for Best Achievement in Direction.

Based on the surprise success of *Treed Murray*, Phillips was viewed as one of Canada's up-and-coming cinema auteurs. *Take One* heralded him as "one of the most interesting filmmakers working in Canada today" (Heard, 2003: 1). Phillips had been reworking and perfecting the *Foolproof* script for years. After several script revisions for his potential producer, Alliance-Atlantis Communications (AAC), Phillips credits a sweeping change to AAC's executive personnel that finally saw *Foolproof* be green-lighted for production (Heard, 2003).

Foolproof can be described as an exercise in genre. According to Phillips, "I wanted to make a mainstream piece; a genre piece. On purpose. Not as a ticket to Hollywood, but I wanted to make something I would enjoy, that would have a broad appeal" (Hays, 2003: 1). The Canadian film industry has produced the occasional heist movie including Yves Simoneau's *Pouvoir Intime* (1986) and an early tax-shelter film, Daryl Duke's 1978 thriller *Silent Partner* (Heard). Phillips said of *Foolproof* "When I wrote it, I didn't think it would get made in Canada, but I think things have changed" (Hays, 2003). What changed was the willingness for Telefilm to invest in English-language projects looking for a more mainstream audience. *Foolproof* is a heist movie that attempts to be faster and flashier than its predecessors in hopes to reach a younger target audience. The plot does, however, have enough original elements to allow it to build on the genre.

The film follows three twenty-somethings who form a club (called 'foolproof') where, they spend their leisure time plotting corporate espionage and heists. At first these criminal scenarios are only hypothetical; the intricate planning of the heist is excitement and enough for the protagonists. This all changes when their detailed plans fall into the hands of a notorious thief who blackmails them into actually carrying out their latest scheme - a multi-million-dollar

robbery - despite the fact that they had never intended to be criminals. *Foolproof*'s leading actors are Ryan Reynolds and David Suchet. Reynolds, who plays the leader of the 'Foolproof' heist club, had achieved American celebrity status for his role on the ABC sitcom *Two Guys and a Girl* (which aired for four seasons from 1998-2001) and his lead performance in the feature comedy *National Lampoon's Van Wilder* (2002). Suchet plays the film's villain: Leo the Touch. He is best known as the lead role of Agatha Christie's *Poirot* which aired on PBS for 11 seasons but he has also starred in countless Hollywood films including the recent remake of *The In-Laws* (2003), which co-starred Reynolds.

Foolproof was intended to embody the universal appeal, blockbuster potential, and the commercial hype necessary for a film to break into the Hollywood market. It had the makings of, as they say in the industry, 'a film with legs' that would travel well across international borders. When asked about the commercial appeal of the film, Phillips stated, "Does commercial mean that I hope people will enjoy the film, that it will be a crowd pleaser? If it does, then yes, this is a commercial film" (Heard, 2003: 1). Though Phillips downplayed the commercial merits of the film, there was a lot riding on the box-office success of *Foolproof*.

Richard Stursberg, Telefilm's then Executive Director, stated that "*Foolproof* is part of the emergence of a new English-Canadian cinema, one that is not Hollywood filmmaking, but that is committed to making popular independent Canadian movies that will do well at the box-office" (CBC Arts, 2003: 1). Telefilm's new goal was to support projects and producers that had a viable script and firm commitments from distributors, in hopes that such projects would recoup the public's investment (CBC Arts, 2003). It was believed that *Foolproof* would signal a turning point that would see Canadian films become more audience-friendly than in the past (CBC Arts). Phillips dreamed of such ramifications himself, stating: "I think if we manage to have a success

of *Full Monty* proportions,²⁰ then that will be good for everyone in the end, both the filmmakers who want to create something more mainstream...and those who want to create things that are more esoteric. Telefilm has shifted its priorities, but when we have breakout hits, it's only going to help everyone in this business" (Hays, 2003: 1).

In the media hype that preceded *Foolproof*'s release, rarely did anyone speak of what the consequences would be if the project did not attain commercial box-office success. Of *Foolproof* and *Mambo Italiano*, *Globe and Mail* film critic Liam Lacey wrote: "Let's hope these new movies make out like bandits at the box-office because the alternative is too depressing to contemplate: Millions in tax dollars tossed away on second-rate popcorn movies. Spending money on culture is one thing, but, in the memorable words of former Canada Council head Mavor Moore, there's just no good excuse for losing money on crap" (CBC Archives, 2003: 1).

Large budgets and large promotional campaigns are the hallmarks of most of today's high profile action films. Though measured against Canadian standards, *Foolproof* was no exception. To *Foolproof*, Telefilm granted the most production funding it had ever invested in one film: \$ 3,403,785 (Telefilm, 2003b). AAC and their subsidiary, Odeon Films Inc., also put great stakes on the wide appeal of the film.

AAC and Odeon Films contributed the majority of *Foolproof*'s estimated \$8 million production and distribution budget. As promotional news coverage stated, this total budget was "not huge compared to American popcorn movies but was very big by Canadian standards" (CBC Archives, 2003:1). The total budget was comparable with similarly themed Hollywood teenage heist films *Sugar & Spice* (2001) and *The Perfect Score* (2004) which had estimated budgets of between \$10 to \$11 million (US) each.

²⁰ *The Full Monty* (1997) is a British comedy about six unemployed steel workers who form a male striptease act. The film was produced on a budget of \$3.5 million (US), but went on to make upwards of \$250 million in worldwide box-office gross (IMDB).

Foolproof was “released with the kind of fanfare rarely seen in Canada” (CBC Arts, 2003:1). Jim Sherry, president of AAC's Canadian theatrical distribution department, labeled *Foolproof* a perfect fit for the ideal target demographic of 16 to 34 year olds (Dinoff, 2003). *Foolproof* had a reported P&A budget of close to \$3 million (Rice-Barker, 2003). Telefilm contributed \$1,434,048 toward this amount (Telefilm, 2004). These monies supported the biggest multi-platform marketing campaign in Canadian film history. The film’s tagline was: ‘This fall suspense gets intense!’ With big supporters such as CHUM Television, Pizza Hut, and Famous Players, the film’s overall marketing campaign certainly was intense.

In what Jim Sherry called, “one of the largest composite deals ever structured in Canada,” CHUM and AAC struck a deal that would see extensive promotion of the film on CHUM-owned television networks, in particular MuchMusic (Dinoff, 2003:1). In turn, CHUM acquired the TV broadcasting rights to *Foolproof* for free. Famous Players, alone, provided \$500,000 worth of in-theatre promotion and an extensive trailer campaign for the launch of *Foolproof*. The film’s theatrical teaser was presented before screenings of the Hollywood blockbuster *The Matrix Reloaded* (2003) which “left an estimated two million impressions” (1). Famous Player’s VP of Corporate Affairs, Nuria Bronfman, justified the company’s contribution to the film when she said that “one of the key ingredients for the success of our indigenous film industry is to create audiences and a market for the films...We like to raise the level of the marketing of these films and we have the ability to use our screens and the in-theatre environment to do that” (1). Also included in the film’s promotional strategy was a music video, a \$10,000 diamond treasure hunt contest which was run in eight Canadian cities, massive billboard ads, and a Pizza Hut marketing tie-in (CBC Archives, 2003).

On October 3, 2003, *Foolproof* opened on 204 screens making it the widest domestic release in Canadian history (CBC Arts, 2003). *Foolproof* also set a precedent for the widest opening release of an English-Canadian film in Quebec. Of the 204 screens, 37 were in Quebec theatres which screened a French-language dubbed version of the film (Hays). To compare, another well publicized Canadian release that year, David Cronenberg's *Spider* (2002), was released on only 35 screens in its opening weekend (CBC Arts, 2003).

Though close to \$3 million was spent to promote *Foolproof*, and its nearly \$8 million production budget included the highest investment Telefilm Canada ever made in a single film, the film only made roughly \$230,000 in its opening weekend (CBC Archives, 2003). As of November 6, 2003, *Foolproof* was finishing its theatrical run with only \$440,000 in the box-office gross (Rice-Barker, 2003). As a result, the film grossed virtually nothing in the US, where it was released direct-to-video. *Foolproof* incurred huge financial losses, but it still managed to be the tenth highest grossing Canadian film of 2003 (Rice-Barker, 2003).

The commercial success that had been envisioned for *Foolproof* failed to transpire. *Foolproof*'s box-office failure is predominantly significant because it was a victim of the structural limitations placed on Canadian films. When one considers that in 2003-04, across the country there were 574 movie theatres and 54 drive-ins with a combined total of 2,980 screens (Statistics Canada, 2006), *Foolproof* played in less than half of all available venues and on less than ten percent of all Canadian screens in its opening weekend.

With the substantial marketing push behind *Foolproof*, it is surprising that this film was not considered the tentpole film for its opening weekend release in Canada. On that same weekend (October 3-5, 2003) there was only one other large-budget release, *School of Rock* (2003), a family comedy starring Jack Black. *School of Rock* had a modest budget by

Hollywood blockbuster standards: \$35 million (US). Its opening weekend North American gross was a disappointing \$19,622,714 (US) on 2,614 screens; however, the film went on to earn over \$85 million in worldwide sales (IMDB, 2003b). What this case study reveals is that the only factor that determines if a film is privy to the industry's optimal saturation release into Canadian theatres appears to be whether or not the film is distributed by one of the major US distributors.

f) Critique of Canadian Distributor Obligation

In 2005's, *Scripts, Screens & Audiences: A New Feature Film Policy For The 21st Century*, one of the main issues raised by the Standing Committee On Canadian Heritage was whether or not Canada's distribution system places constraints upon publicly-funded films. Federal funding is given to nearly all Canadian-produced feature films. Though they have separate policies, nearly all funding agencies require that their publicly-funded films be distributed in Canada by Canadian-owned and controlled distributors (Canada, 2005). The major critique of this obligation is that it favors the commercial interest of the rotating group of current Canadian-owned distribution companies and limits the ability for Canadian films to access a North America-wide distribution deal.

Industry submissions to the Committee were divided on the question of whether or not such a requirement restricts the potential of a Canadian film in any way. The report cites only a few suggestions from industry players. Cineplex Entertainment were of the opinion that "good commercially profitable, appealing films can come from any source and be distributed based on those characteristics" (44). The report implies that this quote means that Canadian distributors have a fair chance at theatrical exhibition but, if you read closely, what this carefully worded sentence says is that 'good films can get a distributor'. That is not the issue.

The National Film Board of Canada (NFB) and the CFTPA feel that the CFFF requirements are not negatively affecting Canadian films but they would like to see Canadian distributors be required or encouraged to better market their films.

Those who stated that the current rules inhibit Canadian films included; the Alberta Motion Picture Industries Association, Film Ontario, and the Nova Scotia Film Development Corporation. None of these organizations were quoted in the report but it was added that they felt allowing foreign distributors to handle Canadian films would help with the perceived inadequate marketing of indigenous films (Canada, 2005). This popular stance toward opening the market to allow US distributors to handle Telefilm-funded films argues that the slick Hollywood-style promotion system would get more Canadians out to see Canadian-produced films. The mass marketing and packaging of the studios would also be more successful at promoting the less audience friendly or more niche Canadian films.

g) Focus on Commercial Success

One of Telefilm's many mandates is in fact to promote the commercial profitability of Canadian films. This objective is one of the biggest drivers behind the Corporation's keen interest in the details of a CFFF distributor's marketing campaign. Producer Robert Lantos, is blunt in his assessment of what has historically ailed Telefilm and, consequently, the industry:

For years, Telefilm ignored commercial success in their concern for political correctness and regional and gender balance, but that kind of approach doesn't work. There should be universal commitment to one thing: excellence. It's pretty tough to achieve success. Most films don't work. [But] If you don't focus on excellence ... you will only encourage producers not to produce, but simply to hit the marks set out for them by the government (Glassman, 2007:1).

As Telefilm has shifted its focus to projects with greater audience appeal and commercial potential, the industry has likewise changed its philosophy.

The key 'commercial' initiative was Telefilm's decision to begin rewarding performance envelopes to producers and distributors of Canadian films which performed well at the domestic box-office. These bonuses for financially successful productions set money aside specifically to fund future productions. They allow the recipient to automatically qualify for Telefilm assistance of up to 49 per cent of the production costs of his or her next project.

Under the CFFF's English-language guidelines, a film qualifies its producer(s) for a Production Performance Envelope if it is part of the top 15 percent of films earning a minimum of \$500,000 in gross Canadian box-office receipts. Prior to 2006, a film had to reach \$1 million in box-office gross before its producers could access the funding envelopes. Canadian feature-length documentaries that achieve success at the domestic box-office qualify for production performance envelopes of up to \$1 million. As part of the CFFF Marketing Program Performance Envelope, distributors of Canadian films ranked in the top 15 percent of each separately ranked linguistic market qualify for the Telefilm bonus. Companies who achieve moderate box-office returns but who do not earn enough to obtain the performance-based funding envelope are still able to receive an envelope for use in the development of subsequent projects. Performance Development Envelopes offer a bonus of up to \$150,000 – large enough to significantly contribute to production financing.

Telefilm began meticulously tracking the commercial success of its projects when the five percent box-office target for CFFF productions was set in 2001. Listed in order of achievement, Telefilm's biggest box-office success stories from 2001 to 2007 are the following twelve feature films:

1. *Bon Cop, Bad Cop* (2006)
2. *Séraphin - Un Homme Et Son Péch* (2002)
3. *La Grande Sduction* (2003)
4. *Les Invasions Barbares* (2003)

5. *C.R.A.Z.Y.* (2005)
6. *Les Boys III* (2001)
7. *Aurore* (2005)
8. *Mambo Italiano* (2003)
9. *Maurice Richard* (2005)
10. *Les Boys IV* (2005)
11. *Camping Sauvage* (2004)
12. *Horloge Biologique* (2005)

Though one title, *Mambo Italiano*, is in English, and the reigning top revenue earner *Bon Cop*, *Bad Cop*, is a bilingual film, the striking commonality of all twelve films is that they are all from Quebec (Playback Online, 2007).

h) Slate Development Pilot Program

The most recent Telefilm initiative, the Slate Development Pilot Program, is a two-pronged policy instrument which aims to support more commercially promising English-language films and, at the same time, strengthen the breadth of the domestic supply chain through forming producer/distributor partnerships.

Implemented in 2007 as a pilot initiative for three years, the Slate Development Pilot Program offers a non-interest bearing line of credit to producer/distributor partnerships to assist in the financing of a small portfolio of English-language Canadian films. Complementing the primary objective of the CFFF – to increase Canadian audiences for Canadian feature films – the slate program’s objective is to “encourage the development of Canadian feature films that have high box-office potential, in a range of genres” (Telefilm Canada, 2007b: 3).

A ‘slate’ is a selection of film projects at the draft script stage. The program requires a participating producer to have a minimum of three feature-length fiction films at the draft stage. This pilot program allows Telefilm to oversee a slate of productions throughout each step in the development process with only one application on the part of the producer. The intention for the

slate program is to build better relationships between Canadian producers and distributors. This will hopefully result in greater predictability of success, financial support, and increased efficiency within the relationship between all three parties: producer, distributor, and Telefilm.

According to Wayne Clarkson, Executive Director of Telefilm:

What's innovative about this pilot program is that we're financing the production company and not the project. This approach provides greater certainty of financial support and autonomy for production companies. What's also new is that an experienced distributor is involved at the development stage to help ensure high box-office returns in a range of genres (Telefilm Canada, 2008b:1).

The production firm is the central figure in the slate program but the entire slate of films must also have a CFFF-eligible Canadian distributor attached to each individual project. One distributor can be committed to the entire slate of projects. The production company must have a demonstrated track-record of achievement with at least two Canadian theatrical releases to their credit. Service work for a US-produced foreign location production does not qualify.

The actual dollar amount of the Telefilm credit line is based on the producer's ability to prove market interest (financial backing by other private sources) in the projects. The amount of financial commitment from international distributors or sales agents, Canadian or international broadcasters, and private investors that the producer brings to the projects is used to calculate the maximum line of credit. The attached Canadian distributor is required to provide the initial sum of monies (roughly ten percent of the total development budget for the slate). The Telefilm line of credit will match the total amount of market interest invested.

Affiliated production firms – those that both produce and distribute films – are considered to pose less risk to the Telefilm investment; consequently, they are able to access a line of credit that is initially as much as \$250,000 for a period of up to three years. Over the two to three year period, based on how much market interest the producer has been able to draw to the film, the maximum could be extended to as much as \$500,000. Or if private capital is not

forthcoming the credit line can also be reduced or withdrawn. It is, of course, expected that the applicant payback the total line of credit upon the commencement of filming or the sale of their rights to the script.

A main reason for the loyalty of the Canadian exhibitor to the Hollywood studio distributor is that exhibitors need a large amount of product to fill their multiplex screens. Studios have a steady supply chain with the resources and financial capital to guarantee future film properties to the exhibitor. Since the Slate Development Pilot Program is intended to encourage reputable Canadian producers to have a number of feature film projects on the go, could the program result in a steady and stable distribution supply chain?

Unfortunately, the slate program requires the production company to have a minimum of three films in development and only supports feature films intended for the theatrical market and not television. Therefore, it is getting little interest from Canadian production firms who can't afford to have three films in development and, even if they can, still tend to have a foot in both the theatrical and non-theatrical markets in order to survive – which, as previously mentioned, has long been encouraged by Telefilm.

There are currently only a handful of production firms taking advantage of (or who have qualified for) the program. These include Anagram Pictures, who signed a multi-year slate deal with Maple Pictures in March 2008 to develop at least four feature films; Capri Films Inc., working with Equinoxe Films Inc.; Infinity Features Entertainment in conjunction with distributor Seville Pictures; and Keystone Pictures Inc. and Whizbang Films Inc. (Paul Gross' production company which most recently released *Passchendaele* in 2008), both of whom are working with Alliance Films.

i) Contradictions and Concerns

Telefilm's eligibility requirements that dictate which Canadian distributors have access to CFFF films have an effect on the distribution marketplace and may place restrictions upon the diversity among and ease of market entry for Canadian distribution firms. New entrants to distribution are already faced with a large initial capital investment, problems accessing economies-of-scale because of concentrated ownership in the industry, and a preferred choice barrier because producers and exhibitors weigh the past history of the distributor as the most important indicator of future success. What Telefilm's distributor eligibility requirements effectively do, whether intentional or indirect, is support the product supply line and continued growth of a handful of Canadian distribution firms. Requiring a proven track record of success in a market known for its consistent underachievement results in a government support system where commercial success and the propensity for delivering products with wide audience appeal trumps universal access to funding resources. Therefore, the continued financial success of a few dominant firms becomes priority over the incubation of new and emerging distribution firms. Some in the industry believe that it is only a matter of time before we see only a single distributor operating in Canada, and maybe that is all there is room for in such a small market.

New entrants must seek out product from the international marketplace. This proves to be a difficult task with the fierce competition from established firms who, like the studios and mini-majors, can offer North America-wide distribution deals compared to the single Canadian market offering of the small Canadian firm. To meet Telefilm's eligibility criteria, new Canadian distribution firms must first establish themselves as importers of international independent, alternative, and art house cinema in order to sustain revenue flows. It is a challenge to prove themselves as promoters of indigenous cultural product, when sustainability for nearly all

Canadian firms means the procurement of a steady product supply chain from a foreign distributor looking for a direct conduit into the Canadian marketplace.

By attempting to limit the number of distribution firms in the marketplace and rewarding an established firm for its proficiency and profitability, Telefilm has added to the already monumental barriers to entry within the motion picture distribution industry. Overall, growth in the Canadian distribution sector has been hindered and the main industry incubator, Telefilm Canada, is supporting an imbalance.

D. 4. Industry Subsidization: Albatross or Lifeboat?

Publicly-funded Canadian films which are obligated to use a Canadian distribution company for their domestic release may be denied fair access to theatre screen time because, for the most part, Canadian distributors cannot give the exhibitor the same economic enticements such as elaborate P&A expenditures and a steady product stream as their US competitors. Canadian private investment in film is lacking because potential investors know that, no matter how commercially promising, Canadian films have only the slightest chance of reaching the cinema audience where the most profits are to be had.

Telefilm's recent changes to the English-language performance envelope requirements and their new slate development initiative should effectively increase the productivity of Canadian producers. With increased productivity comes the potential for greater commercial achievements in the theatrical marketplace. In recent years Telefilm has certainly seen more individual box-office successes than it has in decades previous. Nonetheless, as producer Denise Robert – a long time collaborator with acclaimed director Denys Arcand – states, “When an industry is successful, you don't stop helping it - you help it grow even more” (Binning, 2007: 1).

The rationale for ensuring that Canadian distribution firms have a protected supply line is that these firms will cross-subsidize and acquire private investment for Canadian productions.

Though this policy benefits Canadian distributors, for producers:

...a requirement to deal only with Canadian distributors as a term of access to production subsidies implies a further subsidy. Each time a supported Canadian filmmaker has to choose a Canadian distributor when he or she would prefer to contract with a foreign distributor because of better price or service, an implicit subsidy is granted by the filmmaker to the national distributor. The size of the subsidy is the loss of profit or higher losses experienced by the filmmaker (Acheson & Maule, 2003: 29).

With the majority of production funding continually coming from public coffers, supply-side initiatives have not been successful in their central aims of attracting private investment and encouraging greater marketing expenditure on the part of Canadian distributors. Such subsidization has been called the 'albatross' of Canadian motion picture industry (Acheson & Maule, 2001). Private investment is needed to meet the large initial production expenses of the film product. Acheson & Maule (2001) argue that without profitable Canadian distributors and greater private investment, the industry will continue in a "cyclical pattern of subsidization" (29).

The total production expenditure for Canadian-produced films in 2007-08 was \$273 million. This is down from the record high of \$364 million from just two years previous (CFTPA, 2009). In 2007-08, public investment in Canadian films accounted for 56 percent of total production financing in the country. Public funding sources include federal and provincial tax credits, Telefilm's CFFF, independent production funds, and other public outlets such as financing from provincial governments and other government departments and agencies (CFTPA, 2009). In 2006-07, 64 percent of all production financing for Canada films was from public sources. This decline is due almost entirely to a ten percent drop in funding from provincial governments and other governmental departments, not from increased private monies (CFTPA, 2009).

In 2007-08, 43 Canadian productions received financial support through Telefilm's CFFF (CFTPA, 2009). Of its \$90 million expenditure this past year, the program contributed \$68 million directly to production which amounted to 25 percent of all production financing in Canada, making it the largest single source for production monies two years in a row. The annual CFTPA report looks at this Telefilm investment as an incentive for private investors. In terms of the CFFF's financing-leverage ratio, with feature film financing from other sources totaling \$153 million in 2007-08, the ratio of CFFF financing dollars to other financing dollars, improved by 46 percent; from \$1.54 in 2006-07 to \$2.25 in 2007-08 (CFTPA, 2009). But from 2001-02 to 2007-08, every dollar invested through the CFFF was matched by only \$1.18 from other sources. It is, therefore, apparent that "... production that is taking place inside the CFFF is drawing less and less external financing – thereby reducing the leverage of the CFFF investment" (CFTPA, 2008: 8).

While there does not appear to be a direct relationship between any single source of funding and the number of films produced in Canada or their theatrical success, fluctuations in the total amount of production financing each year over the past decade correlated with extreme variations in financing attained from foreign investors. Foreign investment in Canadian theatrical production went from \$91 million in 2003-04 to \$17 million in 2004-05. In 2005-06 the number rose again to \$87 million only to drop to a meager \$9 million in 2006-07. In the previous year, foreign financing reached \$29 million and accounted for 11 percent of all production monies (CFTPA, 2009).

The effects of constant fluctuations in financing are most visible in the average production budget of the Canadian-produced films. In 2006-07, the average budget fell to \$3.2 million, from \$4.5 million a year previous (CFTPA, 2008). At \$5.1 million, the average CFFF-

supported theatrical feature received significantly more than the national average of \$3.4 million in 2007-08 (CFTPA, 2009). Overall Canadian films continually account for less than two percent of theatrical films with budgets between \$10-20 million exhibited in Canada (CFTPA, 2008). Since investment directly reflects the quality of productions, without public financing further concerns over the Canadian production sector's ability to maintain high standards or content quality will be raised (CFTPA, 2008).

Public funding provides the necessary consistency that private and foreign investment cannot. Subsidization is, therefore, not the albatross of the Canadian film industry; it is its lifeboat. Maintaining sufficient public funding for the production industry is a most pressing issue since there is a growing need to compete with the increasingly well-funded international products in domestic theatres. Though direct and indirect public subsidies have remained steady in recent years, continued public support is threatened if subsidized films are increasingly unable to compete for a wide consumer base in the domestic theatrical market.

E. The Export Channel: Canadian Films into the US Marketplace

As Magder (1993) infers, "Canadian cultural actors are primarily interested in developing products that will be attractive to the international, and especially American, markets" (17). For Canadian-produced films, or any film for that matter, the significance of distribution into the US market is huge. The US is not only the largest film market, but also the most profitable. As one Canadian distribution executive states, "The United States is worth what the rest of the world is worth. If you sell to the US for a certain amount, this is what you are going to get in all of the rest of the world." However, with few exceptions, distribution of foreign-produced films into the US market is severely limited. This has allowed US corporations to build an inward looking

media system that limits access to the US market from foreign cultural producers including its closest neighbors: Canada.

E. 1. The Studio Distribution of Canadian Films

Though a large number of US-financed films are produced in Canada every year, there is an extreme hesitancy on the part of the US distributor to acquire a certified Canadian picture, no matter how universal the film's narrative structure. From 1968 to 1978, Canada produced 448 feature films but, "according to the Canadian Motion Picture Distributors Association, only 14 of them were distributed by the US majors" (Pendakur, 1981: 54). From 1986 to 1993, only 0.4 percent of the majors' total revenue was from distributing Canadian-produced films (Canada, 1998: 10).

Though Canadian economists Acheson & Maule argue in favor 'open policies' toward cultural activities, as exemplified in the US, they themselves acknowledge that:

American distributors in the various media are biased against foreign productions, so the flow is one way... American distributors operating in both countries, apply a set of blinkers to a rich menu of Canadian materials (1999: 17).

Globerman (1991) cites two main reasons as to why the majors do not exercise opportunities to distribute Canadian films. Firstly, they contend that the commercial potential of Canadian films is systematically underrated. There may be a Hollywood purchasing preference that accompanies a lack of knowledge about the Canadian product. Secondly, the majors impose unfair terms on Canadian producers that discourage domestic production by succumbing to a false belief that Canadian films are unique products but if they were more like the Hollywood studio films, they would be picked up for distribution more often. This reasoning, when applied to Canadian feature films, implies that the majority of pictures lack a universal message and those lacking a universal message will also lack consumer interest (Gasher, 1992).

Past activity also reveals that “Studios find it unprofitable to distribute a film with a gross rental potential of less than \$10 million... [and] studios cannot afford to risk money on production and distributing films aimed at an esoteric audience” (Donahue, 1987: 1). The fact of the matter is, however, that US firms have been notoriously unreceptive to the vast majority of film offerings from around the globe (Acland, 2003).

E. 2. Hollywood: Not an Import Business

According to film theorist Toby Miller, Washington/Hollywood/New York preside over the most closed television and cinema space in world history (Acland, 2003). In the US broadcasting industry, foreign ownership is disallowed, and US film distributors exhibit a ‘reflexive refusal’ to import foreign films into the North American market (Trumpbour, 2008).

Though American foreign policy since the 1950s has been propped up on the lofty principle of the ‘free flow of information’, this principle has not been upheld. The ultimate use of this principle is as a “light to shine upon governments seeking to limit the US film industry’s domination over foreign cultural markets” (Trumpbour, 2008: 210). The US government’s policy stance has been to support a self-regulated media industry and has resulted in a highly concentrated, anti-competitive, oligopoly and oligopsony ownership structure in the US media and communications industries (Kunz, 2007).

Historically, the US motion picture industry has never had a goal of bringing products from around the world to the marketplace (neither in the US or globally). The singular goal of its member organization, the MPA, is to export the products of its member companies (Pendakur, 2008). Such a claim is supported by the fact that since Hollywood’s inception, the US has imported “remarkably few films and television programmes, relative to its consumption, and

many of those they do buy have been consciously designed to satisfy American audiences” (Sassoon, 2002: 114).

The distribution and consumption of international films in the US market is remarkably low. Only a handful of non-English language films have had success in the American market. These include: *Like Water for Chocolate* (1992), *Life is Beautiful* (1998), and *Crouching Tiger, Hidden Dragon* (2000) (Acland, 2003). Statistics for 2004 show that the US has the least amount of foreign penetration among all film-producing countries as domestic production accounted for 93.9 percent of all films available in the US market (Trumpbour, 2008).²¹ The functional rationale is that the sheer volume of production output of the US media industry alone prevents the need for further importation. This justification, however, masks the potential existence of import biases on the part of the US media industry.

7. Ancillary and Foreign Markets: The Canadian Industry's Panacea?

Canadian distributors are being encouraged to circumvent the highly concentrated theatrical exhibition market by seeking out opportunities in secondary or niche media platforms. According to the Standing Committee on Canadian Heritage, the most necessary change for the Canadian film industry is to, “the context in which Canadians see films” (Canada, 2005: 141). Their report, *Scripts, Screens & Audiences*, goes as far as to suggest that because Canadians watch more TV and rent more DVDs than they make trips to the cinema, more importance should be placed on the non-theatrical film mediums. In essence, it is suggested that the secondary distribution markets should become the primary concern for Canadian distributors.

²¹ The second highest domestic box-office share in the world is held by India. The 92.5 percent domestic penetration here, however, is attained through the country's strict cultural import laws (Trumpbour, 2008).

Telefilm's response to the weak box-office performance of English Canadian films is to devise a new measurement of industry success which includes the secondary markets. Telefilm's publication *From Cinemas to Cell Phones* calls for a holistic method for looking at a film's success that includes "...not only box-office receipts but also DVD sales, rentals and other distribution platforms, such as TV and the Web" (2007a: 5). Telefilm justifies this priority shift from the theatrical market by stating that:

Over time the data collected will create a comprehensive measurement of success. Modestly produced films that did not fare well in theatres, or had little access to big screens, could have a different life on the small screen (5).

This new focus on secondary markets is reflected in the number of recent Telefilm-produced theatrical features. During its first three years, Telefilm's CFFF was producing an average of 44 films annually. Over the past three years, the average annual number of CFFF films dropped to 31 (Telefilm, 2007a).

A. Exhibition Windows and Narrowcasting

Films are unique products because they can be presented on various media platforms with no effect to content, message, or meaning. The same content can be exhibited repeatedly in the same geographical market, but at different times and by different means. Increased competition in the media industry and the quest for economics of scale has led to a growth in alternative or secondary media distribution outlets (Doyle, 2002). Until the arrival of television in the 1950s, film exhibition took place solely in theatres (Hoskins et al., 1997). Since the post-war period, there have arisen a number of different exhibition markets for feature films (Globerman & Vining, 1987). As traditional market boundaries have begun to fade away, Canadian distributors are increasingly being encouraged to explore other options that will allow

them to exhibit their films in secondary markets, whereby avoiding the challenges involved in theatrical distribution (Attallah, 1996; Grant & Wood, 2004).

In the film industry distribution markets are known as 'exhibition windows'. The first window for a Hollywood or Canadian feature film is its release into North American theatres. The theatrical window can last anywhere from a week to a year, as long as the box-office is still seeing positive numbers. The second window is the film's release into the DVD and VHS rental market where it can be available from six months to a year. Pay-TV is the third conventional window. Pay-TV often coincides with the rental market and films are available here for roughly six months. Films are acquired for screenings on network television in the fourth window, then often move into a fifth domestic window: syndicated or cable television (Grant & Wood, 2004).

The home video and specialty television channel markets personify the general principles of 'narrowcasting' because these industries address not a single mass audience but multiple and fragmented micro-audiences (Attallah, 1996). While broadcasting strives to be appealing and acceptable, universal and intelligible, narrowcasting can be highly specialized, arcane, and appealing to the specific individual tastes of consumers (Attallah, 1996). Films which would normally receive only spotty distribution (i.e. first films, low- budget, specialty topic, and NFB productions) actually receive sufficient distribution through video to sustain a minor industry from which meager profits may emerge.

With each release window profits are negotiated differently. In the home video and video-on-demand markets distributors earn a percentage of rental fees received or make out right sales of DVDs to the video store. For pay-per-view TV sales, the distributor negotiates a percentage of subscription fees. In what is often the final window, conventional TV, distributors sell the exhibition rights to broadcasters for a flat rate for a set (often lengthy) time period.

Broadcasters often have the right to re-air the film multiple times throughout the designated time frame (Caves, 2000).

Whether it targets a mass or specialized audience, a film's market is typically international (Acheson & Maule, 2001). International theatrical releases may overlap the domestic video release. Other outlets such as airplane screens and in-hotel entertainment are also exploited by distributors. According to Grant & Wood (2004), "The idea is to extract the absolute maximum consumer surplus... from every class of audience before making [the product] available to the next" (53).

Distribution into secondary windows greatly increases a film's overall revenue. The revenues from the domestic theatrical window generally account for only a fifth of what a film will earn in its potential life span. Foreign theatre sales and domestic video rental windows make up another fifth of total profits, while foreign video alone can account for as much as 14 percent. Television windows, both domestic and foreign together, can be as much as 25 per cent of all eventual revenue (Grant & Wood, 2004).

B. Foreign Sales of Canadian films

Suggestion have been made that the Canadian marketplace is too small for producers and distributors to be looking inward for success. Acheson & Maule (1999) state that "...Canada's creative community has more to gain from access abroad than protectionism at home" (5). Looking at the representative size of Canada's population within the context of the global film industry is the simplest way to explain the low market share of indigenously Canadian films in their national theatrical market. Acheson & Maule (2003) describe a hypothetical situation in which a country's percentage of domestic film revenues reflects the population of viewers in

each country. Of the total population of English-speaking viewers in the world, they suppose that 75 percent of the films shown in all countries would be from the US, 15 percent from the United Kingdom, 5 percent from Australia, and 5 percent from Canada. They suggest that:

Canadian-made films, for example, would make 95 percent of their revenue abroad and only five percent at home ... a statistic of 5 percent for Canadian-made films in its cinemas is a source of pride and not concern. In no sense, is Canada or Australia being dominated if they attain that percentage (9).

In order to justify this scenario where domestic market share of box-office revenue accounts for the same figure as the country's share of the global theatre-going population, Acheson & Maule assume that there is perfect competition and equality among the players in a global market. The authors do admit that "in the real world, many factors result in deviations from this benchmark...Canadian viewers, for example, represent an even lower percentage of the total market for first-run English-language films than the five percent assumed in our hypothetical world" (9). Their solution to the problem of low domestic market share is for firms to look beyond their borders:

A small country operating in large language markets should put much more weight on exports and imports in balance-of-payments statistics than on the percentage of national films in the movie houses to measure its performance in the industry (9).

Of course Canadian distributors and producers do make substantial efforts to extend the products to the global consumer-base. Thus far, the results of such efforts do not equate with a universal remedy for the industry.

Data sources on the overall value of international sales for Canadian distributors and producers prove to be problematic. In its annual industry report, CFTPA provides statistics on the 'export value' of the Canadian motion picture industry. But explicit data on, and analysis of, how much Canadian films are worth in the international marketplace are skewed by the inclusion of the monetary total of foreign location production activities that take place in Canada along with the value of foreign pre-sales and distribution advances earned by Canadian productions in

foreign exhibition and sales markets. CFTPA explains why these seemingly distinct criteria are combined under the category of ‘export value’, thusly:

Export value as opposed to just *exports* better reflects the nature of film and television production in Canada. It acknowledges that film and television productions are intangible products and portions of the copyright can be exported to foreign countries. It also accounts for the budgets of productions shot in Canada, even when the copyright is held by a foreign entity (CFTPA, 2008: 18).

In 2008, Canadian foreign location production reached \$1.77 billion in production volume. This included the creation of 85 theatrical feature films; 62 television series; and 63 MOWs, mini-series, and pilots (CFTPA, 2009). Pre-sales and distribution advances in foreign theatrical markets earned \$31 million for Canadian firms in 2008 – an increase of \$11 million from the previous year but far from the record high of \$93 and \$102 million in 2005-06 and 2003-04 respectively (CFTPA, 2009).

Statistics Canada's total export figures include sales of Canadian productions plus revenue from the distribution of non-Canadian films in other territories. Theatrical exports in 1991-92 equaled \$31.9 million. This grew to \$132.1 million by 1997-98 and in 1999-00 all film exports totaled \$187.3 million. However, exports represented a mere five percent of total distribution revenues in 1991-92 and 16 percent in 1999-00 (Acheson & Maule, 2003).

As Grant & Wood (2004) state, “Although export success is always welcome, it can never be predicated or assured, and the first responsibility of cultural policy-makers must be to ensure that their local creators at least have the space to tell their stories at home” (320). Canadian distributors have found time and again that the key characteristic of an internationally saleable film is its ability to prove itself in domestic sales. Until Canadian films have success at home they may not be fully able to exploit distribution opportunities abroad.

C. The Benefits of Multi-Platform Media World

Access to ancillary and foreign markets ensures that risk is minimized for most theatrical films. Don Simpson, a Paramount Studios executive, states that “with ancillary sales...very few pictures lose money. Most break even. If you’re making a picture for between seven and ten [million dollars], you don’t lose money. The studio can’t lose” (Quoted in Litwak, 1987: 86). Losses in the theatrical market may also be made up by the sale of rights in ancillary windows. When looking at a moderately budgeted film, sales to ancillary markets can cover as much as 80 percent of the cost of production, substantially lowering the financial risk of the venture. Cable television pre-sales can amount to upwards of 50 percent of the production budget. The distributor’s gross from domestic home video usually equates to 12.5 percent of the total investment while another 12.5 is gained from foreign theatrical sales (Litwak, 1987).

Particularly for Hollywood studios, the theatrical film market is becoming a ‘loss leader’ for profits in the home video market. Ancillary products are more so than ever driving the success of Hollywood studios. Examining patterns of media consumption reveals that the average American spends 13 hours at the theatre per year versus 77 hours watching home video (Weinberg, 2005). Meanwhile, data from the MPA’s Economic Report in 2002, supports the ‘loss leader’ claim. The report shows that domestic box-office accounted for a total \$9.5 billion, the international box-office gross was \$9.6 billion, but the VHS and DVD rental and sales of MPA-member titles was more than \$20 billion (Weinberg, 2005: 163).

Part of the success of the video market is due to the restructuring of the video retailer wholesale purchasing contracts after 1998. Mortimer (2008) observes that prior to 1998, the typical arrangement was that video retailers would pay upwards of \$70 per video tape and were then entitled to all receipts for its rental. The system changed when retailers were given an option to pay a fee for individual videos. The fee ranged from \$3 to \$8 per video and the retailer

was entitled to 45 percent of the rental revenues. This resulted in more copies of films at the video store, which parlayed into more customers and resulted in greater profits for retailers and the distributors.

Weinberg (2005) suggests that studios may be too focused on the theatrical release. Since the profitability of the video release has such a financial impact (nearly twice the revenue of the domestic theatrical market), “perhaps the studio should optimize the video release date and then go backwards to determine the movie release date” (166). Though profitable, the expanding of exhibition windows functions to “effectively splinter audiences while extending the lifespan of a filmed commodity” (Acland, 2003: 24). Weinberg overlooks the fact that it can take up to eight years for a film to move through each of the secondary exhibition windows (Grant & Wood, 2004). Over time, motion pictures face price discrimination since a film’s commercial appeal is time sensitive (Caves, 2000). Distributors stand to make significantly less per each screening of the film as it goes through the cycle of exhibition windows. In addition, independent producers and distributors may not be able to take full advantage of ancillary rights sales because they negotiate with each individual exhibition window and, therefore, “have difficulty working out bilateral agreements that fully internalize these interdependences between revenue flows from the various exhibition windows” (Caves, 2000: 115). This strategy’s main advantage is that “if one exhibitor suffers a loss, it is not offset against the producer’s share of profits from another” (115).

D. Internet Distribution and the Threat of Substitute Products

Changes in distribution technology have, and will continue to have, great financial benefit to distribution firms. Recent technological developments have made Internet motion

picture distribution a reality; however, Hollywood has not thoroughly explored the technological and financial possibilities that the Internet has to offer (Currah, 2007). Though Internet distribution eliminates product manufacturing costs and requires less promotional resources, innovation in film distribution has been hindered by what the major firms perceive to be a threat to the current exhibition window schedule by substitute products.

Currah (2006, 2007) argues that Hollywood studios have collectively acted to restrain technological innovation in the motion picture industry through efforts to control and limit the legal Internet distribution of feature films. As with other oligopolies, the major distribution firms have the power to manipulate and control product supply markets and display a tendency to “neglect or even marginalize emerging markets, especially those that are seen to threaten the status quo...” (Currah, 2006: 440).

Studios view the current distribution windows as a natural flow of product. The traditional release order – theatrical, home video, cable/pay-per-view, and finally a network television release – is the pattern that has worked best for the industry for many years. When a movie is launched in the theatrical window it gives the industry the opportunity to find its audience, and the other opportunities flow from it. Mature media corporations, in particular, film studios view investment in legal Internet distribution as a sacrifice of profits from the established ancillary exhibition windows.

It is believed that Internet distribution would need to correspond with the home video release of a film to maximize demand and marketability. According to Currah (2006), DVD rentals and sales have become the “keystone of Hollywood economics” (451). Profits from the DVD market often equal and, in several cases, make more revenue than a film’s box-office gross (Weinberg, 2005). In 2004, the US home video market accounted for \$21.12 billion in revenue

alone (Currah, 2006). Studio executives, therefore, do not wish to create a substitute or competing product and risk the possibility that sales from this new distribution window may result in a perceived loss in profits in their most profitable market. Though consumer demand for Internet film distribution is apparent in the popularity of movie piracy through file-sharing or peer-to-peer (P2P) downloads, the majors “have favoured an economic model for Internet film distribution that protects the existing structure of windows, and specifically, the lucrative DVD-oriented home video window” (Currah, 2006: 452).

The effort to sustain the industry’s centralized home video distribution model is evident in the collective push to adopt new and advanced digital video technologies. The existing industry business model for the secondary markets relies heavily on packaged commodities. The appearance of more ‘value added’ DVD content and the creation of the new Blu-ray Disc digital video format are two ways in which the industry is attempting to circumvent a decentralized Internet distribution model and to offer appealing alternatives to Internet piracy. These new home video product formats also provide the industry with an anti-piracy security measure since they are equipped with digital rights management (DRM) technologies that prevent the duplication of DVDs and Blu-ray Discs.

In early 2008, it appeared that the industry-wide resistance to Internet distribution had started to wane as studios began to release back catalogues and a limited amount of new titles through legal online rental websites. By the end of January, the Apple-owned Internet media application iTunes offered its users Apple iPod-compatible²² digital copies of motion pictures for rent or purchase from the following studios: 20th Century Fox, Lionsgate, MGM, Miramax, New Line Cinema, Paramount, Sony Pictures, Touchtone Pictures, Universal Pictures, Warner Bros.,

²² iPod is Apple’s line of popular mobile media content devices. With its movie downloads, the iPod’s software places restrictions upon the use of the content such as a 24-hour viewing window for rentals and the inability to back up a purchased digital file or to copy, play, or transfer the file to another device.

and Walt Disney Pictures. As of February 2008, however, *Wired Magazine* reported “a mere 1,000 downloadable movies for rent on iTunes, fewer than 5,000 on Amazon, and around 6,000 on Netflix...” (Rose, 2008: 1).

The limited product selection of the top online distribution outlets has continued into 2009. The studios state that the lack of legally accessible online motion pictures is primarily due to distribution arrangements with pay-per-view and cable television networks (Manjoo, 2009). These important and well-paying buyers contractually stipulate that they receive exclusive exhibition rights to a film for a set period of time – as long as 18 months – during this time new and in-demand films are not made available within the online window. With a rotating and limited product catalogue, legal Internet distribution options are not meeting consumer demand.

Internet service providers (ISP) are also hindering consumer interest in legal online distribution by indirectly affecting the affordability and accessibility of online media content. In the US, led by communications giant AOL/Time Warner (the parent corporation of Warner Bros. Entertainment), the ISP industry is moving toward universal implementation of a new pricing system for Internet consumer connectivity. This new pay-for-bandwidth price structuring sees consumers incur fees for extensive network bandwidth usage which is most often associated with the uploading and downloading of large media files. This new service price has the ability to make the legal downloading of motion pictures less cost effective for the consumer since, in addition to standard rental fees, downloaders will also be liable for charges pertaining to their bandwidth usage.

Canada’s largest ISPs, Rogers Communications and Shaw Communications, have also moved to a pay-per-bandwidth pricing format. In addition, these companies employ a technique known as ‘traffic throttling’ to prevent potential network congestion by limiting the upload speed

of large digital files, in particular, digitized media content (Reveler, 2009a). In the current CRTC hearings on net neutrality, which are to conclude in July 2009, these ISP practices are being questioned by several Canadian motion picture industry associations. The CFTPA states that traffic throttling has “put a chill on the adoption of P2P by independent producers for the distribution of their content” (Reveler, 2009b: 1). Meanwhile, representatives of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) stressed that this practice “impedes creators' access to cheap, efficient distribution and limits Canadians' freedom to access legal content” (1).

Since questions of affordability and ease of access are affecting consumer demand, Internet distribution is not yet a feasible primary release window for independent distribution firms. Independent and Canadian distribution firms do not drive industry changes. If the full impact of Internet distribution is to be realized, it must first be embraced by the industry's major players. As one Canadian distribution executive states, “we are the tail not the dog... we are going to get dragged along for the ride which is decided by major distributors.”

E. Spiral Pressure and Ancillary Success

Though the DVD market has risen to become the highest studio revenue earner, the importance of the theatrical release and the opening weekend box-office gross should not be discounted. Beyond being a significant revenue source, the importance of the theatrical opening weekend is two-fold. First, as Drake (2008) states, the theatrical release is ‘front-loaded’ since now more than ever a film “needs to make an almost instant impact in order to avoid being dropped from screens by exhibitors” (64). Second, though the theatrical window can account for less than a quarter of a film's overall revenues, the theatrical opening weekend is extremely

important as it is viewed as an indicator of the film's sell through value in all subsequent markets from home video to television: "theatrical box-office figures are seen as a measure of how the film can be valued and exploited as a licensable property over its life-cycle, and across different formats" (64).

There may indeed be more demand for products in the home video market. Statistics for the US domestic market show that, while there were 607 films released to theatres in 2006, there were 13,019 DVD titles released to home video (MPA, 2006, 2007). Proponents of the meritocracy and consumer preference arguments surmise that the film distribution industry is still relatively competitive because of the space available in the ancillary markets (Globerman & Vining, 1987). Acheson & Maule (1999) argue that:

There is no lack of 'shelf space' for Canadian audiovisual material. Multiple radio and television channels, a comprehensive video distribution system, and pay-per-view (PPV) mechanisms provide space for Canadian programs and films inside and outside a rapidly expanding broadcasting system... Federal and provincial public broadcasters are there to serve any neglected programming segment of the Canadian market... [This] indicates that the failure is not in the availability of shelf space but in the scarcity of good audiovisual content to put on them (19).

As Kunz (2007) states, however, such reasoning overlooks "the conscious decisions made in the allocation of resources" (56).

Though there are a plethora of secondary exhibition windows, there are control mechanisms in place that restrict the access of indigenous Canadian feature films to the primary theatrical window. Entrance into the theatrical market not only brings subsequent advantages in selling an audiovisual product to secondary markets but in some cases, there is spiral pressure for films to do well at the box-office in order to see any profits from secondary windows at all (Simonoff & Sparrow, 2000).

By not focusing on a theatrical release, the Canadian film industry would not be predisposed to the profitability of secondary exhibition markets. As Acland (2003) explains, it is

essential for a film to have a theatrical release because "...the theatrical market is indispensable to launching films into the expanding film universe" (24). Sony Corporation USA Chairman, Howard Stringer has been quoted as saying, "If you don't spend a lot of money on marketing, you don't generate big box-office. If you don't have a big opening weekend you weren't a success. And if I'm not a success, I can't sell [a film] to television or cable and I threaten my video and DVD sales, and so forth" (Quoted in Grant & Wood, 2004: 94). Consequently, the bulk of a film's promotional budget is spent on its theatrical release because this offers access to other markets.

Buyers instinctively know that "the theatrical release of a movie is the most visible part of its commercial life" (Moul & Shugan, 2005: 80). Just as the awareness of the public is built by a theatrical release, the box-office results still drive the licence fees of broadcasters and the sales to airlines and hotels. There is a correlation between the success in secondary windows and theatrical performance. Though it is possible to recoup distribution costs in ancillary markets, "the maximum exploitation of these markets is contingent upon the initial success of the film in theatrical distribution" (Donahue, 1987: 2). Research has found that home video's sales pattern was directly related to the theatrical movie's sales pattern (Lehmann & Weinberg, 2000) and that both the video's opening rental strength and decay rate (rate at which sales decline) were significantly related to a movie's box-office performance (Ravid & Basuroy, 2004).

Since the financial destiny of a film is rooted in the strength of the opening weekend box-office gross, if a Canadian film underperforms or is bumped off the cinema marquee by an incoming studio offering, "chances are slim that it will have significant play internationally (if at all), and it is unlikely that it will make it to pay-per-view, cable or network television" (Simonoff & Sparrow, 2000: 12). Short theatrical runs make it difficult, if nearly impossible, for

a film to capitalize on ancillary revenue streams as “ancillary deals are predicated on domestic box-office gross” (13).

Narrowcasting and ancillary markets may provide a way around the uphill battle of theatrical distribution for Canadian films, but they do not challenge the established US domination of Canada’s theatrical exhibition industry. For films that do have a marginally profitable theatrical run, success in ancillary markets is increased because “promotion at each stage likely has spillover benefits of enhancing potential demand at subsequent stages” (Caves, 2000: 115). This claim is supported by the fact that the same movies that dominate box-office earnings also command the same presence in the video rental and sales markets (Hoskins et al., 1997). Over 99.7 percent of all secondary market earnings go to films that have box-office revenues. Considering that the Hollywood studio distributors maintain 90 percent of all box-office revenue, they in turn would presumably command a similar figure in the secondary markets (Grant & Wood, 2004).

Studio distributors are better positioned than the independent Canadian distributor for profits in secondary market because of the benefit from promotion at each step in the supply chain and their collective ability to dictate the industry standard for the amount of time in between exhibition windows releases. This spiral pressure to succeed in the theatrical window in order to profit from the secondary markets, is also neutralized within conglomerated media firms.

F. Ancillary Markets and Media Conglomeration

Specialized and niche market distributors are being targeted for integration as part of business models which seek control over as much of the market as possible. There is, of course,

great empowerment and financial benefit for the majors to vertically extend their ownership into theatrical exhibition as well as the home video market. The greatest financial incentive for integration is the benefit of economies of scale. Films, like other media products, tend to have relatively high fixed costs or 'first copy' costs that do not vary because of an increase in the quantity produced; however, there are very low incremental costs of supplying, replicating, and duplicating an audiovisual product for consumption in additional markets, where it can be sold over and over again to greater numbers of consumers (Caves, 2000; Doyle, 2002; Hoskins et al., 1997; Jayakar and Waterman, 2000).

Vertical integration allows studios to "...control the media in which the film will be exploited in order to maximize the downstream revenues" (Grant, 2007). In fact, "By forming their own home video divisions, buying others, and establishing distribution partnerships, between 1972 and 1982, 20th Century Fox, MGM/United Artists, Columbia, Orion, Warner Bros., Paramount, Disney, and MCA/Universal had all extended into this [home video] industry" (Grant & Wood, 2004: 93).

When Tri-star Pictures acquired exhibitor Loews Theatres in 1986, it filed a motion with the American Justice Department to overturn the Paramount Consent Decree of 1948. They did not amend the document but decided not to limit this reintegration either, proclaiming that "home video and cable made film distribution diverse enough to re-allow the vertical integration of theatrical exhibition and distribution" (Acland, 2003: 96). Remarkably, the American Justice Department declared the home video industry to be 'diverse' four years after the major film distributors already had a controlling stake in this blossoming industry.

When media firms diversify and expand into entirely new areas of media this is known as diagonal or lateral integration (Doyle, 2002). If a film studio were to acquire a cable television

channel, this lateral integration would give the parent firm a diversified portfolio across related but unique media industries. Current media giants, such as Viacom (parent company of Paramount), Disney (Walt Disney Pictures), AOL/Time Warner (Warner Bros.), News Corp. (20th Century Fox), and Vivendi-Universal (Universal Studios), have access to both the theatrical and secondary windows since distribution and exhibition companies, and various other media outlets, exist within their corporate structures (Kunz, 2007).

Viacom, for example, owns one of the largest film production and distribution firms, Paramount Pictures, which also distributes the rights to filmed entertainment from DreamWorks Pictures, DreamWorks Animation, Paramount Vantage, Paramount Classics, Marvel Studios, MTV Films, and Nickelodeon Movies. Viacom's CEO, Sumner Redstone, owns the theatrical exhibition chain National Amusements, a first window theatrical film exhibitor, and Blockbuster Video, one of the world's largest video rental companies who, in this case, have priority access to Paramount, Dreamworks, and MTV films within this lucrative secondary exhibition window. Specialty, pay-per-view, and cable television channels make up the third through fifth windows; Viacom has these covered with CBS²³, MTV Networks²⁴, and a slew of niche market channels (Grant & Wood, 2004). Viacom's marketing interests include the largest display advertising company²⁵ in the world and their specialty channels including MTV which can stream their film trailers and teasers to the ideal film audience demographic: teenagers. No Canadian media firm comes close to this level of market access and cross-media promotion.

²³ On December 31, 2005, a corporate spin-off of Viacom Inc. (Viacom) saw the creation of CBS Corporation (CBS). Though now separated into two publicly traded companies, these two entities have maintained their corporate allegiances.

²⁴ The holdings of MTV Networks alone include 150 television channels worldwide, media production, publishing, home video, radio, music, recreation, licencing, and merchandising entities.

²⁵ Viacom's display marketing entity is now held under "CBS Corporation". Through their continued corporate relationship, however, Viacom promotes their media products on "CBS" billboards, subway cars, bus shelters, etc.

Entertainment writer Leonard Klady, in his article for *Variety*, “Where Have All the Independents Gone?”, hypothesizes that since Hollywood studios are prone to replicating successful independent and specialty niche market films, if the trend of mergers and acquisitions continues “the majors will phase out [audience] interest in specialty film within two or three years” (Quoted in Kunz, 2007: 117). Media corporations have hinted toward a change in the very nature of conglomeration by acquiring production and distribution companies of various sizes and nationalities.

8. Conclusion

Though the domestic box-office returns on Canadian films are very poor, there has never been a successful opposition to the majors’ questionable business practices and control mechanisms, or the dependency of Canadian exhibitors on Hollywood’s product supply. While these industry conditions created a risk adverse and beneficial finance structure for Hollywood’s investors, they have led to significant barriers toward efforts for a successful domestic Canadian motion picture industry. This analysis of the political and economic conditions throughout the history of the North American film trade reveals that these barriers have resulted from internal structurally-based limitations upon the exchange of cultural resources across and within Canadian borders. These structural forces have perpetuated the dominant market preference for Hollywood films and the historic underperformance of Canadian films in their own domestic market.

A. New and Original Contributions

A. 1. The Five Distribution Channels

This thesis identifies five unique structures of distribution within the Canadian theatrical motion picture industry. Political economy analysis reveals that the structures were negotiated between state, political, and social actors under asymmetrical conditions of power. Though the channels differ in terms of their origin and complexity, they reflect political and market power differentials that have had a persistent cumulative effect on the development of the Canadian motion picture industry. The distinct distribution channels that constitute the intra-North American film trade are:

1. The Unimpeded Import Channel: Hollywood Studio Films into Canada

Though the industry and the political landscape in Canada have seen numerous changes over the years, the direct release of Hollywood studio films into Canadian theatres is the most solidified structure of distribution, because it is both financially lucrative and politically protected by the grandfathering of studios under the Quebec Cinema Act and the 1988 Industry Canada film distribution directive.

2. Obligatory Domestic Middleman: Quebecois Sub-distributor

The Quebec Cinema Act (Le Regis du Cinema) was the first attempt at legislation to renegotiate the foreign-dominated distribution system in Canada. The Quebec provincial market benefited from the realization of this proprietary rights policy which was successful at restricting mini-majors and English-Canadian distributors from directly accessing Quebec theatres, thereby creating a more lucrative business model for Quebecois firms through sub-distribution and subsidiary opportunities. The final amendment to the Act in 1985, however, guaranteed a free flowing distribution channel into the Quebec marketplace for the Hollywood Studios and ensured the continued provincial presence of these dominant firms, their subsidiaries, and any future incarnation thereof.

3. Obligatory Domestic Middleman: Canadian Sub-distributor

The 1980s saw the death of two national proprietary rights policy initiatives for the Canadian film industry and the birth of the output deal. The failure of policymakers to legislate the National Cinema Act and the Federal Distribution Bill has all but silenced current proponents of proprietary rights policy for Canada's film industry. The quashing of the Federal Distribution Bill as a direct result of Hollywood's lobbying efforts and the perceived threat to the Canada-US Free Trade Agreement is testament to fact that the signing of international trade treaties threatens the Canadian government's freedom to enact proprietary rights policy measures. Canada's participation in international trade organizations which are mandated toward neo-liberal trade policy, such as the WTO, may also be detrimental to Canada's nationalist policy goals.

Though not part of Canadian legislation, the Investment Canada film distribution directive of 1988 was successful in limiting the presence of new foreign motion picture distributors in the Canadian marketplace. By setting foreign ownership guidelines which stipulate that US mini-majors can only gain entry into Canada via sub-distribution deals, this policy-driven renegotiation of power prevented what could have easily become a Canadian industry controlled by a pure monopoly of foreign-owned firms. There are at present three very strong English Canadian distributors: Alliance Films, E1, and Maple Pictures. Their main source of competitive advantage, however, remains their ability to acquire and distribute in-demand foreign products into Canada through output deals with the US mini-majors.

4. The Subsidized and Protected Domestic Channel

In the early 1980s, the CFDC reinvented itself as a new policy tool for the Canadian motion picture industry. Telefilm Canada's attempt to circumvent the highly concentrated

theatrical market by encouraging the film and video production industry to embrace television as its central release window did not deter Canadian filmmakers from their cinematic endeavors.

After previous decades of distribution hardships for Telefilm-financed productions, in the mid-1980s the corporation began to focus its attention upon Canada's distribution sector. The creation of the Feature Film Distribution Fund – the first funding platform to directly assist distributors in the marketing of Canadian films – increased the economic resources of Canadian distributors and encouraged them to reinvest revenues into domestic film production.

Formed in response to a 2000 policy aim of attaining an annual domestic box-office share of five percent, Telefilm's Canada Feature Film Fund (CFFF) has become the single most important source of film production financing in this country and is responsible for the majority of Canada's most successful and most acclaimed theatrical films. The requirement for a CFFF-financed picture to use a Canadian distributor within the domestic market is a key factor in the sustainability of the domestic motion picture industry. Though the CFFF distributor eligibility requirements may be limiting diversity in the Canadian distribution industry, this opportunity to access and have creative and financial control over the products of this unique government subsidized supply line is of significant benefit to Canadian firms.

5. The Export Channel: Canadian Films into the US Marketplace

Even Canada's most acclaimed films face barriers to entry into the US theatrical exhibition market. It is a widely held notion that the US majors and studio distributors operating within Canada have no interest in handling Canadian-produced feature films and strategically act to limit their entrance into the US marketplace. The perceived US resistance to foreign media imports is predicated upon the existence of anti-competitive and cartel-like associative groups

such as the MPA, anti-foreign ownership regulations, and aggressive global media export policies.

a) The Cumulative Effect

Though these five channels are asymmetrical, together they create a continental distribution system in which there exists a strong limiting force upon the market access of Canadian-produced films and constrained opportunity for state policy intervention in this cultural sector. Analysis of the role that Canadian film policy has played in creating the complex film distribution system within Canada has revealed that, though such key film policy initiatives as the Quebec Cinema Act, the proposed National Cinema Act and Federal Distribution Bill, and the Investment Canada distribution policy initiative attempted to reclaim some level of control over the Canadian motion picture industry by Canadian distribution firms, by continually succumbing to external pressures and agreeing to comparable terms with the MPAA, Canadian policy makers have solidified the dominant/dependent relationship between US corporate interests and the Canadian state.

A. 2. Constrictive Economic Conditions

The business practices of the motion picture industry were designed by the Hollywood studios to be favorable to them. The current distribution structures within Canada are to the mutual advantage of the major US distribution corporations and the dominant distribution and exhibition chains in Canada. In the same way that a great extent of the Canadian domestic film production sector is dedicated to producing service work for foreign investors, film distribution in Canada is so heavily dependent of output deals with US firms that it too can be defined as a

branch plant industry. These relations see assured profits for all parties. It stands to reason, therefore, that the lack of Canadian films in theatres is based less on the merit of individual films – their genres, lead actors, budgets, and marketing campaigns – than on the fact that there is only a minimal amount of theatrical ‘shelf space’ reserved for the films that are not associated with Hollywood studios or other US major distributors. In addition, the strict economic logic which uses the consumer choice rationale and individual merit arguments as justification for the short comings of the domestic Canadian motion picture industry is easily dismissed.

A. 3. Firm-level Negotiations

The macro-level structure of the Canadian motion picture distribution system also restricts and limits the decision-making and negotiations strategies of individual Canadian-owned distribution firms. Since the studios have devised and legitimized the principles and standards of practice for the motion picture industry in North America, Canadian entrants must operate within the traditionally engrained distribution structures that were established both to maximize efficiencies of the dominant firms and to maintain the status quo of the industry. The supply-side and demand-side decisions of Canadian motion picture distributors are limited by the historically and politically created structural arrangements of the industry. Within these arrangements Canadian firms negotiate from a position of inferiority.

Though certain Canadian films prove to be exceptions to the rule by attracting more desirable exhibition terms, business decisions take place within the existing system whose organization inherently breeds an unequal structure of distribution and cultural product flow within the North American theatrical market. Since each motion picture is an individually negotiated business venture, firm-level negotiations do little to advance or change existing

industry power arrangements. As long as there is no separate Canadian film market, Canadian distributors will be operating within a system that is designed by the Hollywood majors.

A. 4. Ancillary Exhibition Windows and Foreign Market Sales

This thesis has discovered that ancillary exhibition windows and foreign sales are not a cure-all for the troubles of the Canadian film industry. The risk reduction strategies used by the majors including ownership concentration and restrictive business practices have been paramount in creating barriers to success on the part of independent and Canadian distributors in the theatrical market as well as secondary exhibition windows. Success in ancillary and foreign markets is dependent upon first reaching a wide theatrical audience. The barriers that prevent Canadian films from attaining an optimal launch into theatres consequently restrict them from attaining similar revenues in the home video and broadcast exhibition windows as those accumulated by their US-distributed competition.

B. The Definitive Solution: A Distinctly Canadian Distribution Marketplace

Present industry arrangements are a direct result of the Canadian government's failed attempts to renegotiate the terms of historically defined structure of the motion picture industry in the 1980s. Canada has not successfully used the instruments at its disposal – legislation, quotas, and subsidies – to effectively combat the imperialist power of the US over the motion picture industry in Canada. In the current political arena, the Canadian government is restricted to acting as an industry patron. Recent policy publications only perpetuate industry problems by not targeting the long standing questionable business practices and control mechanism of the

dominant studio firms, nor the restrictive distribution structures which have emerged within the North American theatrical market.

Within Canada's film policy documents, the most prominent recommendations have always been supply-side production subsidy initiatives. Investors view the Canadian cultural industries as having an unacceptably high degree of risk based on the absence of profits, difficulty predicting success, and the shortened popularity (or shelf life) for the Canadian product (Canada, 1987). Demand-side measures have been limited to an increase in funds for the marketing and promotion of theatrically released Canadian films. As stated earlier, films are experience goods. Advertising is the key to promoting the quality of a particular film; it is essentially what brings people into the theatre. Though, a steady production supply and increased advertising expenditures are certainly areas that need further financial backing and a shift upward on the priority ladder, neither will solve the problem of getting Canadian films onto Canadian screens.

A separate Canadian theatrical market will generate a direct supply-side benefit to the Canadian motion picture industry which will lead to further possibilities to increase consumer demand for Canadian film products. At the very least, the declaration of a distinct Canadian distribution territory will prevent major distributors from monopolizing the market through the use of North American-wide distribution deals with independent and foreign producers. Guaranteed access to more in-demand films from around the world will give Canadian distributors a more substantial revenue stream that will subsequently allow them to invest in more domestic productions over which they have greater control in terms of creative development and financing, and are better positioned for financial gain. The ensuing infusion of capital into the Canadian distribution sector will undoubtedly see a significant increase in the

private investment in Canadian production as well. This will result in better financed and marketed films and break the cyclical pattern of government industry subsidization that may be perpetuating the industry's poor performance at the box-office.

Though the move toward proprietary rights policy can be detrimental to international negotiations (Pendakur, 1990), economic policy decisions too often must submit to the dictates of a global free enterprise market in which media conglomerates have vested interest. Such initiatives are vulnerable to pressures from both international lobbyists and the interests of large national corporations. As Acheson & Maule (2001) suggest, channeling inter-country negotiations through normal diplomatic channels and establishing a more arm's length relationship between government and industry would improve the policy determination process.

There will be no separate Canadian distribution market without the reintroduction of proprietary rights policies that do not exempt or grandfather the Hollywood studio distributor. According to the Canadian Association of Film Distributors and Exporters (CAFDE), which represents the largest Canadian distributors, the Canadian government must:

...introduce legislation which would once and for all recognize the Canadian market as distinct from the American one for the question of non-proprietary rights to feature films... The only way we can expect Canadian films to have more than a meager chance to compete in the growing international market is if we have strong Canadian companies with domestic roots that are developing and distributing/marketing Canadian and non-Canadian productions (As quoted in Acheson & Maule, 2001: 30).

However, with Canada's international trade commitments under NAFTA and the WTO placing restrictions upon cultural policy which aims to protect national interests, this definitive solution may not be the most practical of solutions under the current political regime.

At present, there are no accountability measures or sanctions in place to encourage cross-subsidized Canadian distributors to reinvest profits in the production of Canadian-produced films. If policymakers are to look to the reinvestment of capital on the part of the Canadian

distributor as the building block for a domestic motion picture industry that is increasingly independent of public support, industrial policy measures must be in place to ensure that the industry itself is motivated toward internal sustainability. This must be addressed before the much larger cultural policy objective can be operationalized.

C. Future Research: Oligopoly and the Bigger Picture

Though the case study of the Canadian motion picture distribution system reveals one of the most prominent examples of media imperialism in the world today, the oligopolistic market structure of film distribution has been a fundamental starting point for media conglomeration across all media platforms and international borders. Signs of dependencies are emerging in other world theatrical markets. Smaller markets are being inundated with Hollywood products and facing political pressure to forego the use of nationalist or protectionist policy measures such as licencing or domestic content quotas.

As Magder (1989) illustrates, “In the last forty years the Hollywood majors have diversified their activities to include virtually every facet of cultural production and distribution, from television programs and cable systems, to publishing and sound recording, to video games and toys, to clothing and children’s furnishings” (146). As of January 2005, the corporations that owned the world’s six largest motion picture distribution companies also owned each of the major US television networks (Kunz, 2007). Though we are moving toward a cultural industry defined by convergent and hybrid media with niche and specialized exhibition windows, traditional media giants are also integrating new media companies. Controlling international film, television, publishing, and interactive media enables substantial control over the entire realm of cultural output.

Political economy analysis of the Canadian motion picture industry reveals that the international media conglomerate has the power to dictate the availability of Canadian cultural products within their own country. In the broader spectrum, this widespread inclination of media firms toward international exportation and ownership concentration may ultimately lead to cultural integration on a much larger, global, scale. Constraints on cultural production and access to domestic consumer cultural options throughout the world also require recognition and continued critical analysis.

Table 1: Top Twenty Canadian-produced Films, 2008

Title		Box office (\$ millions)	Language
1.	Passchendaele	4.34	English
2.	Cruising Bar 2	3.46	French
3.	Babine	2.22	French
4.	Dans une galaxie près de chez vous 2	1.93	French
5.	Borderline	1.27	French
6.	La ligne brisée	0.89	French
7.	Le grand départ	0.87	French
8.	Le dernier continent	0.87	French
9.	Un été sans point ni coup sûr	0.82	French
10.	Blindness	0.63	English
11.	Maman est chez le coiffeur	0.60	French
12.	L'Âge des ténèbres	0.60	French
13.	Up the Yangtze	0.55	English-Mandarin
14.	Young People Fucking	0.48	English
15.	The Stone Angel	0.48	English
16.	Fugitive Pieces	0.35	English
17.	How She Move	0.31	English
18.	Heaven on Earth	0.25	Punjabi-English
19.	Amal	0.25	English
20.	My Winnipeg	0.16	English

Data Source: CFTPA 2009

Table 2: Canada's Largest Theatre Chains*

Exhibitor	Locations	Market Penetration
Cineplex Entertainment	132	Located in all major markets within Alberta, British Columbia, Manitoba, Ontario, Saskatchewan, and Quebec. Locations operate under the following brands: Cinema City, Cineplex Odeon, Coliseum, Colossus, Famous Players, Galaxy, SilverCity, and Scotiabank Theatres.
Empire Theatres	51 ^	At least one theatre in 8 of 10 provinces. Represent a monopoly in the 4 Atlantic Canadian provinces.
Landmark Cinemas	32	Alberta, British Columbia, Manitoba, Saskatchewan, and Yukon Territory
Magic Lantern / Rainbow Theatres	16	7 in Alberta under the Magic Lantern name and 9 theatre locations under the Rainbow moniker; 6 in Ontario (1 in the GTA) and 3 in Saskatchewan
Guzzo Cinemas	12	Quebec
AMC Theatres Canada	8	6 in the Greater Toronto area (GTA), 1 in Montreal, and 1 in Ottawa/Kanata)
Stinson Theatres	8 ^^	Smaller markets in Ontario
Cinema Fortune	5	Quebec
Premier Theatres	5 ++	Smaller markets in Ontario with 1 location in the GTA
Golden Theatres	3	GTA only
Festival Cinemas	3	Greater Vancouver area only
Alliance Atlantis Cinemas **	2	GTA only

* As of June 2008.

** 50% owned by Cineplex Entertainment.

^ Includes 1 drive-in location.

^^ Includes 2 drive-in locations.

APPENDIX A.

The Five Channels of the Canadian Motion Picture Distribution System

#3. Obligatory Domestic Middleman: Canadian Sub-Distributor

#4. The Subsidized and Protected Domestic Distribution Channel

#5. The Export Channel: Canadian Films into the US Marketplace

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