

**MA MAJOR RESEARCH PAPER**

**CANADIAN CONTENT:  
A SURVEY AND ANALYSIS OF  
CANADIAN TELEVISION POLICY**

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## INTRODUCTION

Since 1913 when *The Radiotelegraph Act* became law in Canada, broadcasting has been linked to the protection and maintenance of Canadian nation building. In the *Act*, the beginnings of a formal commitment to Canadian content emerged. It states that "no one shall be employed as a radiotelegraph operator at any coast or land station unless he is a Canadian<sup>1</sup>." Such a position reflected the government's fears that Americans could eventually dominate Canadian airwaves if a strong and clear nationalistic stance was not made. This legislative tone continued and evolved over the course of Canada's broadcasting history and ultimately led to the creation and implementation of the first *Broadcasting Act* in 1968, the legislation that currently governs Canadian broadcasting. Over the past seventy-five years, the focus of broadcasting policy in Canada has remained the same; to ensure that Canadian citizens can access Canadian content.

Television broadcasting in Canada began in September 1952 when the Canadian Broadcasting Corporation (CBC) went to air with its first television stations in Toronto and Montreal. Fifty years later Canadian broadcasting has become a sophisticated and complex system that includes additional public broadcasters, private broadcasters, cable and satellite distributors, the Canadian Radio-television and Telecommunications Commission (CRTC), the Canadian Audio-Visual Certification Office (CAVCO), independent producers, varied interest groups, the Canadian public, and an overwhelming volume of foreign programming.

All of these Canadian broadcasting elements are influenced and directed by the cultural sovereignist policies that have developed out of the *Broadcasting Act (1991)* and its predecessor legislation (i.e. the *Broadcasting Act (1968)*.) As a result, the production and distribution of Canadian television are considered to be cultural industries. Canada's cultural products (television shows) are intended to build and strengthen the nation, give Canadians a sense of community, develop a common set of values and ideals, and ensure that Canadians know what it means to be Canadian. This is Canada's cultural sovereignist agenda for Canadian television.

The cornerstone strategy to achieve these cultural objectives vis-a-vis powerful American influence and market trends has been the establishment of Canadian content regulations and "Cancon" quotas. These requirements have been designed to ensure that there is always "shelf space" for Canadian programming and that it can always be accessed by Canadians. Essentially, the "Cancon" quotas oblige Canadian broadcasters to program a minimum amount of Canadian productions, and that cable and satellite distributors guarantee that at least half of the channels available to Canadians are of Canadian origin. This has created an environment of regulatory-driven broadcaster demand for Canadian content, as opposed to leaving supply and demand to drive market forces.

This guarantee of "shelf space" has become a hot topic in the era of globalization and the digital age, and consequently many believe Cancon requirements need to be reexamined and reappraised in this context. A new economic and cultural landscape now exists in which current broadcasting policies may be outdated and the linking of broadcasting to a

nationalistic agenda may be obsolete (and legally contestable in the context of free trade and globalization.) The purpose of this paper is to examine the current status of Canadian content as it relates to television and to outline the various perspectives of and challenges facing Canadian content within the current economic and cultural context. Particular attention will be paid to the economic players that operate within Canada's regulated broadcasting system and the relationships between these players and Cancon. As will be seen, those involved economically and politically in the Canadian broadcasting system have stakes in Canadian content. Depending on the future direction Cancon takes, certain players will prosper and benefit while others may fail. Due to these multiple interests, as well as technological and neo-liberal pressures, Cancon is especially precarious. Broadcasters, producers, lobby and interest groups, governments and governmental agencies, unions, cable and satellite providers, and foreign interests all have agendas that rely on a Cancon system that meets their needs. These groups are consistently using their political and economic influence to attempt to shape the Cancon system to maximize their interests; often the needs and visions of these varying groups are contradictory. The principle analysis of this paper is designed to determine who wins and who loses when various models of Canadian content are engaged.

broadcasters, the CBC, independent producers, various interest groups and the distributors (i.e. cable and satellite operations)

This paper will be divided into five distinct sections. The first section will provide a descriptive account of the two distinct views on Canadian content: one favours the continuation of the *status quo* (a regulated television industry designed to safeguard and enrich Canadian culture and identity); the other believes Cancon is an outdated approach to Canadian broadcasting given current economic, political and cultural factors. Within

each of these two opposing positions are two predominant ideological perspectives: the Cultural Sovereignist perspective and the Neo-Marxist perspective support the *status quo*, while the Populist perspective and the Open-Market perspective advocate an overhaul of Cancon regulation. This section will set out these four ideological perspectives and the rationale behind them. They will serve as reference points for the remainder of the paper.

The second section will focus on Cancon and the issues and relationships that surround Canadian content. This includes the economics of Canadian television production, examining bureaucratic issues, statutory elements, financial support and the three frameworks that Cancon and equivalent regulatory measures have operated within in Canadian broadcasting since its origins; the Institutional Approach, the Legal Approach and the Financial Approach. This section will provide understanding of the politics and the economic factors that drive regulation and subsidization in Canadian broadcasting.

Thirdly, the commercial players in the Canadian broadcasting industry will be profiled. How their actions influence and are influenced by Cancon requirements will be examined. The paper will examine private broadcasters, the CBC, independent producers, various interest groups and the distributors (i.e. cable and satellite operations) of Canadian television. An analysis will be made of what approach towards Canadian content would most benefit each player (i.e. Cultural Sovereignist, Neo-Marxist, Open-Market or Populist.)

Canadian content is a highly controversial topic in all areas of Canadian broadcasting, and in addition to the four distinct ideological perspectives, the various interests and agendas, there are additional issues that add to Cancon's contentiousness. The fourth section of the paper will examine these issues and some of the incongruities associated with the current Cancon system. They include how Canadian content is defined, the established linkage of Canadian culture to Canadian broadcasting, the necessity of transnational audiences in Canadian television production, and the relationship between cultural production and service production.

The final section of the paper will put Cancon in an international context, specifically focusing on trade issues that have arisen due to Canada's cultural sovereignist policies and formal trade agreements. Attention will be paid to the exemptions that Canada's cultural industries have received in free trade agreements and the challenges and opportunities that present themselves as a consequence of these exemptions.

This paper is an effort to synthesize and analyze the issues and the players that inhabit Canadian content and Cancon's relationship to Canadian broadcasting and economics. Granted, such a survey could be an epic undertaking that would not fit the parameters of this paper. However, the intention is that this document will be a comprehensive study of the topic in its current context. Little attention will be paid to Cancon's historical roots or the specific factors or people/organizations that have moulded Cancon into its current version. A task of such nature goes beyond the scope of this paper.

## FOUR PERSPECTIVES ON CANCON

For nearly ninety years the airwaves of Canada have been regulated to promote cultural sovereignty, build the nation, and to serve the public interest. Things have changed since then. There are no longer the same limitations of the radio spectrum due to digital compression technologies and it seems that Cancon has become inefficient in the meeting of cultural objectives in the context of current economic realities (this will be explored in the following sections.) Nevertheless, Canada has maintained its cultural sovereignist approach to broadcasting. In an effort to shield Canadian identity from global economic pressures (that find legal expression in trade agreements), the Canadian government has leveraged policies protecting Canada's cultural industries. Currently, Canadian cultural industries are exempt from certain trade regulations in international trade treaties. However, there is continued pressure to move to a more open market system that includes cultural industries. Many foreign decision makers and lobbyists view Canada's protectionist policies as potentially violating international trade agreements and obstructing a free and open international marketplace. In the United States, in comparison, film, television and music are not classified as cultural products; they are "entertainment" products and are treated as any other industrial product.

As a consequence some groups are arguing for reforming the Canadian content system while others support the continuation of the direction in which it has been heading. Among those who favour the current Cancon framework are two distinct ideological perspectives. The first is the Cultural Sovereignist perspective. The second is the Neo-

Marxist perspective. Typically, those favouring reform embrace a Populist perspective or an Open-Market perspective. This section will examine the agendas and desires of those favouring the *status quo* and those pushing for reform.

### **Cultural Sovereignist Perspective**

The Cultural Sovereignist perspective embodies the spirit in which the *Broadcasting Act* and its predecessor legislation over the last ninety years have been written. It promotes the view that broadcasting contributes to nation building, to citizenship and to national sovereignty, and should therefore be subsidized and protected by agencies that have the country's cultural interests in mind. Canadian content requirements, both financial and regulatory, have been established with this logic in mind and use the *Broadcasting Act* as the rationale and legal basis for such measures. Essentially, Cancon regulations are necessary, according to Cultural Sovereignists, to reinforce and protect the idea of a distinctive Canadian culture and to differentiate Canada from the United States. Cultural Sovereignists believe that without regulation, Canada would deteriorate.

The powerful American presence, and the ideology that it promotes, have always been the principle targets of the Cultural Sovereignists' actions. This is a uniquely Canadian situation in the global context. The Canadian scenario is different than any other broadcasting situation in the world because during most of the last century, the majority of Canadians have always been able to access American content for free over the air directly from American broadcasters. Geographical proximity has been the catalyst for the ideological battle spearheaded by the Cultural Sovereignists.

The rationale for the current Canadian content system as sanctioned by the cultural sovereignists is effectively summarized by W.T. Stanbury, in his article "Cancon Rules Should be Canned." He states that to support a cultural sovereignist broadcasting policy, there are certain factors that must be accepted. Firstly, it has to be accepted that broadcasting has the power to impact people. Secondly, it has to be accepted that without regulations, Canadians would choose to not watch Canadian content, and that if they did not, the "distinctiveness of Canada as a nation would be threatened."<sup>2</sup> Finally, it has to be accepted that whatever is produced by Canadians will contribute to the promotion of national identity. These points must all be accepted, according to Stanbury, if the cultural sovereignty perspective is to be validated.

Clearly there are several inconsistencies and inefficiencies in the cultural sovereignist rationale (which is the point Stanbury was trying to make.) Chiefly, the argument is that there is no proof that Cancon is effective in meeting the cultural objectives that Cultural Sovereignist legislation and policies lay out. Uncovering this proof is problematic since the cultural objectives are intangible, unquantifiable and the most important terms of the cultural sovereignty perspective ("national identity" and "cultural sovereignty") have never been defined in policy or legislation.<sup>3</sup> Furthermore, the current mechanism for what defines Canadian content blatantly disregards the thematic content of Canadian programming. This suggests that Cultural Sovereignists believe cultural objectives can be met by insuring that Canadians can access content that does not necessarily tell a Canadian story but is simply produced by Canadians.

### Neo-Marxist Perspective

The Neo-Marxist perspective does not represent a particular political agenda but instead provides the political and economic arguments for the maintenance and promotion of the *status quo*. In other words, it points to the broad theories of Marx and Engels which state that “the ideas of the ruling class are in every epoch the ruling ideas<sup>4</sup>.” The ideas produced by the ruling class reinforce its dominance as the ruling class<sup>5</sup> and these “ruling ideas” are a consequence of the material conditions and material relationships established by the “ruling material force” of the society.<sup>6</sup> The Neo-Marxist perspective, according to Dallas Smythe in his book *Dependency Road*, claims that the dominant class utilizes corporate capitalism's “creation of consumer demand<sup>7</sup>” and the role of members of society as audience members to manufacture consciousness. This “Consciousness Industry” uses the mass media to instruct members of society on the “techniques and values of the dominant social system.<sup>8</sup>” This is particularly relevant in the context of Canadian content, as Cancon becomes a tool to reinforce the dominance of the certain groups of political and cultural elite in Canada.

Canadian content, as has been suggested above, is the cornerstone of the broadcasting system in Canada, a system that according to Neo-Marxists is designed to operate with the intention of guaranteeing the dominant class's position within the social order. This element of the Canadian broadcasting system ensures that Canadians will be presented content that reflects Canada to Canadians and that different worldviews or ideologies will not dominate Canadian broadcasting (i.e. American.) Cancon regulations have been

designed so Canadian messages can get to Canadians; in fact, the system declares that any other model is illegal. The Cancon structure works to reinforce the societal dominance of Canada's political, business and cultural elite.

The political elite benefit from Canadian content because they have used their power as legislators and lobbyists to guarantee Canadians access to Canadian television programming. Much of this programming, particularly the most popular Canadian programming, is in the form of news. News is used by the political elite to filter what should be considered important to Canadians and what should not. This is achieved through various means, particularly by manufacturing events and issues in the form of press conferences and press releases. When watching the news, it becomes apparent that most news items, especially those involving politics, are issues that have been manufactured to raise the consciousness surrounding certain issues and events that fit into a particular political agenda. These techniques all reinforce the political elite's legitimacy within society.

Canadian content quotas are similarly beneficial to the business elite of Canada. The regulations require that not only Canadian programming is available to Canadian viewers, but consequently, Canadian advertising. So, not only is the system designed to get Canadian stories to Canadians, but it is also designed to get information about Canadian goods and services to Canadians. Furthermore, television commercials guarantee the reinforcement of capitalist ideology and the consumer's responsibilities within the current politico-economic system. The regulated Cancon system also includes a procedure

known as *simultaneous substitution*; a requirement that states if a Canadian broadcaster is airing the same programming as an American broadcaster at the same time, the cable provider must replace the American signal with the Canadian signal. This typically means that the most popular television shows (usually American) will still have Canadian commercials. Again, it is apparent that the current system benefits the business elite of Canada.

It is worth noting that much of the pressure for reforming the regulated Canadian broadcasting system comes from the business elite of the private sector. A deregulated industry implies that they are not accountable to anyone other than their shareholders and a shift towards an open-market. Such a shift, from a Neo-Marxist perspective, would represent a change in the dominant class; the dominant rules are no longer the rules of the political and cultural elite but instead of the business elite. However, what is interesting is that many of these mammoth private companies capitalize on the regulated, closed-market structure of Canadian broadcasting. For example, Alliance Atlantis, arguably one of Canada's largest media companies, posted \$959.9 million in revenue in 2002.<sup>9</sup> During that fiscal year, the company received \$84.7 million in the form of government assistance. Of this, it is projected by Alliance Atlantis that only \$6.3 million will ever be repaid to the government.<sup>10</sup> This represents a \$78.4 million handout to a company whose gross profits in 2002 were \$276.3 million dollars. From this example it seems that private companies can achieve lucrative benefits in the regulated environment and a shift to a deregulated environment would likely contribute to loss of a major revenue source. The Alliance Atlantis case is not a unique example; further examples include CTV and

CanWest Global's business strategy of exploiting the publicly mandated practice of simultaneous substitution to maximize revenue and profits. From this perspective it seems that a shifting of the dominate class would not necessarily make economic sense for the business elite pushing for reform.

Finally, we see that the cultural elite of Canada benefit from Canadian content regulations; this includes writers, directors, actors, producers and cultural administrators. The logic being that current Cancon requirements guarantee, through legislation and policy, the perpetual employment, profits and "shelf space" for those involved in the Canadian television industry. The cultural elite operate in a publicly subsidized framework that is currently worth approximately \$3.2 billion a year in production activity alone.<sup>11</sup>

The elite of Canada have so much to potentially lose from any reform to the current Canadian content system, including access to and control over the distribution of information (the Consciousness Industry) in Canada, not to mention generous profits. It is therefore difficult to imagine any organized movement towards significant Cancon reform generating enough support and momentum to override the *status quo*. With powerful political, economic and cultural forces lobbying for and creating legislation, policies and procedures to reinforce their dominance, significant reform to Canada's subsidized information industry seems unlikely.

## Populist Perspective

The Populist perspective supports fundamental reforms at the core of the current Canadian content system and a movement towards a broadcasting policy that reflects the interests of the viewer. They sanction the abolition of any government policy that interferes with a consumer's freedom of choice. For Populists, all Canadian content regulations affect choices that are available to consumers. Populists believe that fixed quotas on Canadian content, which essentially are designed to limit the volume of American content on Canadian televisions, are a form of censorship. In a scenario where television content is legislated to be substantially Canadian, consumers are being denied programming that could be desirable but is limited due to the nationality requirements of the producers and other key creative personnel. The position states that governments should not be in the business of dictating what citizens can or cannot watch on television and that the broadcasting system should be built on consumer freedom of choice. This denial of freedom of choice has been interpreted by some to be a denial of the freedom of expression. Arguably, Cancon requirements could be a violation of Canada's *Charter of Rights and Freedoms* (1982) which states that "everyone has the following fundamental freedoms...(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media communications<sup>12</sup>;" choosing what to watch could be interpreted as a form of expression. This claim, however, has yet to be tested in the courts.

In addition to being against Cultural Sovereignist censorship, Populists further disagree with public financing measures aimed at assisting Canadian television productions. The

Populist view is that any public money earmarked for Canadian production is a “sin tax” for Canadians who prefer American programming over the Canadian content that their taxes are funding.<sup>13</sup> To address the issue of funding Canadian programming, certain Populists have suggested a “user-pay” system so only those who choose Canadian content are responsible for paying for it.<sup>14</sup>

The Populist position regarding Canadian content in the era of globalization and digital technologies is that regulating Canadian content will become redundant as the lines between traditional broadcasters and new digital delivery methods begin to blur due to convergence of technologies and fading international borders. When this occurs, consumers will decide their own content without thought to its country of origin. In fact, there are already “language translation technologies” available that allows content to “cross linguistic market borders” flawlessly.<sup>15</sup> This is why new media have, by some, been labelled “culture busters.”<sup>16</sup> Consequently, broadcasting is no longer a closed system operating within physical cultural boundaries (we have seen this in the case of pirated DirectTV in Canada.) The solution, according to Populists, is essentially that of a free market, where Canadian citizens are simply selective consumers; if Canadian programming is desirable it will be watched. This, of course, is problematic since Canadian programming is competing with American programming and it is a market reality that Canadian programming cannot generate the equivalent revenue of American programming.

One of the strongest counter-arguments to the populist approach is that Canadians, even though they selectively watch significantly less Canadian television than American, do want Canadian content available to them in a Canadian broadcasting system. A recent study reported in the *National Post* indicated that sixty-four percent of Canadians want Cancon guaranteed to be available to them<sup>17</sup>. Ironically, this seems to suggest that a Populist system in Canada does include Canadian content and that the "populists" wanting a consumer-driven market are in the minority.

### **Open-Market Perspective**

The Open-Market perspective for Canadian content is the model of a free and open economic system that has become current in the era of "trade liberalization, rapid technological changes, constraints on the public purse, and the growing export success of Canada's cultural products."<sup>18</sup> For supporters of freer international trade and a global ideology of the marketplace, the deregulation of the Canadian broadcasting system and the elimination of Cancon requirements are seen as necessary measures. The position, as with the populist perspective, also declares that the current system of quotas is a form of censorship that discriminates against American cultural products. However, the difference is that the open market perspective tends to favour corporate rather than consumer interests. Furthermore, in the context of international trade agreements, America regards its "cultural" productions as entertainment productions, and they are therefore treated as any other industrial product in terms of trade. Canada, on the other hand, does not view their cultural products as any other industrial product and has

consequently insisted on the protection of its cultural products in various international trade agreements.

The Open-Market perspective insists on a level playing field in all aspects of the economy so that market forces can effectively determine the value of goods and services. This perspective argues that Canada's cultural sovereignist policy is protectionist towards Canadian cultural products and does not reflect the demands of the current global economy. The view is that the trends of international trade pressures will not go away<sup>19</sup> and protectionist policies need to be updated to reflect economic realities. This is particularly relevant given that the financing of Canadian television production is now heavily reliant on foreign investments to fund productions. Production financing appears to reflect current economic realities, but public policies are lagging. This is controversial considering that part of the broadcasting system embraces the global economy by accepting foreign moneys to finance productions while another part rejects globalization by regarding Canadian produced cultural products (i.e. television) more favourably than foreign produced television. Given such an inconsistency in the Cancon system, it is not surprising that Open-Market proponents oppose the cultural sovereignist position.

If Canadian broadcasting is to continue to be regulated in some capacity or another it is suggested that the "lag" between the "facts" and the "values" of policy and the "real world" needs to be rectified. If not, the "realities of the marketplace will impose their own facts."<sup>20</sup> Adding to the controversy, the Canadian broadcasting system is governed

by a piece of legislation (*Broadcasting Act (1991)*) that was passed before technologies such as the Internet were even a consideration to the broadcasting system.

The critique of this perspective, as can be imagined, is that it blatantly dismisses and ignores all cultural objectives and any nationalistic pursuits. The model simply wishes to forward one ideology, the ideology of the marketplace, which is arguably American ideology. Cultural production is seen as a business like any other, not as a means to maintain and promote distinct national identities.

In the section of this paper devoted to the profiling of the various players in the Canadian television industry affected by Cancon an analysis will be made concerning which groups benefit from each perspective. As will be seen, most benefit both economically and politically from the current framework.

## **CANADIAN CONTENT**

Canadian film and television production cannot survive without public funding, or publicly mandated funding. Economically, this is because these productions are in direct competition with American programming and simply due to the discrepancy in the sizes of population (between the United States and Canada) Canadian television shows are at a significant disadvantage. This is because American productions are far more likely to recoup their production expenses and profit domestically (in the U.S. market) than Canadian productions. There is not a level economic playing field and this contributes to

a cycle in Canada of lower production values, smaller audiences and smaller or no profits. Canadian policy suggests that for the domestic television industry to continue making Canadian products it needs to be able to compete with foreign products. This means that a Canadian television production should be of the same quality as an American television production. If this were not the case, Canadian productions would be inferior and Canadians would likely watch less Canadian television, an action that obviously does not contribute to the meeting of the objectives of Canada's cultural sovereignist policies. To compensate for this, and to assist in the meeting of the cultural goals, the Canadian government has made it policy to regulate and subsidize Canadian television production.

In terms of regulation, a production must be labelled "Canadian" to become eligible to fulfil a broadcaster's Cancon requirement and to access Canadian funding. To achieve this status a production must employ a significant number of Canadian citizens in key creative positions; this includes producers, writers, directors, production designers, technical directors, directors of photography, performers, editors and composers. If the production meets the personnel requirements set by the Canadian Audio-Visual Certification Office (CAVCO), it is deemed to be "Canadian." Creative content has nothing to do with the classification of a production as Canadian. This policy of disregarding creative content seems to assume that if Canadian personnel are involved in a production, they will automatically produce something that will speak to Canadians and will contribute to the promotion and maintenance of national identity and culture. It has been argued by many that this is a terrible assumption to make, and in fact, may lead to

Canadian producers using Canadian funding means to produce content that is geared to international or trans-national audiences. Once a production is labelled "Canadian" it becomes eligible to operate within the subsidized framework of Canada's cultural sovereignist television system. The policy of not considering creative content guarantees objectiveness for the public decision makers. This protects public players from accusations of sanctioning certain aesthetics over others; however, it does not guarantee the ability to maximize the cultural objectives of the Canadian broadcasting system.

The two types of funding that are available to Canadian television producers are subsidization from the public purse and funding from the private sector that has been mandated to be earmarked for Canadian producers by public policy; often as a stipulation of a broadcasting or distribution license from the CRTC. Public funding strategies have changed over the history of Canadian broadcasting, as will be presented later in this section, but currently the model favoured is a financial approach (as opposed to an institutional approach or a legal approach.) When it comes to public funding the principle funding sources are tax credits, grants, equity investments that are often available at both the federal and provincial levels. It is not unusual for the public funding of a Canadian production to represent more than half of the funding of a production, with the remainder of the money coming from the broadcaster in the form of licence fees and private funds mandated by public agencies.

The role of funding in the context of private companies operating within the television broadcasting industry (i.e. broadcasters and cable and satellite providers) is noteworthy as

it has been referred to by some as "quiet blackmail."<sup>21</sup> This label has been attached by some because obtaining a broadcasting or distribution licence has been observed to be a "licence to print money"; it is therefore very sought after. The CRTC recognized this and began to use the television broadcast licence a tool to leverage greater commitments to Cancon out of television broadcasters. The pursuit for broadcast licences was so highly competitive companies were willing to make substantial promises. These promises generally fit into three categories. The first was time periods for airing of particular programming, the second was the type of programming to be aired, and the third was the influencing of profit, or the forced earmarking of some of a companies profit for funding domestic production.<sup>22</sup> The CRTC has since turned these promises into conditions of licence. Now, all Canadian television broadcasters are required to contribute a percentage of their gross revenue to funding Canadian productions. This has led to the creation of such funds as the A-Channel Drama Fund, the Bravo!Fact fund, the Global Development Fund, the Shaw Children's Programming Initiative. Broadcast licences also stipulate how much broadcaster investment must be made in original independent domestic productions; this essentially means that even licence fees for productions are a form of publicly mandated funding. Furthermore, cable and other distribution companies also are required to create similar production funds; these include the Bell Broadcast and New Media Fund, the Cogeco Program Development Fund, the Fundy Communications Production Fund, and the Rogers Documentary Fund. The CRTC's relationship with the cable companies has also led to the partnership between the cable companies and Telefilm in the creation of the Canadian Television Fund, a fund worth close to \$200 million annually. These funds are all publicly mandated and have become a vital

component of maintaining the Canadian broadcast environment and insuring an effort is made to create quality Canadian content. The rationale behind all of these funds is that no organization would fund Canadian programming if it was not required by law because broadcasting or re-broadcasting, foreign programming is much cheaper and much more profitable.

This rationale, and some of the economic forces at work within the Canadian broadcasting system, has contributed to an environment wrought with challenges. Seemingly, the most contentious issue is the relationship between domestic production and the global marketplace. For instance, a lot of the funding available in Canada for domestic production is in the form of equity investments. This means that the public and private investor could recoup their investment and profit if the production recoups and profits. This leads to two contradictory forces at work; the cultural sovereignty force (pursuing the objectives of the *Broadcasting Act*) and the potential profit force (pursuing profits in all global markets.) Typically, for a Canadian production to have a chance of recouping and profiting it must have sales in the global marketplace. To maximize the possibility of foreign sales a Canadian production cannot be too distinctively Canadian as foreign buyers are usually interested in productions to which their audiences cannot relate. This has led to an "export-or-die logic that...has put pressure on Canadian producers to fashion the qualitative aspects of their products to the tastes and dictates of other places."<sup>23</sup> Both public and private funding sources have recognized this and are force into the awkward position of attempting to fund productions that are Canadian in content and context, and that have foreign profit potential; two seemingly contradictory

forces. This confusion of policy is particularly prevalent in the Canadian Television Fund (Canada's largest production fund, a \$200 million per year publicly and privately financed fund). The challenge it seems has become to create an domestic industry that can meet the cultural sovereignist objectives laid out by public policy and legislation and be financial viable within the framework of a global economy.

A global economy is defined as an economy where goods and services from one country do not have unfair economic advantages over goods and services of another country. In other words it is a free and open marketplace. Treaties such as the Canada-United States Free Trade Agreement (CUSFTA), the North American Free Trade Agreement (NAFTA), and the General Agreement of Tariffs and Trade (GATT) have been established to make certain markets more free for corporations to expand internationally. This free market mentality is accepted for virtually all industries in countries that have subscribed to international trade agreements, but for some countries, such as Canada, special treatment and exemptions are demanded for their cultural industries. Countries, such as Canada, view their cultural industries as vital to the maintenance of their cultural identities and national unity. According to these countries, if these industries were not protected from foreign competition a deterioration of national identity and national unity would be unavoidable. For this reason the Canadian government views, and has viewed, its cultural industries, including television production and broadcasting, as the ties that bind all Canadians and strengthens Canadian culture. Policies and legislation are in place to insure that Canadians can access Canadian content.

Certain foreign countries, particularly the United States, view these policies as protectionist and they feel that a violation of trade agreements is occurring. With these policies in place a true free market ceases to exist. Americans do not see their cultural industries any differently than any other domestic industry and feel that other countries should take the same position. Of course, the situations are entirely different considering that American television productions generally recoup and profit in the domestic market. America is a cultural powerhouse that has generated products and personalities that are recognized and sought after around the world. In Canada, without government intervention and the subsidization of Canadian television the industry would likely be unable to sustain itself. From a purely economic perspective it is not viable for Canadian broadcasters to finance Canadian production as it is much cheaper to acquire foreign productions than to licence domestic content, and Canadians tend to watch substantially more American content than Canadian. Consequently, much more revenue can be generated from advertising in a schedule that only programs American content.

As mentioned above, the Canadian Television Fund is Canada's largest production fund; it provides roughly \$200 million annually to independent productions in Canada, and its mandate is to finance productions that "speak to Canadians about themselves, their culture, their issues, their concerns and their stories."<sup>24</sup> If an English language drama series, shooting more than thirteen episodes, qualifies for full funding it could receive \$6.220 million dollars from the Canadian Television Fund.<sup>25</sup> A production could access up to sixty-two percent of its financing from this fund. Part of this money, up to thirteen percent of a production's budget, is in the form of a non-equity payment to the

production. The remainder of the money, up to forty-nine percent of the production's budget is in the form of an equity investment. Naturally, as with any equity investment, the Canadian Television Fund hopes to minimize their investment risk and maximize their profit potential. To do so the production company applying for assistance must project the "rate of recoupment and contribution in dollar terms that the project is expected to make the Fund."<sup>26</sup> The Canadian Television Fund has a ranking system, a one hundred and thirty-point scale, used to determine which productions will qualify for funding. Of the one hundred and thirty points, twenty-five are allotted to recoupment while only five are allotted to "visibly Canadian." In other words, in order for a production to access up to forty-nine percent of their budget, from an organization that was created by the Canadian, a production must recognize that five times more value is placed on a production's ability to recoup and profit than in being visibly Canadian.

This approach does not match up with the cultural sovereignist broadcasting policies or legislation that are in place in Canada or with the mandate of the Canadian Television Fund. The problem is that the system, although it appears to condemn the globalization of cultural industries, actually encourages the globalization of cultural industries. In other words, the system discourages foreign content in Canada but rewards Canadian content that has the potential to be sold in foreign markets. The current Canadian broadcasting system and Cancon regulators present some legitimate ideological concerns. At times, the ideology of the marketplace is paramount, while in other considerations, the favouring of a Canadian ideology is the ultimate factor.

The Canadian television system is a contradictory system. It protects its programming from the consequences of globalization when the programming is threatened and it embraces the consequences of globalization when its programming can generate revenue. The system relies on a global audience for survival, yet it denies foreign producers the same privileges; and Canada has been successful at this considering that it is now the second biggest exporter of audiovisual products in the world.<sup>27</sup> It is no wonder that the United States and other foreign countries do not always approve of Canada's cultural industry's policies.

### **Public Approaches to Canadian Content**

Since the origins of linking Canada's audio-visual industry to culture there have been three distinct approaches to insuring that Canadians have access to Canadian stories. These are, the Institutional Approach, the Legal Approach, and the Financial Approach. All three of these approaches continue to exist today, but, over the last sixty-five years they have been valued differently. Currently, as noted above, the focus is on a financial approach to Canadian content.

### **Institutional Approach**

The history of publicly funding Canadian film/video productions dates back to 1939 with the creation of the National Film Board (NFB). This represented the beginnings of the Institutional approach, an approach that relied on the building of public institutions and the developing of the personnel that would produce and distribute Canadian stories to

Canadians. The NFB was designed to promote the "creation and distribution of audiovisual works that interpret Canada to Canadians and to other nations."<sup>28</sup> Prior to this, in 1936, the Canadian Broadcasting Corporation was established as the national public radio broadcaster to be "an important ideological steering mechanism for the state."<sup>29</sup> The CBC acted as both the public broadcaster and as the regulator of broadcasting in Canada; broadcasting was limited to radio until CBC Television first went to air in 1952. These two organizations had strong cultural mandates and were designed to operate as the producers and distributors of cultural products in Canada. However, both of these vertically integrated organizations had large bureaucracies, "battalions of state-employed filmmakers" that consequently contributed to the "retarded emergence of an independent production sector."<sup>30</sup> This was addressed in 1958 when the CBC's regulatory power was removed with the creation of the Board of Broadcast Governors (BBG) whose establishment marked the beginning of the favouring of the Legal Approach to Canadian content in television broadcasting.

Currently, both the NFB and the CBC continue to pursue their mandates and to support the independent production sector.

### **Legal Approach**

In September 1958 the *Broadcasting Act (1958)* was passed and suddenly there were two public bodies at work in the Canadian broadcasting system; the CBC to "operate the public service," and the BBG to "supervise the entire system."<sup>31</sup> The act also saw the legitimization of the private broadcaster; they could now operate as "equals" with the

CBC within the Canadian system. The arrival of the BBG set the framework for the way that broadcasting is still legislated in Canada. Soon the BBG began implementing policy that had to be followed within the broadcasting system that demanded "shelf space" for Canadian content.

The first formal Canadian content quotas were implemented by the BBG in December 1959. The quota was to be that "during any period of four weeks, not less than 55% of the broadcast time of any station or network shall be devoted to programs that are basically Canadian in content and character."<sup>32</sup> This trend continued and soon there were regulations for Canadian content during prime time television hours (6:00pm to midnight), during summer months, and during "calendar quarters." Canadian content regulations were designed, according to the BBG, to demonstrate that "public broadcasting was not the only solution to national interest in broadcasting."<sup>33</sup>

In 1968, *The Broadcasting Act (1968)* was implemented. This legislation was to "correct the weaknesses"<sup>34</sup> of the previous broadcasting acts. Essentially, the bill was to remove Parliament from the affairs of broadcasting in Canada. To achieve this, the Canadian Radio-Television Commission (CRTC) was created. This regulatory body replaced the BBG and was to regulate and supervise all of the elements of the Canadian broadcasting system, which now included the Canadian cable television business. One of the key reasons that the BBG was replaced was its inefficiency with regard to dialoguing among the members of the broadcasting community, including the public, prior to implementing

regulation. With the CRTC's mandate of determining what was in the "public interest" the commission began "speaking" with the public in various forums.

Soon after its establishment, the CRTC implemented stricter Canadian content quotas for radio and television. In February 1970, the CRTC, feeling that the spirit of Canadian content was not being lived up to by Canadian broadcasters (who typically scheduled Cancon programming when viewership was low<sup>35</sup>), announced that the minimum Cancon requirement for television would be 60 percent of the entire broadcast day, including prime time. The CRTC has continued in this legislative role, but around that time focus again began to shift to a new possibility for managing Canadian content and broadcasting, it was a shift towards the Financial Approach.

### **Financial Approach**

During Canada's centennial year, nearly thirty years after the creation of the NFB and nearly 10 years after the creation of the BBG, \$10 million dollars was allocated to the newly created Canadian Film Development Corporation (CFDC), an agency with the objective of supporting the Canadian feature film industry. This marked the beginning of a financial approach to Canadian broadcasting. This fund continued to grow and by 1976 it was distributing \$25 million a year to assist Canadian feature filmmakers. The Broadcast Program Development Fund was introduced in 1983 by the CFDC to "encourage the production and broadcast of quality television programs produced by private Canadian producers."<sup>36</sup> This fund was created through "a tax on monthly cable TV bills to help subsidize the production of Canadian films and television programs."<sup>37</sup>

This formalized Canada's commitment to the financial approach, it also created an environment where broadcasters could secure Canadian programming through licence fees instead of by financing full production budgets; broadcaster dollars could be stretched and independent producers could finally develop domestically. Around this time, a decision was made by policy makers that television was the preferred outlet for Canadian stories rather than film due to the distribution/exhibition system in place.<sup>38</sup> In 1984, the CFDC was renamed Telefilm Canada to "better reflect its range of activities,"<sup>39</sup> and eventually, in 1996 a new \$200 million Canada Television and Cable Production Fund was established; now known as the Canadian Television Fund (CTF). This fund represents a partnership with Canada's cable companies and is also Canada's largest production fund. During the 1999-2000 fiscal year the CTF funded over 2000 hours of Canadian programming<sup>40</sup>. This funding structure remains the structure within which Canadian domestic production continues to operate.

In addition to the public funds mentioned above there are other public funding sources that contribute to Canadian production in the film/video industry. The Cultural Industries Development Fund (CIDF) announced in 1999 by the Department of Canadian Heritage is a \$28 million fund that targets book and magazine publishing, sound recording, film and video production and multimedia. The Canada Council for Arts also funds Canadian cultural enterprises. Other funding opportunities for Canadian projects exist in the form of federal and provincial tax credits. Several provinces also fund production and the arts through various other funds.

It is clear that Canadian content as Canada currently knows it could not exist without the availability of public funding. The financial approach to Canadian content and broadcasting is designed to level the playing field by infusing hundreds of millions of public and private dollars into Canada's cultural industries each year.

## **COMMERCIAL PLAYERS**

In the Canadian broadcasting environment there are many players who have a great deal at stake when it comes to the current manifestation of Cancon or any future variation; the actions of these players influence and are influenced by Cancon. Whenever there are numerous voices trying to direct economic and cultural policy certain players win and certain player lose. This section of the paper will examine many of these players and determine which versions of Cancon best suit each group. However, the intention of this section is to simply provide snapshot profiles of each group; a brief description of their role and where each player fits into the Canadian content spectrum. An analysis will then be made regarding which of the four perspectives of Canadian content best suits and most favours each particular player. To achieve this an overlapping of agenda and perspective must occur.

The domestic players that will be examined are private broadcasters, the CBC, independent producers, cable and satellite providers and various interest/lobby groups connected to domestic television production in Canada.

## Private Broadcasters

Arguably the two biggest private broadcasters in Canada are the media giants CanWest Global (Global TV, Prime TV, Men TV, Deja View, Lonestar, Fox Sports World Canada, Xtreme Sports and twenty-two other digital specialty channels) and CTV, owned by Bell Globemedia (CTV, CTV Newsnet, Talk TV, Travel TV, Comedy Network, Outdoor Life, ROBTv, TSN, Discovery and seven other specialty channels.) Additionally, there are other companies who have significant interests in private broadcasting. They included Rogers Communications (OMNI, MSNBC, Outdoor Life, SportsNet, TechTV, The Biography Channel and The Shopping Channel), Alliance Atlantis (Food Network, HGTV, History, Life Network, Showcase, The Score, ten other digital specialty channels and thirty-nine digital specialty channels approved by the CRTC but not yet in operation), and CHUM Ltd. (MuchMusic, BRAVO, SPACE, Star-TV, SexTV, City TV, and twelve other specialty channels.) These five companies represent virtually all of the domestic private broadcasting interests in Canada and a significant portion of all Cancon licenced and broadcast in Canada.

In the past, getting a Canadian broadcasting licence was considered a "licence to print money," much of this cash-cow phenomenon had to do with certain policies instituted and endorsed by the CRTC; these include simultaneous substitution, the "non-duplication" rule and "linkage" rules. *Simultaneous substitution* is a process that allows Canadian broadcasters to have their signal substitute an American signal if they are broadcasting the same programming at the same time. This extends the reach of the Canadian signal and allows for more advertising revenue to be generated. The "non-

*duplication*” rule similarly favours Canadian private broadcasters. This policy states that no foreign broadcaster can be in direct competition with a Canadian broadcaster in the Canadian broadcasting system. This rule has denied American broadcasters like MTV and ESPN access to the Canadian market because they would be competing directly against MuchMusic and TSN respectively. Finally, “linkage” rules declare how many Canadian channels must be available to viewers for every American channel that is available on a cable or satellite system. Currently, there is a 1:1 ratio; this means that for every American channel that Canadians can access they must be able to access a Canadian channel at the same tier in the cable or satellite spectrum. These rules have protected private broadcasters in Canada and allowed them to become profitable ventures. In addition to the three regulations, some private broadcasters, specifically specialty channel broadcasters, receive monthly subscriber fees from cable carriers of the signal. For example, TSN (owned by CTV) receives \$1.25 per subscriber per month from the cable companies.<sup>41</sup> The CRTC orders the cable companies to pay this wholesale fee to offset the costs of running a Canadian broadcasting operation. Clearly, there is a regulated environment at work that certainly seems to benefit private broadcasters; however, the feeling is often not shared when the broadcasters are forced to finance Cancon. become vulnerable to market forces, maybe a gamble that could be exceptionally profitable; a perspective that often motivates cultural capitalists and their

For private broadcasters in Canada funding Cancon is seen as a “cost centre” as opposed to a “profit centre.”<sup>42</sup> This implies that broadcasters do not want to finance Canadian production as it is virtually guaranteed to generate a loss. They could generate much more money without having to pay licence fees and contribute to production funds as

directed in the current Cancon environment. However, from a business perspective, these "losses" could almost be regarded as a form of insurance against too much competition. In other words, while operating in the Cancon system the apparent losses seem to be more than balanced by the benefits that are made available to Canadian broadcasters in the form of the cultural sovereignist policies of simultaneous substitution, "non-duplication" and "linkage." It appears that while many private broadcasters would appreciate deregulation because an open-market allows for unlimited expansion, their current market status and economic success has been achieved because of a regulated system.

Maintenance of the *status quo* seem to be the safest route for private broadcasters in Canada as they are allowed to operate in a protected economy; but the reinforcement of the *status quo* does not seem to be in the spirit of the cultural sovereignist perspective, it is a clear effort to keep the rule of the dominant class the dominant rules (a Neo-marxist approach). However, many successful entrepreneurs embrace risk and refuse to look at potential markets as being limited by geographic or political borders; they favour an open-market. A shift to an open-market, although risky because goods and service providers become vulnerable to market forces, maybe a gamble that could be exceptionally profitable; a perspective that often motivates cultural capitalists and their shareholders, including private broadcasters, to push for change.

## **Independent Producers**

Independent producers come in all shapes and sizes in Canadian Television; there are small companies that are run by a staff of one or two people and there are companies that employ hundreds of people (again, Alliance Atlantis is an example of this.)

The current Canadian broadcasting system has been designed with the independent producer in mind, and as a consequence a lot of public and publicly mandated money ends up under the control of Canadian independent television producers. The shift towards a financial approach to Canadian content away from an institutional approach meant that producers were not to be affiliated with large public institutions and therefore needed to finance from other sources. This shift also gave broadcasters more flexibility with their money as they were only required to pay licence fees to acquire content instead of fully funding productions; this meant more Canadian programming with higher production values could be leveraged. Also, the producer benefited because they retain ownership of their production, allowing producers to sell their product in other markets without having to repay broadcasters.

If a new ideological approach to Cancon were to be established, such as an open-market approach, it is very likely that small and medium sized Canadian production companies would suffer. Leveraging the financing for shows with production values that could compete with American products would be virtually impossible. Without a guaranteed "shelf space" broadcasters would choose to acquire cheaper foreign programming rather than contribute more money to the financing of a Canadian show with lower production

value. The current Cancon system is a safety net for Canadian producers in an industry that is notoriously unstable.

On the other hand, larger production companies would have a much better chance of survival and would likely thrive in an open-market. These companies, such as Alliance Atlantis or Fireworks, operate within vertically-integrated, or "self-dealing" systems; so finding a broadcaster is not challenging as there is an on-going dialogue between the producer and the broadcaster as they are a part of the same "family." For Alliance Atlantis this could include relationships with HGTV or Showcase, while for Fireworks this would include the CanWest Global operations Global TV and Prime TV. These production companies can operate in a closed system and amortize some of their expenses over the entire operation. Furthermore, when money stays within the same operation at all levels (i.e. production, distribution and exhibition) it can be economically maximized. Again, an open-market does pose a risk for any venture since companies become vulnerable to unpredictable market forces. Any large production company should consider if the value of the government subsidizations, almost \$80 million in 2002 for Alliance Atlantis, outweighs the potential profits and/or losses of an open-market.

## **CBC**

The CBC is a unique specimen in the Canadian broadcasting environment as it has been in existence, pursuing virtually the same mandate, for almost seventy years. For most of that time the Institutional approach to broadcasting resonated throughout the corporation. This manifested itself in in-house production, staff, resources and facilities. However,

over the past decade the approach has changed. The number of salaried staff at the CBC has been slashed in favour of a private sector employment model based on freelance labour in production enterprises. Furthermore, the CBC has also begun to shift away from in-house productions to the independent producer. Now many CBC productions (outside of news and sports programming) are required to go through the same funding process as their counterparts producing for the private broadcasters.

The CBC is a very ambitious project whose mandate is exceptionally grand. Essentially, its role as a public broadcaster is to reflect Canada, and all the versions of Canada, back to Canadians. As a broadcaster this is challenging because the target audiences is not one specific demographic, but rather an entire, very diverse, country. Informing, enlightening and entertaining<sup>i</sup> all Canadians present Cancon in an entirely different scope than can be found in other Canadian broadcasters since the CBC's mandates and strategies all directly or indirectly revolve around Cancon. Maximizing the CBC's cross-demographic appeal becomes even more challenging when the economics of competing for Cancon production dollars in the Telefilm structure are factored into the scenario. Since Telefilm places value on the foreign exportability of a production in its funding rankings, it is unlikely that productions without mass appeal will maximize funding. This process devalues the CBC's mandate in the sense that those audiences that are under represented on television are further marginalized because their stories are not marketable outside of the country and are consequently less prominent on the CBC. This cycle dilutes the overall value of the CBC and the Cancon structure since these groups need cultural organizations like the CBC to contribute their stories to Canada's cultural mosaic (this

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<sup>i</sup>Wording taken from the *Broadcasting Act (1991)*, Section 3, Subsection 1

what Canada's Broadcasting Act demands.) It becomes apparent that when the system begins to rely on economic rather than cultural markers the culture mandate becomes secondary. Even the slightest shift to an open-market changes the sensibilities and agenda of a public broadcaster. The CBC relies a strong, culturally sovereignist Canon system for its survival, if this environment disappears the CBC becomes a broadcaster of token Canadian content. The CBC, it appears is the only player in Canada's broadcasting system that has the most to lose if there is an ideological shift away from the cultural sovereignist Canon model.

### **Interest Groups**

Interest groups have a long history in the evolution and shaping of Canadian broadcasting. When Canada was first deciding on a formal broadcasting structure in the 1920s the Canadian Radio League was one of the strongest and most influential voices at the table.<sup>43</sup> Presently, there are numerous interest and lobby groups operating in Canadian broadcasting, all of whom have agendas linked to the future of the industry and Canon; all claim to represent the best interests of their members. Their strategies involve putting pressure on policy-makers in hopes of directing the industry in a way that matches their mandates. This section will briefly look at four of these interest/lobby groups presently at work in Canada. They are the Director's Guild of Canada (DGC), the Friends of Canadian Broadcasting, ACTRA and the Canadian Association of Broadcasters (CAB.)

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<sup>i</sup> Wording taken from the *Broadcasting Act (1991)*. Section 3, Subsection i.

**The Director's Guild of Canada** began in 1961 as a representative group for Canadian film directors. Initially, it began lobbying Ottawa for a strong national feature film policy. Currently, the DGC's mandate still revolves around continued employment opportunities and recognition for their members. They continue to lobby policy makers but are not strong advocates of a cultural sovereignist agenda; yet, they do push for a subsidized Canadian industry regardless of whether it is in the form of subsidized domestic or service production. Their vision statement reads that: "The DGC is a visionary leader and partner in the development of the international Canadian film and television industry at a policy and professional level. This evolving and multifaceted Canadian film industry will be vibrant, confident and world-recognized for excellence in storytelling from a unique perspective."<sup>44</sup> The DGC wants their members to be employed and be able to share their visions and voices throughout the world, and they want public policy in place that facilitates such objectives. They favour a protected industry (as it guarantees employment), but they fence-sit when it comes to aligning with domestic or service productions.

**ACTRA** (Alliance of Canadian Cinema, Television and Radio Artists) is the body that represents over 20,000 actors in Canadian film, television and radio. They share an approach with the DGC in the sense that they pursue policy that helps their members financially and raises their profile on the globally (again, a fence-sitting approach.) Officially, they have two key goals in terms of policy objectives, firstly, to support Canadian content and secondly, income security for performers.<sup>45</sup> The first objective is clearly designed to appear culturally sovereignist, but the second objective is a slyly

disguised way of lobbying for a strong service production industry in Canada. This is the case because far more money can be made for Canadian actors in Canada who work on foreign productions.

When John Manley released his first budget in February 2003 and announced that there would be cuts to domestic funding and increased subsidization for foreign productions ACTRA's true interests were revealed. In a press release ACTRA stated that it "welcomes the steps taken ... to increase the production services tax credit that encourages foreign production in Canada, but is dismayed by the 25% cut to the Canadian Television Fund (CTF) that supports Canadian production."<sup>46</sup> This position indicates that their interests are not cultural sovereignist, but are simply based on potential employment and financial remuneration for their members. Their cultural sovereignist tendencies are simply in place to guarantee that Canadian content continues to be funded and therefore they have a landscape that guarantees employment (through a regulated Cancon system) for its members.

**Friends of Canadian Broadcasting** is an interest group who does not directly have an economic stake in the future of the Canadian content system or the Canadian broadcasting system. Their agenda, unlike other interest groups presented, seems to be a genuine cultural approach. They want to defend Canadian content and the accessibility of Canadian content for Canadian against market forces and a "hostile government."<sup>47</sup> The organization declares that it intends to participate in the shaping of the Canadian broadcasting system by representing the interests of Canadian viewers and listeners. Part

of this representation includes not only demanding cultural responsibility but also fiscal responsibility with regards to public money spent on film and television in Canada. They want the production funding system in Canada streamlined so that money, production values and cultural objectives can be maximized. As part of their strategy they participate in CRTC activities and lobby for amendments to Canadian policy and legislation that govern all elements of broadcasting in Canada. They have been labelled "one of the 'most spectacular and vociferous' groups"<sup>48</sup> operating in Canadian broadcasting, and their principle objective is to promote Canadian nationalism.<sup>49</sup> In an era when it seems that all agendas revolve around money, it is refreshing to see that such a voice is prominent in the Canadian content landscape. The Friends subscribe to a cultural sovereignist perspective that seems to be guided by a genuine belief in the link between Canadian broadcasting and national identity and culture. A shift in ideological direction for Canadian content would likely contribute to a stronger Friend's voice and their cause and objectives would grow as it is one driven by nationalistic passion.

**Canadian Association of Broadcasters (CAB)** is an industry association that represents many of the broadcasting players in the Canadian broadcasting environment; their members include private broadcasters, networks and specialty channels. The organization takes a very patriotic approach to broadcasting, but it is clear that their interests are economic and they lobby for policy and legislation that maximizes profits and a protected economy. In other words, they support the *status quo* when it comes to Cancon and Canada's broadcasting objectives, but their approach is much less cultural sovereignist. They recognize that the system protects their interests and they want it to

remain strong and secure. The membership of the CAB has a lot to lose if a significant shift occurs in policy; many of their members would no longer be able to survive in an open-market.

What is clear from this brief profile of four key interests groups is that many depend on the *status quo* to maintain their economic positions and dominance. The interest groups have developed to fight for the continuation of their privileged economic positions. The only voice that truly embraces the cultural sovereignist perspective (Friends of Canadian Broadcasting) has no direct economic stake in Canadian broadcasting; they simply have a cultural agenda that relies on the use of Canadian content and Canadian broadcasting to promote and national vision, culture and identity. This snapshot demonstrates that the cultural sovereignist approach of Canadian broadcasting is not what drives the industry; it is an industry that relies and seeks out money and profits. This reality has the consequence of ultimately diluting and belittling the cultural objectives of Cancon as it becomes apparent that economic goals are valued over cultural goals, and there are strong lobby/interest groups in place to move this forward.

### **Distribution Sectors**

The distribution sector of the Canadian broadcasting industry represents the broadest range of outcomes on the success/failure spectrum if there was an ideological shift in the way that Canadian broadcasting was managed. This sector constitutes primarily of the cable industry and the satellite industry. The big players in cable in Canada are Rogers, Shaw, Cogeco and the Canadian Cable Television Association (CCTA); in the satellite

distribution arena the biggest player is BellExpressVu. If a shift were to occur that moved Canadian broadcasting from a Cancon, cultural sovereignist system to an open-market system it is very likely that the cable companies would profit enormously while the satellite companies would fail miserably.

Currently there are over eleven million homes in Canada hard-wired to cable, this represents a 70.8% penetration rate and a 83% market share for the entire country; satellite providers have a 17% market share.<sup>50</sup> Furthermore, in 2001 cable companies in Canada had revenues of just under \$4 billion and a profit margin of 16.1%; the satellite providers during the same period has revenues of \$697 million and profit margin of negative 42.0%<sup>51</sup>, satellite providers are losing hundreds of millions of dollars annually in an effort to convert cable customers to satellite services. In both of these distribution ventures cable and satellite operators are subjected to CRTC mandated rules that are conditions of their licences, however, they also receive protection from the CRTC from foreign competition.

The entire distribution sector must contribute a percentage of their revenues to the Canadian Television Fund (CTF) for funding Canadian domestic independent productions. Last year the distribution sector contributed \$150 million to the fund.<sup>52</sup> Furthermore, as mentioned in the section on private broadcasters, they are required to provide a 1:1 ratio of Canadian channels to foreign channels on all tiers of the distribution spectrum. These tiering and linkage rules and the contributions to the CTF are the cost-centers for the distributors of operating in a regulated and protected industry. If there was

an ideological shift away from a cultural sovereignist broadcasting system to an open-market system this would imply that the protectionist rules of tiering and linkage would cease to exist and the market alone would dictate what Canadians would watch; also, and much more significant, a shift would open the market up to foreign competition. This would very likely destroy Canada's satellite providers and benefit the Canadian cable companies.

Although the CRTC aims to treat cable and satellite providers equally they are not equals, simply because they are subject to different market forces. Cable companies, for instance, were allowed to operate in a state sanctioned monopolistic system and have been doing so in a regulated system similar to its current incarnation since the early 1970s.<sup>53</sup> This monopolistic structure was condoned by the CRTC to insure that cable infrastructures could be built and that virtually all of the country would be able to access cable if they desired, instead of there just being competition in dense, profitable markets. Presently, Canadian cable companies own the cable infrastructure in Canada, this means that even if deregulation were to occur any cable signal would have to utilize the infrastructure already in place. With more than a 70% cable penetration rate, Canadians, in an open-market situation, would very likely continue using the services of a Canadian cable provider. Consequently, cable profits would increase because they would not be directing revenue to production funds or distributing signals that did not maximize profits.

Satellite distributors, on the other hand, do not have the luxury of a hard-wired system as a form of insurance against competition. In an open-market environment they would be competing directly with American powerhouses such as DirectTV whose satellite footprints already cover much of Canada. Since a foreign company like DirectTV is capable of profiting in their domestic market and the cost of reaching the Canadian market is negligible they would be able to strong-arm Canadian satellite providers out of the market with little effort.

Based on this analysis it becomes clear that it is in the best interest of Canadian satellite distributors to favour the *status quo* and the cultural sovereignist approach to broadcasting. While for cable companies, they would have a significant amount to gain from a shift to an open-market for television content.

## **CURRENT ISSUES AND DEBATES**

The greatest challenge to the Canadian broadcasting framework since its origins has been the balancing of public and private interests. Dallas W. Smythe has described this as the attempts to balance "contradictory forces of public service and the production of audiences for advertisers."<sup>54</sup> Regardless of how it is described, it is apparent that the role and objectives of broadcasting in Canada are contentious topics, and the virtues of Cancon are even further debatable. This attempt at a just balance, one that embraces elements of the private sector's wishes and publicly endorsed cultural objectives, has contributed to a controversial and incongruous system. This section will examine the

current controversial components, potential future challenges of the Cancon system and the relationship of Canadian domestic and service production to Cancon.

### **The controversial definition and incongruities of Cancon**

Two factors, the definition of Cancon and the contradictory realities of the Canadian content environment, have instigated the thrust of many of the arguments that surround Canadian content.

The challenge with the current definition of what makes Canadian programming "Canadian" is that it does not account for any creative content. The gage is simply based on a point system where points are assigned according to the citizenship of key personnel; this presents three dubious scenarios. The first is that by simply having Canadians involved in a production does not guarantee that a Canadian story or a Canadian perspective will be presented to the viewers. Without content actually being considered in the definition of Canadian content, it seems unlikely that a consistent nationalistic message can be delivered.

The second challenge with the current definition structure is it presumes that no one other than Canadians can produce material relevant to Canadian nation building. If a foreigner did produce a "Canadian" production, they would be discriminated against due to their citizenship and would not be given a fair opportunity to reach Canadian audiences. A production of such nature could in fact have a much stronger cultural impact than a Canadian production geared for the foreign marketplace. Similarly, the third challenge

with the definition of Cancon is when Canadian producers want to make a culturally relevant show with foreign elements. In a recent interview with a Canadian producer, a situation was described relating to the rigidity of CAVCO's standards. She was developing a documentary about the life of John Candy; someone who she believed was quintessentially Canadian. It was to be a show that would rely on a variety of television and film clips of Candy at his funniest and most poignant; however, most of these clips had been produced by Americans and therefore rendered the production ineligible for a "Canadian" endorsement. This is an example of a production that, were it made, would possibly have had cultural significance, yet the CAVCO standard has contributed to an environment where such a production is denied.

Clearly, the method of determining what is to be deemed Cancon has some flaws that do not necessarily match the cultural objectives established for the Canadian broadcasting system. In addition to the CAVCO issues, there are further incongruities that threaten the cultural objectives of the Canadian broadcasting system. Generally, these incongruities stem from the mismatching of the objectives and realities of the Canadian broadcasting system. These include the involvement of foreign entities in the production of Canadian content production, the absence of tangible goals for the broadcasting system, and the lack of proof that broadcasting contributes to the meeting of cultural objectives.

All elements of the Canadian broadcasting system are intended to contribute to nation building and the promotion and maintenance of a distinct Canadian identity. However, in the current context of globalization and freer trade, the economics of Canadian television

production have contributed to an environment where an exclusively Canadian audience base will not sustain the publicly subsidized industry. Consequently, Canadian producers have been forced to look for and rely on foreign investments to finance productions; this financing can be in the form of licence fees, pre-sales, equity investments or acquisitions. Foreign broadcasters and distributors do not contribute money to Canadian productions to forward Canada's nationalistic objectives; they do so because they believe the programming can attract audiences and generate advertising revenue in their respective markets. This implies that if a Canadian producer targets their production to an exclusively Canadian audience, it will often not be able to raise the required financing because the content will not be of interest to foreign audiences or advertisers. This becomes more of a reality as production budgets and broadcaster expectations rise. Therefore, the economic reality of a reliance on foreign financing makes the pursuit of any cultural objective redundant. This is a genuine concern if cultural objectives are to be the priority of broadcasting in Canada.

The legislation and policy that direct broadcasting in Canada, although aimed at achieving nationalistic goals, never establish tangible targets that could prove whether or not the broadcasting system is successful in meeting its objectives. Presently, thirty-two percent of television watched in English-Canada is Cancon<sup>55</sup>; Canadian news and sports programming accounts for close to eighty percent of this Canadian viewing.<sup>56</sup> With the current structure there is no way of judging whether or not this is an admirable achievement or if it is a disgrace. It is not unreasonable to question whether or not the system works when there is an absence of concrete criteria that would be able to prove or

disprove the effectiveness of the system. This absence of success markers makes accountability impossible for all levels of the broadcasting system. Furthermore, it indicates that the current system is based on tokenism rather than the legitimate pursuit of a stronger and united Canada.

When it comes to audience viewership within the Cancon context Quebec is often cited as an environment where the system works. Of the television watched in francophone Quebec, sixty-nine percent is Canadian content<sup>57</sup>. This is perceived by many to be an enormous success and a model for what Cancon could be. The question that begs to be asked however, is if broadcasting Canadian content can contribute to nationalistic cultural objectives, how can the results of the 1995 Quebec referendum be explained when 49.4 percent of voters were in favour of separation? Not only does this raise questions about the validity of Cancon as a means to maintain and promote a national identity and culture, but it questions the integrity of the entire Canadian broadcasting system. Again, Canadian content and a cultural sovereignist broadcasting system may simply be tokenism at its most basic form.

### **Regulating the Future**

This paper has already introduced many of the issues that the regulated Canadian broadcasting industry can expect to face in the future. Daniel Schwanen in his paper *A Matter of Choice: Toward a More Creative Canadian Policy on Culture*, proposes that these future considerations revolve around the key developments of global trade and

investment, technological advances and budget constraints. This section will briefly review these three regulatory policy considerations.

The shift towards a more global economy puts pressure on nations wishing to ensure a distinct cultural voice in the global marketplace. In most areas of industry, Canada has liberalized its trade policies to participate in the global trade; it has yet to do so for its cultural industries, including television, since they are believed to be so inextricably linked with national identity. However, this trend toward freer trade will not slow down. In fact more comprehensive trade deals are imminent<sup>58</sup>, and the more comprehensive the deals, the more they will begin to chip away at the protectionist policies surrounding Canada's cultural industries. These economic trends are something that Canadian regulators need to recognize when considering future regulations.

Technological advances and innovations are a further consideration for regulators of Canadian broadcasting. Basically this refers to the arrival and rapid evolution of digital technologies. With regards to broadcasting, the biggest challenge comes from direct-to-home (DTH) or video-on-demand (VOD) technologies. Essentially the question for regulators is when is broadcasting no longer "broadcasting"? The world of video-on-demand suggests that the traditional definition of broadcasting no longer matches the service being offered. This is because VOD services are point-to-point programming where the consumer chooses content to watch and the service provides the program directly to the consumer. In other words, all transactions are with the individual. The CRTC has defined the services of DTH and VOD as broadcasting so regulation can

continue; however, this has been a “highly contentious” move.<sup>59</sup> The Cancon challenge that the CRTC will likely encounter when it comes to VOD is that the “broadcasting” system will shift to a populist, or consumer choice, system. This means that exposure to Canadian content can no longer be guaranteed. If “broadcasting” is still to have cultural objectives in the era of DTH and VOD, regulatory methods will have to be reevaluated.

In the current Canadian content context, Cancon can not be produced without public subsidization. This fact has been problematic for producers and broadcasters as public purse strings have been tightened to eliminate governmental deficits and reduce public debt. It has been proposed that reduction of funding to cultural industries is likely to continue as enormous public debts are targeted and spending aimed at other priorities on governmental agendas are pursued (i.e. healthcare and literacy.<sup>60</sup>) The challenge is that if broadcasting-linked cultural objectives are to remain a priority this needs to be addressed in the form of fiscal commitments from the federal government. If not, this will likely become another factor contributing to an ineffective Cancon system.

Clearly, if broadcasting and Canadian content are to remain under the regulatory umbrella directed by the federal government, there are concerns related to the future that need to be addressed. If they are not, pursuing Canadian content objectives will become even more redundant than they are already.

## **Service Industry vs. Domestic Industry**

On February 18, 2003, the Honourable John Manley presented his first budget as the Minister of Finance to the House of Commons in Ottawa. The budget was to be Prime Minister Jean Chrétien's legacy budget, with something in it to please everybody; this included significant amounts of money for health care, child benefits, housing for the homeless, municipal infrastructures and reducing the national debt. However, the only group of that seemed to be hard hit with the budget, and in fact lost federal support, was the Canadian domestic film and television industry. Domestic production received a \$25 million funding cut, prompting many to ask where Canada's cultural priorities are. To further fuel this fire, the budget significantly increased the labour tax credit for foreign filmmakers that choose to film in Canada. This move highlights the tension that exists in Canada between the domestic/cultural film and television production industry and the service/foreign production industry (also known as Hollywood North.) This example tangibly showcases the conflict that exists between seeing film/television production as either a cultural enterprise or a business enterprise; and since many of Canada's cultural objectives are linked to film, television and broadcasting it becomes further apparent how Canada's situation has become so contradictory and controversial at both the domestic and international levels. This section will briefly outline the tension and challenges that exist within the industry that desires strong domestic and service sectors yet does not see a conflict in using public money to fund and protect both elements.

In the 2001/2002 fiscal year \$5.1 billion was spent on film/television production in Canada. Of this money, \$1.8 billion was from the foreign service industry, while \$3.3

billion was from domestic production (\$2.1 billion of this amount being CAVCO certified Cancon.)<sup>61</sup> Furthermore, 137,800 people were directly or indirectly employed in Canadian production during the same year.<sup>62</sup> These numbers indicate that Canadian production is a significant component of the Canadian economy. This, as we see from the example of Manley's budget, is both good news and bad news for the culturally sovereignist Cancon system.

Domestic (Cancon) production does benefit from a strong service industry. Hollywood North has helped develop Canadian production crews, talent and facilities so that they are now reputedly some of the best in the world. As a consequence, Canadian producers can now access these world-class crews for their own domestic production. This benefits producers by creating an environment where productions can be more efficient, can achieve higher production values and can consequently reach a wider audience. The challenge is that these highly trained crew members have become so qualified and are in such demand that their rates are unaffordable to most Canadian productions. Hollywood North has increased the cost of higher end Canadian production by having "bid up" the price of Canadian crews; this has added "further strain" to Canada's subsidized domestic production industry.<sup>63</sup>

The Canadian economic and production landscape now appears to favour foreign (i.e. American) productions over Canadian domestic productions. The service industry, where budgets are substantially larger than domestic budgets, can take advantage of their strong currency, a highly trained talent and technical pool, significant tax credits, and production

resources and facilities that are globally renowned. This is great for the economy but undermines Canada's cultural objectives. Canada, it seems, is beginning to adopt the American view on production as principally a business and abandoning its former priority as a cultural saviour. Yet, the system continues to use cultural sovereignist policies to protect Canadian production and Cancon, and to encourage foreign production. This is a very contradictory and incoherent system indeed; where the winners are foreign producers who can cut costs in Canada, Canadian crews and talents and Canadian service producer, while the losers are Canadian domestic producers, the Canadian funding system, Canadian television audiences (and tax payers) who desire high-quality Canadian content, and any Canadian cultural objective that relies on a strong domestic production industry.

Even though a formal exemption for Canada's cultural products is present in the

## **INTERNATIONAL PERCEPTIONS OF CANCON**

Canada that are exempt in the trade agreement. It states that the United States can

A survey of Canadian content, without an evaluation of the trade issues that surround Canada's cultural policies and Cancon would not be a comprehensive study. This section will examine some of the key issues and history that makes Cancon such a contentious issue in the context of international trade.

covering an equivalent sum in, say, steel or lumber products.<sup>67</sup> This clause implies that

The guarantee of "shelf space" for a product is the ultimate violation in international trade; its intentions are to protect the product from market forces and, therefore, a truly open market. This becomes problematic in the context of free trade since the denial of an open market is contradictory to the notion of free trade. However, in Canada, exemptions

have been reached within key trade agreements for the country's cultural enterprises; these currently include television production; these exemptions are present in the Canada United States Free Trade Agreement (CUSFTA), the North American Free Trade Agreement (NAFTA.) The strategy that proclaims that "culture is not on the bargaining table"<sup>64</sup> has led to "allowing (Canadian) governments to pursue a range of protectionist policies."<sup>65</sup> This policy of masked protectionism regarding television, which manifests itself in the form of Cancon quotas, has become a controversial issue in international trade dialogues, because when a domestic product is protected it implies that a foreign product is censored. If these controversial policy issues persist, it is predicted that "Ottawa is doomed to lose trade disputes before the World Trade Organization."<sup>66</sup>

Even though a formal exemption for Canada's cultural products is present in the CUSFTA, there is a "notwithstanding" clause that applies to the cultural industries in Canada that are exempt in the trade agreement. It states that the United States can retaliate, dollar for dollar, if a cultural policy gives an unfair economic advantage to domestic products over foreign products. As an example, Marc Raboy points out, "if the Americans were to consider that Parliament's annual \$1 billion grant to the CBC discriminated against the US broadcast production industry, they could take action covering an equivalent sum in, say, steel or lumber products."<sup>67</sup> This clause implies that the Canadian cultural industries are only protected until a foreign party feels it is in their interest to pursue action against the protectionist policies. However, this has never been pursued in the context of broadcasting or film/television production. This is likely due to

one major fault in the cultural sovereignist approach; the policies impressively lack coherence and consistency.

The inconsistencies surrounding Canada cultural policies in the context of global trade likely address why there has not been a serious lobby by foreign interests to fight Canada's Cancon broadcasting quotas or other cultural sovereignist policies related to film or television. For instance, there are Cancon quotas for broadcast television, but no similar policy for movie theatres, video stores, book stores or other outlets for foreign cultural content. American producers, distributors and studios have access to consumers outside of the television market, and they are making hundreds of millions of dollars in the Canadian market alone. For instance, in 1999/2000 theatrical and home video revenues in Canada totaled \$508.1 million and foreign content accounted for 97.3% and 97.2% of these markets respectively.<sup>68</sup> This total of \$508.1 million represents \$138.8 million more than the total revenue for conventional television in Canada during the same period.<sup>69</sup> Clearly there is far more money to be made outside of broadcast television in the cultural industries, and foreign enterprises are dominating in these areas. This example points to the ineffectiveness of Cancon quotas and their link to cultural objectives. Foreign enterprises still can gain economically in Canada's "protected" cultural industries.

Another reason that foreign parties likely have not challenged (to the point of going to the WTO) the cultural sovereignist policies of Canada's broadcasting and production industry is that there are further incentives in place that assist foreign producers in

Canada. An example of this includes tax credits on labour costs that foreign productions can access. Foreign players operating in the Canadian content environment are able successfully access both Canadian tax-payer dollars and Canadian consumer dollars. American economic and cultural interests can be sought after and achieved; American capitalists seem to be the big winners in the current Canadian content environment. This is clearly not the cultural desire of Canadian content, but it is the reality.

## CONCLUSION

This paper has attempted to give some detail into the current and future issues, and some of the perspectives and agendas surrounding Canadian content in Canadian broadcasting. The subject matter is contentious, controversial and complicated. Evidence forces any researcher in the area of Canadian content to question whether the system was designed to knowingly fail at meeting the objectives that direct it. This conspiratorial view is easily reinforced by incongruities between intention and action. Possibly the most glaring and tangible example of this is reported by Dallas W. Smythe in his book *Dependency Road*: Players with cultural interests have a guaranteed "shelf-space", while

those with  
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If Canada had seriously intended to protect its culture from total domination by United States Consciousness Industry, drastic measures would have been employed. Instead of adopting the same technical standards for television as were used in the United States, Canada would have adopted different and superior standards (French, British, or German). (Smythe, D. W. (1981) Pg. 176)

change; as the CRTC put it in 1999 in their *Policy Framework for Canadian Television* "The Commission will not change the existing regulations for conventional television with respect the level of Canadian content."<sup>73</sup> The continued presence of Canada's cultural sovereignist (or protectionist) position is firm policy. If federal legislators were really genuine about taking a stand against American content, it could have been done quite simply with a bold decision upon the arrival of television in Canada. This points to the likelihood that forces much greater than the desire for cultural sovereignty and nation building were present when decisions regarding Canada's cultural

future and its relationship to broadcasting were established. Smythe argues that even before television arrived in Canada, its culture and ruling class were integrated and had progressed so far with that of the United States that making and delivering on such protective measure as Cancon were “laughably impossible.”<sup>70</sup> Rhetoric and tokenism have become the shrouds behind which a dependency on American culture, ideology and consumer goods hide. Canada’s cultural industries seem to value economic success over cultural success.

Canadians still want Canadian content<sup>71</sup>, and they should have it; to achieve and ensure this it seems apparent that new options for Canada content regulation need to be considered. Perhaps alternative practices including “screen quotas, box-office levies, withholding taxes, and investment obligations”<sup>72</sup> should be seriously examined. However, such actions could have the unfortunate consequence of ruffling international trade partner feathers and facing the prospect of trade retaliations. In the current system, there does seem to be a balance where most of the players involved in the system are relatively satisfied. Players with cultural interests have a guaranteed “shelf-space”, while those with economic interests domestically have a system where they can access public funding and foreign players can access both tax payer money and consumer money. Players should be pleased with this mutually beneficial system as it likely will not change; as the CRTC put it in 1999 in their *Policy Framework for Canadian Television* “The Commission will not change the existing regulations for conventional television with respect the level of Canadian content.”<sup>73</sup> The continued presence of Canada’s cultural sovereignist (or protectionist) position is firm policy.

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Although Canada has “created a fortress”<sup>74</sup> with its policies, legislation and regulation regarding Cancon and Canadian broadcasting, it is not a fortress that protects Canadian culture; it is a fortress that protects the interests of the majority of players involved in the system. Cultural sovereignty, as Susan Crean puts it in Raboy’s *Missed Opportunities*, is “a slyly laid trap.”<sup>75</sup> As troubling as this may seem, it may be a system that Canadians must resign themselves to, any other version would upset the delicate equilibrium that took close to a century to achieve.

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