

Canadian Content in the 21st Century

Submission of the Canadian Conference of the Arts

I. The Philosophy Underlying our Approach

The CCA believes that:

- ◇ Canadian arts and culture are intrinsically important and should be supported because they enrich the lives of Canadians and Canadian society and create distinctively Canadian content in an increasingly globalized environment.
- ◇ All Canadians deserve the opportunity to experience, participate in, and appreciate the arts and culture wherever they live and whatever their personal circumstances.
- ◇ Canadian cultural workers are professionals who deserve supportive working environments, legal protections for safety and health, opportunities for training and professional development, appropriate financial compensation for their work, and access to social benefits. Creators have the right to enjoy the economic benefits of their creative work.
- ◇ Canadian governments at all levels have the lead responsibility for supporting the arts and culture and creating conditions for a dynamic, diverse and sustainable artistic life in Canada. Public policies and programs should recognize and accommodate the wide diversity of identities, traditions and forms of expression which characterize contemporary Canada, reflect the full spectrum of cultural activities (creation, production, performance, exhibition, publication, presentation, dissemination, consumption, preservation and conservation) and encourage active participation in the arts by citizens of all ages.
- ◇ By virtue of its national responsibilities, the federal government should play a leadership role in arts and cultural support, adopt a comprehensive policy to govern all federal activities that have an impact on the arts and culture, and work in cooperation with governments at other levels of jurisdiction. Federal cultural policy should promote and enhance those aspects of our national life that are distinctly Canadian; the artistic and cultural practices and cultural identities of the two official language groups, the Aboriginal peoples, our culturally diverse populations, and our geo-political regions.
- ◇ Freedom of expression is a fundamental value in Canada and should be central to Canadian cultural policies.

Although the Conference believes that the increasing globalization of the cultural industries has the potential to ensure that the lives of Canadians and others around the world are enriched by exposure to a wide diversity of cultural expression, the forces of globalization must be tempered by domestic policies that favour Canada's cultural sector. Canada's contemporary cultural expression reflects the fact that our population has a great breadth of diversity. Canadian society is characterized by a great openness to the immense diversity of cultural expression from around the globe which provides information, enlightenment and



entertainment of relevance to our own citizens and creators. Moreover, a true and open flow of cultural goods also provides opportunities for Canadian creators, performers, producers and craftspeople to export their products to new markets and audiences.

At the same time, globalization carries with it the possibility of the emergence of a monoculture, driven by gargantuan enterprises motivated by providing profitable entertainment rather than cultural expression. These well-funded international conglomerates place low-cost programs with high production values on the market. They are well equipped to occupy a significant space in national distribution and exhibition systems around the world. The expansion of the activity by a relatively small number of trans-national vertically-integrated companies stands to reduce the space available for domestic programming or international offerings from diverse sources.

The CCA has been instrumental in the development and animation of the International Cultural Diversity Network (INCD), which brings Canadian arts groups into dialogue with other cultural organizations across the world. The network's primary goal is to find a way to mitigate the threats to cultural expression emanating from international trade agreements; its members also wish to preserve and promote diverse forms of cultural expression by implementing a convention on cultural diversity entitling states to enact cultural policies that favour their own artists and producers.

The CCA does not believe that the construction of a cultural Great Wall of China is the appropriate (or practical) response to the challenge of globalization. Rather, we believe that judicious use of all the public policy tools available to us can ensure the availability of cultural products that are reflective of our own society and of truly distinctive international products.

The policy tools available to government to promote Canadian content include:

- ♦ Legislation, including copyright legislation, the Status of the Artist Act and other legislation to support creators;
- ♦ Regulation - in particular, the requirements for access by Canadian productions, both in-house and acquired to our airwaves and those ensuring access and pride of place to Canadian services on our distribution networks, as well as those requiring a financial contribution to the creation of Canadian programming;
- ♦ Public institutions - including the National Film Board, which both produces and co-produces Canadian programming and distributes it both through its own mechanisms and via Canadian broadcasters and the CBC, which broadcasts both acquired and produced programming;
- ♦ Tax incentives - both those aimed at Canadian producers and those at foreign producers. Such incentives are aimed at creating employment for Canadian creators and craftspeople and, in addition, the domestic tax credits play an important role in building Canadian production companies, capable of producing high quality television programs and films;
- ♦ Direct subsidies to the creators of Canadian content through the Canada Council;
- ♦ Subsidies to producers of television programs through the two programs of the Canadian Television Fund, the Equity Investment Program administered by Telefilm Canada and the Licence Fee Program, and to film producers through Telefilm's Feature Film Fund; and



- ◊ International co-production treaties which provide Canadian audiences access to the world's cultural diversity and in turn give Canadian creators and producers access to new audiences internationally.

Most of these mechanisms are dependent on definitions - of who is eligible, what kind of productions are eligible and of the terms and conditions surrounding production. The current review of the definition of a Canadian program could affect the capacity of each of these tools to meet the public policy goals outlined in the discussion paper published by the Department of Canadian Heritage as a framework for this review. In particular, we note the paper's statement of goals for the definition system:

Any definition system would have to contribute to the government public policy objectives in film and television which are first and foremost cultural, that is to ensure that Canadians have diverse and accessible Canadian choices and to connect Canadians to one another and to the world. In order to achieve these objectives, the Government of Canada remains committed to nurturing Canadian talent and to fostering a vibrant domestic film and television industry in Canada that produces, distributes, broadcasts and exhibits distinctly Canadian productions. Furthermore, the Government is also committed to provide a high degree of predictability, consistency and fairness in funding program guidelines, broadcast regulations, assessment processes as well as funding and certification decisions; to ensure that public funds will be administered as efficiently as possible; and to provide effective and reasonable opportunities to mitigate the risk of abuse or error.

We agree with these objectives and would summarize these goals as fourfold:

- ◆ To ensure diverse and accessible programs that reflect Canadians to each other and the world through Canadian eyes
- ◆ To nurture Canadian talent
- ◆ To foster a vibrant film and television industry that can produce, distribute and broadcast distinctively Canadian productions
- ◆ To provide predictability, consistency and fairness in the various levels of definition.

As is inherent in any system with multiple goals, the Canadian content system must find an appropriate balance in the attainment of these goals. In the view of the CCA, in any such balance, the emphasis should be on the involvement of the key creative people and the faces that animate the programs.

We would note that the current system gives more points to directors and writers and requires that a Canadian occupy one of these positions. The current system also requires that at least one of the lead performers be Canadian. The CCA believes that this emphasis on the creators and performers continues to be appropriate. Although the creative teams may be relatively few in numbers, absent their input there would be no employment for the craftspeople, the post-production staff and the other industries, including catering and other location service. Moreover, we will not build a Canadian star system without making the faces of Canadian actors, narrators, anchor people and other key performers central to Canadian programs.



The CCA believes that the general approach based on points for key creative positions, requirements for spending on Canadians and ownership of underlying rights by Canadians has served Canada and its creators well. While we recognize that at times there are anomalies whereby Canadian productions seem to be more about foreign topics and locales, we believe that any attempt to define "Canadianness" using subjective criteria is not appropriate. For example, we do not believe that the 'visibly Canadian' criterion used by the CTF is an appropriate measure of Canadianness. Such an approach limits the subject matter that a Canadian creator can address and supposes that regulatory bodies have a fix on what constitutes a Canadian theme. Even an arts jury constituted to assess "Canadianness" would have difficulty with such a decision given the complex mix of cultures and communities that compose our national identity and iconography. **The "visibly Canadian" criterion constitutes a real threat to artistic freedom.**

It is the ideas generated by Canadians that are important. The ideas that are in turn developed and financed by Canadian companies, with Canadian actors and performers and which will further develop our star system, providing creative Canadians the capacity to work in their own country. Clearly, service work and location shooting by foreign companies is an important economic contribution to the health of our creators and cultural industries. **But it is programming made by Canadians, primarily for Canadians, that best reflects our cultures, our values and our ways of life.**

The system of recognition by the Canadian Audio-Visual Certification Office (CAVCO), our international co-production treaties, the Canadian Television Fund and Telefilm, our national cultural institutions and, perhaps most importantly, the Canadian content regulations for broadcasting along with provincial government and private funding taken together constitute an intricate and interdependent system. The system, although not perfect, has been an essential element in the growth of the domestic industry and we should examine carefully any proposed changes to ensure that unintended consequences do not result. At the same time, the Canadian content definitions have been in place for some time and the capacities of our creative community, the production industry and the broadcasting industry have grown substantially during that period. We believe that some incremental change should now be considered.



II. Principles to underpin the definition of Canadian content

In the CCA's view, there are three fundamental elements that should underpin the Canadian content definition and system.

First, there should be a basic definition of Canadian content that is demanding enough to ensure that Canadian creators and producers are supported while being flexible enough to provide producers the opportunity to express themselves freely and provide opportunity for international sales. This basic definition along with related public policy mechanisms should ensure that all elements of the development of a program are supported by the Canadian broadcasting and distribution system. All programs recognized as Canadian for broadcast or any other purpose, with the exception of treaty co-productions, should meet this basic definition.

Second, the basic level of requirement for a program to qualify as Canadian should be increased as the producers, distributors and exhibitors of a program derive additional benefit from public policy measures.

Third, the Canadian content system should, to the extent possible, provide an opportunity to meet the goals of cultural diversity, ensuring the availability of cultural inputs from the widest variety of international sources while providing Canadian creators with favourable access to both the domestic market and to new international markets and we need to ensure balance of access to Canadian markets.

The basic level of definition

From the production of a program or film to its availability to the viewer on television or on the big screen, there are a number of steps involving a large number of people. This chain of production can be simply stated to contain the following elements. It should be noted that in some cases, the same person or company might provide a number of the functions in this journey. Nonetheless, it is important to recognize the process to ensure that the proper public policy supports are in place.

- ♦ **Creation** - the development of the underlying idea for the program or film. Whether this is an original novel, a journalistic piece or magazine, an original screenplay for television or film, an idea for a documentary or a variety program or a combination of these, the basic requirement is the original concept. Without the story and the underlying intellectual property rights, there is no program or film. While this always includes a writer, it often includes a writer-director who develops and orchestrates the creative aspect of the property.
- ♦ **Production** - the assemblage of all the elements necessary to ensure that the concept becomes a finished product. This includes the acquisition of the intellectual property rights, hiring of the key creative and craftspeople, arranging for the financing of the program, negotiating distribution and broadcast deals and administering the subsequent rights.



- ◊ **Interpretation** - the creative and artistic interpretation of the underlying concept to bring it to the screen. There are two levels to this step:
 - **The artistic leadership** - usually brought by the director of the project.
 - **The on-screen talent** - whether actors, journalists, narrators, hosts or musical guests, the on-screen talent are the ones who bring the program to life. In some cases, this level is not literally seen on screen - for example, in the case of animation, the animators are not on screen nor are the actors providing the voice over.
- ◊ **The key craftspeople** - the talented craftspeople that make the program work. Whether this is the director of music, the director of photography or the set designer, these craftspeople provide an important artistic contribution to the production.
- ◊ **Distribution** - While there is usually no direct artistic contribution from distributors, they often have an input, by providing financing for the program or film.
- ◊ **Broadcast or exhibition** - The means to provide the program to the end user - the audience.
- ◊ **Broadcast distribution** - The electronic highway that provides a service to the home audience.

We do not believe that there is any need for the definition of Canadian content to support the health of the film and television distribution, broadcasting, or broadcast distribution industries at the most basic level. A review of CRTC or Statistics Canada data will demonstrate that our television, pay and specialty and broadcast industries are quite healthy. They also benefit from a variety of government and regulatory supports, including Canadian ownership requirements and licensing based on the capacity of the market to absorb new players. Moreover, the on-going consolidation within the broadcast industry has meant the emergence of entities that are both vertically and horizontally integrated with access to capital and the ability to finance their own development.

The Canadian film and television production industry has also become increasingly consolidated. Existing requirements for the participation of a Canadian distributor are adequate to maintain this industry at the present time. **We believe that this review should take an incremental approach by building on the strengths of the existing policy instruments and the increasing capacity of our creative communities by ensuring that the existing rules regarding creative control are maintained and strengthened.**

The CCA believes that the current basic six-of-ten point system generally provides an appropriate mixture of support for Canadian creative persons and flexibility for producers to reach out to international markets. However, we believe that the CRTC's use of special recognition for programs where neither the director nor the writer are Canadian or where neither of the two lead performers are Canadian, is really just an end run around the system. Given the maturity of our production industry and the quality of creative personnel in Canada, we do not see that there is any public policy purpose to such recognition. **In particular, we believe that there should be no exception to the requirement that either the director or the writer function be occupied by a Canadian and that all underlying rights be held by Canadians.**



In the past, the Writers' Guild of Canada (WGC) and others have expressed concern about the use of non-Canadians to fill part of the writing function in productions where the writer credit is claimed as Canadian. CAVCO has become much more rigorous in supervising the attribution of credits for writers. The CCA believes that this more rigorous review of these criteria should also be used by the CRTC in its Canadian Content Recognition process.

Similarly, CAVCO requires proof that the underlying rights are held by Canadians. The CRTC's process is somewhat less demanding. As pointed out in CRTC Public Notice 2000-42:

The producer must be prepared to demonstrate full decision-making power by submitting, upon request, ownership documents, contracts or affidavits. The producer must also submit, upon request, an independent legal opinion confirming that financial and creative control of the production is Canadian. Any person fulfilling a producer-related function must be Canadian.

We do not suggest that the CRTC be as demanding as CAVCO but would suggest that the Commission undertake occasional verifications to ensure compliance, just as it does with its monitoring of broadcasters' compliance with regulations and conditions of licence

RECOMMENDATION ONE:

With the exception of treaty co-productions, all programs certified or recognized as Canadian should meet a minimum of six points on the CAVCO scale, including the requirement that either the writer or director and at least one of the two leading performers should be Canadian and that all underlying rights be held by Canadians.

This recommendation implies that the CRTC no longer permits special recognition for co-ventures which exempt certain programs from the director or producer requirement or the leading performer requirements if all other creative positions are met by Canadians.

We also recommend that the Commission use as demanding a test of the writer credit as does CAVCO, and that it undertake periodic audits to ensure compliance with the requirements.

Moreover, we believe that the minimum criteria should be met by broadcaster in-house productions, including the CBC. In Appendix I to Public Notice 2000-42, the CRTC set out its approach to in-house productions stating:

Programs produced solely by a licensee and which meet the Canadian program certification criteria set out in this appendix and Appendix II to this notice will be recognized as Canadian. Licensees need not apply for such certification or submit production information for such productions unless the drama credit is requested, or unless the Commission requests that licensees do so.



In an increasingly consolidated broadcasting environment, where in-house productions may move between several services licensed to the same broadcaster or between several broadcasters, it would seem only fair that these productions meet the same criteria as those from independent producers or broadcaster-affiliated producers. While we do not advocate pre-clearance of broadcaster productions, we do believe that these productions should meet the criteria. In addition, we believe that it would be appropriate for the CRTC to audit such programs on a random basis to ensure that the industry is meeting the spirit of the certification process. We do not believe that it is necessary to look at news or sports programming, but where broadcasters are producing drama, documentary, variety or lifestyle programs similar to those produced by independent producers, an occasional audit by the CRTC would ensure a level playing field.

Similarly, we believe that National Film Board productions and those supported by the Canada Council should also meet the basic 6 of 10 requirement and that Canadians should hold the underlying copyright.

RECOMMENDATION TWO:

Broadcaster in-house productions and NFB productions should be required to meet the six-of-ten point scale and the spending requirements of CAVCO and the CRTC.

While such programs need not be pre-cleared, we further suggest that the CRTC make occasional random audits, particularly of programs that are broadcast on several services.

An escalating series of requirements

While simple recognition carries a number of benefits for the producer of a program, there are a number of other programs, which include recognition and other benefits for producers. These include:

- ◆ Programs receiving bonuses for purposes of meeting the Canadian content regulations;
- ◆ Programs receiving public funding in the form of federal tax credits through CAVCO;
- ◆ Programs and films receiving subsidy through the programs of the Canadian Television Fund or through the Feature Film Program.

The CCA believes that programs receiving additional benefit from the system should make greater contributions to the system, by using more Canadians in the key creative functions than is required for the basic level of recognition.



Bonusing of Canadian drama and children's programs

The CRTC provided a 150% bonus for high Canadian content drama and children's programs from the mid-1980s until very recently. Recognizing the financial disincentive usually associated to the production of these categories of programming, the Commission allowed broadcasters to receive a 150% credit against their Canadian content requirements for first run programs from these categories meeting 10 points.

However, in its 1999 Television Policy, the Commission eliminated this bonusing system for the largest broadcasters while introducing a new system providing bonuses for drama against a requirement for 8 hours per week of what it termed priority programming. Six point Canadian drama receives a 125% credit while 10-point drama receives a 150% credit. The bonusing for children's programs has been eliminated.

A bonus credit provides significant benefit to a production since it allows broadcasters to reduce the amount of time devoted to priority programs in the peak viewing hours. While we believe that the bonusing for high Canadian content drama is appropriate, we do not believe that it is appropriate to provide additional benefit to programs that merely meet 6 points. The 125% bonus should require at a minimum 25% higher point count or a minimum of 8 points Canadian content.

At the same time, we consider that children's programming with high Canadian content provides an important contribution to Canadian audiences as well as to creators and should continue to benefit from the 150% credit against the overall Canadian content requirement. Providing creative, high quality and diverse offerings for young citizens has the ripple effect of developing future audiences with a taste for Canadian programming, as well as encouraging young people to become creators themselves.

RECOMMENDATION THREE

Drama programs benefiting from the 125% credit should meet a minimum of 8 points out of the 10.

The CRTC should reinstate the 150% credit for 10-point Canadian children's programs.



Canadian Film or Video Production Tax Credit

The tax credits provide an additional support to production beyond mere recognition. They can provide as much as 12% of a program or film's budget and are often relied upon by other sources to judge eligibility for broadcast or for other funding programs. Traditionally, CAVCO's rules have been more rigorous than the CRTC's. At the same time, the process takes considerably longer than the CRTC's relatively expedited process.

The six-point requirement has been in place for a long time and a number of our member associations believe that it is appropriate to consider an increase in the minimum point count required. Producers, on the other hand, are reluctant to jeopardize the access to foreign markets and audiences that the possibility of using a foreign writer or director or a leading performer can bring.

We believe that it is appropriate to increase the point count requirement for access to the tax credit program. Although we are aware that some producers argue that many Canadian productions require international "stars" to be competitive, we believe that there is no reason to accept this line of reasoning if we really intend to grow our industry and maintain our distinctive point of view. In the fragmented broadcasting universe in Canada, foreign distribution and other financing have become an increasingly important part of the financial structure of productions. Clearly, we would not want to reduce the overall volume of Canadian production by changing the rules too radically or too rapidly.

For these reasons, we believe that the review should consider a modest move forward by increasing the point count to 7 as a first step towards an eventual increase to 8 points. In 2001-2002, according to CAVCO statistics, 98.78% of all programs certified had seven points or more. The actual numbers are as follows:

10 points - 79.5%
9 points - 10.2%
8 points - 4%
7 points - 5.2%
6 points - 1.22

The lower point counts tend to be drama made for television and relying heavily on foreign pre-sales to make up their financing. A seven-point requirement would still permit a producer looking for domestic and foreign sales to include a foreign director or writer and feature performer while ensuring that the other key creative positions remain Canadian. Seven points will provide work for one more Canadian while not endangering the financial viability of the program.

We would suggest that this modest increase be put in place now and the impact reviewed after a reasonable period with a view to consider an increase to eight points.

RECOMMENDATION FOUR

The point count necessary for the Canadian Film or Video Tax Credit should be raised to seven. This new level should be reviewed within five years with a view to evaluating the appropriateness of raising the level to 8.



The Canadian Television Fund

The benefit to producers of the CTF's two programs is of an even higher order. Programs can receive a very large percentage of their budgets from the Fund and the Fund's approach to requiring higher broadcaster licence fees as part of its scoring can bring additional funds from that source as well. Consequently, a greater contribution to the goals of public policy should be, and is, required.

At present there are four essential requirements for a project to be eligible for the CTF's funding programs:

1. The project speaks to Canadians about, and reflects, Canadian themes and values.
2. The project has 10/10 points (or the maximum number of points appropriate to the project) as determined by the CTF using the CAVCO criteria.
3. Underlying rights are owned, and significantly and meaningfully developed by Canadians.
4. The project is shot and set primarily in Canada.

We concur that the Fund should require 10 of 10 points or all the points available to be eligible for Funding. This ensures the maximum contribution by Canadian creators, performers and craftspeople. However, the CCA considers that the requirements for Canadian themes and the requirement that a project be shot and set in Canada are inappropriate and over-limiting to creators. We acknowledge there is some flexibility for children's programs and documentaries and we also understand the concern arising from drama in the past where a program deliberately masked its Canadian setting.

However, we believe that trying to define what is Canadian by subject or by location overly limits the subject matter available to a filmmaker. For example, a dramatic treatment of Rohinton Mistry's *Such a Long Journey* might be disqualified for being shot in Bombay, or a documentary on the Genocide in Rwanda might not qualify even if the director was Canadian. The real signature of a Canadian production is nothing more complicated than Canadian authorship and point of view. The CCA recognizes the conundrum facing the CTF but believes that it has erred in its requirements for Canadian shooting and Canadian themes.

RECOMMENDATION FIVE

The CTF should review its four Essential Requirements, and in particular, the requirements for Canadian themes and shooting in Canada with a view to removing limits on the topics to be developed by film-makers.



Openness to cultural diversity

In an increasingly globalized entertainment industry, more generic international products are flooding the national cinema and television of many countries. Around the world, governments have expressed concerns and Canada has taken a lead in trying to develop a new convention to help sovereign nations assert their own cultural policies to counter trade restrictions on cultural goods and services. As noted earlier, the CCA has played a lead role in developing an international cultural diversity network. We believe that a significant aspect of the globalization of communications is the possibility it affords for true diversity, allowing local cultures to flourish and international audiences to appreciate the incredible diversity of cultural products and artistic expression from around the world. However nations must have access to the fundamental tools of cultural policy: subsidy, content quotas and ownership rules, so that they can maintain healthy and diverse domestic cultural industries.

Canada has long sought out agreements with other countries for co-productions. Co-productions provide an additional source of funding for films and television programs as well as ensuring audiences in other countries for Canadian programming. In addition, co-production agreements increase the diversity of programming available in Canada by providing privileged access to our television screens for co-productions with approximately 40 countries.

We believe that although the broadcast of a co-production does mean that in some cases the input by Canadian creators, producers, performers and craftspeople is less than in a Canadian-only production, the trade-off in cultural diversity for Canadian audiences and international exposure for Canadian creators is a valuable one. It is our understanding that Telefilm closely monitors the state of co-production activity with our foreign partners to ensure a reasonable balance between Canadian and foreign elements.

RECOMMENDATION SIX

Telefilm should continue to certify programs produced under an international co-production treaty. It should continue to monitor the balance between foreign partners and Canadians to ensure a reasonable share over time for Canadian producers and creators.



A Final Note on Harmonization and Efficiency

We note that in its discussion paper, the Government indicates that one of its goals is to "provide a high degree of predictability, consistency and fairness in funding program guidelines, broadcast regulations, assessment processes as well as funding and certification decision; to ensure that public funds will be administered as efficiently as possible; and to provide effective and reasonable opportunities to mitigate the risk of abuse or error."

The CCA considers that it is important to achieve a reasonable balance between timeliness and thoroughness of review, between consistency and flexibility to avoid bureaucratic mistake, between audit of public funds and consistency and predictability of operations. There are a number of processes used to provide recognition of Canadian programs - from the relatively automatic and timely review by the CRTC to the often-lengthy review by CAVCO, from the subjective criteria once used by Telefilm to the automatic objective criteria used by the Licence Fee Program.

While it is tempting to suggest one big classification process, such a process could bring about either shallow and unconsidered decisions or overly lengthy and unresponsive decisions. Moreover, different types of recognition processes respond to different needs and exigencies. It would seem worthwhile that the bodies involved in the recognition of Canadian programs cooperate to a greater extent. It is somewhat anomalous that not long ago the CRTC undertook a review of its Canadian content definitions with little reference to the expertise of CAVCO or Telefilm and that the present process does not seem to include any input from the Commission.

Certainly, a more formalized sharing of expertise and a review of best practices might ensure that all agencies involved in the recognition of Canadian programs could learn from each other so as, for example, to improve the whole regulatory system by increasing the depth of analysis of the CRTC's process while speeding up CAVCO's processes.



III. Responses to the Questions in the Call for Submissions

- 1. How should a revised Canadian content system establish an appropriate balance between different perspectives (e.g. developing Canadian cultural stories, fostering new talent, building industrial capacity, increasing domestic market shares and maximizing international market potential)?**

All of these aspects are important and interdependent. The existing system of support for Canadian programming has been quite successful in creating programs of relevance to Canadians, establishing a viable production industry and providing opportunities for artists and creators to practice their crafts. The CCA believes that this balance can favour support of creators, performers and other talent while maintaining the sustainability of the production industry. For this reason, we do not suggest radical change to the current system but rather some fine-tuning through incremental change.

- 2. Should the general approach of the current system be retained or should a new approach to assess Canadian content be developed?**

The general approach should be retained.

- a. Should it be required that ownership of intellectual property rights and distribution of a production be controlled by Canadian interests?**

Clearly ownership of intellectual property rights by Canadians is key to ensuring that Canadian values and ideas are contained in the productions certified. Where the intellectual property rights are held by others, the real function of the Canadian production team is as a line producer or service producer. This raises two concerns - the first cultural and the second industrial.

First, Canadian producers are the ones most sensitive to the cultural nuances of our cultures and they are the ones with developed relationships with Canadian creators. The ceding of the intellectual property rights to a foreign company, combined with the possibility to use a foreign writer, greatly lessens the relevance of a program to Canadians.

Secondly, an important part of building a Canadian production industry with the capacity to develop, finance and produce Canadian programs is the management of the library or catalogue of the product. Whereas the initial exhibition (whether on the television or the large screen) may only be marginally profitable, the longer term exploitation of rights in multiple domestic windows, in territories around the world and, increasingly, in merchandizing and new media opportunities, is what permits the growth of Canadian production entities able to take on demanding projects.

Both domestic and international distribution are important elements of the financing of programming and films. Distributors can often have an important input to the nature of the film or program produced, particularly as their finan-



cial input increases. Distribution by foreign companies is less likely to be sensitive to Canadian cultural needs.

b. Are all key creative positions of the current Canadian content point system still sufficient, appropriate and relevant, and are the proper weights being allotted to each position?

The current positions remain the appropriate ones to measure and the current balance is appropriate. In particular, we believe that the assignment of two points to each of the key creative drivers, the director and the writer, reflects their importance to the system. We also believe that the requirement that at least one of these creative positions be filled by a Canadian and that one of the two lead performers be Canadian are essential elements that should be applied to any program certified or recognized as Canadian.

c. Should the minimum point system requirements be increased?

For purposes of recognition only, the current level of six points should be maintained. The CRTC should ensure that broadcaster productions and other programs that they certify meet a true 6 of 10 points, including that Canadians fill all aspects of the screenwriter function.

We believe that it would be appropriate to consider an increase to 7 points for qualification for the federal tax credit. Programs receiving any bonusing from the CRTC should meet a minimum of 8 points for the 125% credit and 10 points for the 150% credit.

Programs qualifying for the CTF should meet 10 of 10 points or all the points available to the production.

d. Is it necessary to require Canadian residency or is Canadian citizenship sufficient for key creative positions?

Canadian citizenship should be sufficient for key creative positions. When long-term non-resident Canadians occupy key positions, particularly the writing and directing positions, CAVCO should be assured that creative decisions are truly made by Canadians.

e. Should the system be redesigned to adapt to differences among the various production genres? Should the Canadian content system be limited to only certain genres?

The system seems to work well for all genres.

f. What changes, if any, need to be made to the point system for animation?

The current point system for animation is appropriate and no changes need to be made. We would suggest however, that the spending requirements be reviewed to ensure that they take into account current practices in the animation industry. In particular, we would note that the step in animation known as in-betweening,



which is not a creative role but rather a labour-intensive fairly mechanical function, is almost exclusively done in Asia by all animation companies. For Canadian companies to remain competitive internationally, it would seem reasonable to ensure that they do not have an additional cost that their foreign competitors do not incur.

g. Should the production and post-production expenditure requirements be amended?

Only as noted for animation.

h. What should be the basis of a new approach to define Canadian content, if deemed required?

There is no need for a new approach.

i. A new Canadian content system would conceivably require the design of vastly different program criteria and administrative processes. How should this new approach work?

There is no need for a new approach.

j. What are the commercial and cultural consequences of the proposed system?

N/A

3. Should international treaty co-productions continue to qualify as 100% Canadian content?

As noted in the body of the submission, they should. Telefilm should continue to ensure that a reasonable balance is maintained between Canadian and foreign participation overall. It should also closely monitor co-productions that include third country partners to ensure fairness and that the project does not become a disguised service production.

4. Should NFB, CBC in-house and Canada Council supported productions continue to be automatically recognized as 100% Canadian content?

Such projects should meet and even exceed the minimum 6-point count. There is no need for certification. Similarly, other broadcaster in-house productions need not be certified although they should also meet the minimal requirements. The CRTC should audit broadcaster productions, particularly those broadcast on several services, other than news and sports productions to ensure that the minimum point count is met.



5. Who should assess the Canadian content of a production and how should this be done? Should there be greater harmonization between the approaches taken by the federal departments and agencies involved in the determination of Canadian content? Should the assessment of Canadian content be centralized?

While we are tempted to recommend a single body to assess Canadian content, we are not sure that this is workable. At the same time, there are flaws with each approach. For example, although the CRTC's approach is not particularly thorough, relying heavily on the good faith of applicants, it does have the virtue of timeliness. CAVCO's review is much more thorough; unfortunately it is much too slow and burdened with a large backlog.

We find it unfortunate that the various agencies involved in assessment do not seem to work together to streamline processes, provide best practices and share data and experiences, and we have recommended that these agencies be directed to collaborate.

We do not believe that it is appropriate to create a single body at this point. In arts funding for example, it is recognized that a diversity of funding sources is optimal, and the same holds true for regulatory regimes. However, we do believe that it is important for the various agencies involved to make a more substantial effort to ensure coherence and harmony. Where there are differences in approach, there should be good public policy reasons for them.

6. Should the administration body have the discretion to accommodate exceptional situations?

N/A

7. Should there be a mechanism to appeal Canadian content decisions?

It is our understanding that the CRTC allows producers to make an appeal of the staff ruling to the Commission. Given the relative timeliness of the CRTC's process, this has not resulted in overly long delays in decisions.

We recognize that decisions made by public servants should in theory offer some opportunity for appeal. However, we have two concerns in this area:

- ◆ Inevitably, appeals are political. This means that rather than review the merits of a case based on the existing rules, it is inevitable that issues such as regional concerns, other representational concerns and other considerations might supersede the cultural purposes.
- ◆ CAVCO's processes are already overly long with a backlog built up. Adding an additional step to the process could mean an even longer delay to the system. Of course, it would be up to a producer to select this option and to live with the delays. Nonetheless, adding another layer to the decision making process will add to the cost and delay the making of the program or film.

