

DISCUSSION PAPER
PRODUCERS AND CULTURAL INDUSTRIES

Surviving the Eddies of Change

Production and distribution are two critical elements for the health and integrity of the creative continuum. Once the task of creation or interpretation of a work of art has been completed, the next big challenge is making it accessible for the enjoyment of the audience. The tasks of production and distribution are critical to the artistic and financial well-being of the artist/creator. This is the traditional role of the producer and the cultural industries.

The cultural industries are often described as the pipeline that feeds Canadian talent to audiences through many different channels. The assertion is frequently made that without our artists/creators, we would have no need for the cultural industries. This view is overly simplistic and does not reflect the active role that cultural industries play in the fostering, promotion and support for Canadian creators and artists. At the beginning of the 21st century, the pipeline analogy is fundamentally flawed and impedes forward thinking about the evolving role of the cultural industries in the creative continuum.

However, with the ongoing development of technologies such as the internet, the lines that traditionally separated the artist/creator from the producer or cultural industries are beginning to blur. It is the view of some observers that the terminology we use to describe the production and distribution functions is as extinct as the dinosaur.

In looking forward to the revision of existing policies and legislation or to the development of new approaches to stimulate growth in the cultural sector, we must first deal with the underpinnings of current approaches to the production/cultural industries sector.

Canada has evolved a series of public policies which recognize the critical function that producers/cultural industries play in sharing our artistic and cultural materials with Canadians and audiences around the world. **Canada has recognized in the past that the integrity and health of the distribution and production sectors is vital to sustaining a Canadian identity.**

Traditional Support Measures

It is crucial that the Canadian government invest in artists/creators, but it is equally important that they have access to producers and the cultural industries to disseminate their work.

The government saw the need to ensure that, in all forms of distribution and production, space be made for the Canadian imagination to be shared and nurtured. In order to enable this to happen, the government exercised three of its most important and effective powers:

- Legislation;
- Regulation;
- The use of its spending power.

The government, therefore, has developed over time a mixture of “carrots and sticks” to reach its public policy objectives regarding the cultural industries. Its objectives are to ensure that the main vehicles of dissemination of Canadian work in sound recording, book and magazine publishing, film and television production, and new media are making a contribution to overall objectives of our cultural policies.

Ownership restrictions were imposed to ensure effective Canadian control of our key distribution systems. Some of these can be found in legislation, while many are contained in regulations limiting foreign ownership and control of our cultural industries.

The first indication of this commitment can be found in the broadcasting system. When the Canadian Broadcasting Corporation was created in 1936, the government declared that the national public broadcaster was owned by Canadians. The importance of this affirmation underscored the awareness by Parliament that broadcasting was of critical national importance.

Public ownership of the broadcasting system also meant that corporations which sought to use the public airwaves for commercial purposes would by necessity have to prove some form of returned benefit to the owners – the Canadian people. This quid pro quo approach to broadcasting has been the rationale behind the undertakings for investment in Canadian content and the air time allotted to Canadian creation and production that broadcast license applicants must demonstrate and respect in order to win and sustain a license from the Canadian Radio-television and Telecommunications Commission (CRTC).

The CRTC has used this element of the Broadcasting Act (1991) to lever approximately \$1 billion from private and public broadcasters dedicated to the conception, production and distribution of Canadian content in all areas of interest from the arts to news and, of course, sports such as hockey.

As other forms of distribution began to take their place in the Canadian cultural landscape, the government extended the same logic of ownership to the sustenance of other key distribution and production systems.

The critical difference between broadcasters and other types of producers and cultural industries is that many of the cultural industries are commercial, privately-owned undertakings. While it can be argued that the broadcasting system is publicly owned, developing a rationale for the imposition of rules on privately held enterprises is more challenging.

Funding programs constitute the “carrot” part of the approach of the government to the cultural industries. Incentives to produce Canadian materials are provided by a raft of government funding agencies and programs. The direct reward for contributing to distribution and promotion of Canadian content has been a relatively persuasive mechanism to share the government’s commitment in this area.

Challenges to Traditional Measures

As new forms of distribution emerge, the process of adapting legislation and regulation to ensure some consistency of treatment across all cultural industries and distribution systems has proven to be challenging. **Convergence, the new reality of the 21st century, continues to challenge and test the efficacy of traditional approaches to legislating and regulating the cultural industries and distribution systems.**

Satellite radio, pod-casting, file sharing, and other distribution technologies have put enormous strain on some elements of the federal cultural policy framework for the cultural industries. These strains can be seen behind several recent developments:

- the development and tabling of revisions to the Copyright Act;
- the CRTC decision on satellite radio;
- the ongoing review of telecommunications policy;
- new pressure to review the role of the CBC;
- pressures to revise the Broadcasting Act;
- pressures to combine the Broadcasting Act and the Telecommunications Act;
- Canada’s ongoing participation in negotiations for updating the General Agreement on Trade in Services;
- Canada’s ongoing involvement in trade negotiations for a Free Trade Area of the Americas (FTAA).

In addition to the technological challenges, government policies regarding cultural industries/production communities are further complicated, and in some cases compromised, by Canada’s involvement in international trade negotiations such as the General Agreement on Tariffs and Trade (GATT), the General

Agreement on Trade in Services (GATS), and through the World Intellectual Property Organization (WIPO), among others.

The confluence of these factors results in an ever-changing landscape within which the producers and cultural industries must play their roles. **Technological change and globalization of trade rules pull Canadian policies into a maëlstrom from which they are not easily extricated, nor do they often emerge untouched.**

The World Trade Organization (WTO) decision on the Canadian magazine industry support programs during the 1990s was a shock to many. Canada had secured a cultural exemption in the Free Trade Agreement with the United States and again in the North American Free Trade Agreement. It was hoped that this exemption would be sufficient to buffer the cultural industries and federal cultural policies from the liberalization of trading rules.

What many failed to understand, however, was that both FTAA and NAFTA are regional trade agreements. The ultimate test for the viability of any policy that falls under the cultural exemption is whether or not the measure in question is consistent with the undertakings made in the GATT and the GATS. These agreements are of paramount importance and it was through their use that the American challenge to the magazine policy ultimately triumphed.

The WTO decision sent a shot across the bow for those Canadians who felt that the cultural exemption was a “bullet-proof” protection for our cultural interests and industries. That decision spurred the cultural sector to become more trade literate so that it could fairly assess any potential threat that may lie buried in the lengthy and technical language of trade agreements.

Although new technologies and globalization are identified in this paper as “challenges” to the existing system, we must bear in mind that they also create new possibilities which we must factor in as we step back and look at the whole picture.

Holding the Line

Meanwhile back on the home front, anxieties persist regarding foreign ownership restrictions, and the ongoing threat of corporate concentration and vertical integration of Canadian cultural industries.

The determination of the government to retain control of our distribution systems appears to be in flux. Part of the rationale behind this is the ever-expanding reach of international agreements on trade and a potential agreement on investment, but also the changing nature of the fundamental technologies which have constituted the distribution systems for books, film and television, sound recordings, and new media.

If the government of Canada cedes the foreign ownership restrictions, it is conceivable that all artistic and managerial control of Canadian cultural enterprises will lie in the hands of foreign owners with little interest in promoting Canadian cultural expression. The role of these industries to foster and promote new or emerging talent could well disappear, with large multi-national interests cherry-picking their way through the Canadian talent pool.

There is also ongoing concern about corporate concentration of ownership with many facets of the creative continuum owned by powerful individuals or consortia. **Concentration of ownership and vertical integration have the potential to be deadly counter forces to the true diversity of cultural expression in any medium.** The potential for the combination of ownership concentration and vertical integration to act as suppressors of creativity and innovation, and dissident views, is a real one and needs to be substantively addressed by Canadian public policy.

The depth and breadth of policy issues arising from this confluence of forces around the cultural industries will be reflected in the policy and legislative agenda of the new government for the next several years. Therefore, it is essential that vigilance be maintained throughout and across all parts of the arts and cultural sector to prevent inadvertent damage to the system of support that the government of Canada has developed over the past fifty years.

Revisions and updating of policies, legislation and regulations are vital to ensure Canadian artists/creators and audiences have access to the full spectrum of artistic and cultural expression in all its forms and diversity.

Canada's often proclaimed commitment to diversity has implications for the maintenance of foreign ownership restrictions and vigilance on the concentration of ownership and vertical integration of cultural industries. **If our commitment to diversity is as strong as we claim, we will do whatever is necessary to ensure that diversity of opinion, experience and perspective is preserved throughout the cultural industries.**

Producers

The term “producer” encompasses a wide range of activities and roles within the creative infrastructure of Canada. Producers can be found in all areas of the arts and the cultural industries. Their functions vary considerably across the spectrum of activities and media but their role is an essential one in delivering the creative experience to Canadian audiences. However diverse the interpretation of producer, the simple reality is that more and more these definitions and roles are being radically revisited in practice more than in policy.

The production function is one that continues to be associated with the cultural industries but it is no longer a role exclusive to them. The traditional range of producers within the cultural sector includes:

- arts presenters;
- museums and galleries;
- professional performing arts organizations (music, dance, theatre, opera);
- touring directors;
- new media, film and video producers (including cooperatives);
- book and magazine publishers;
- sound recording producers.

Canadian cultural policy addressing the role of the producer or the cultural industries is firmly rooted in an earlier era where these roles were much more clearly defined. Technology has changed this to a significant degree, to the point where the artist/creator can act as producer and distributor of their work without the services of an intermediary. Such artist/creator entrepreneurs can promote their own work to specific communities of interest around the world or narrow the focus of their efforts to niche markets where their work will likely be sold.

One excellent example of this type of entrepreneurial spirit can be found with Playwrights Press and the Association québécoise des auteurs dramatiques. These creator-driven organizations have posted their catalogues on the web and have built in full transactionality so that potential customers can preview the work, preview scripts that interest them, or download copies for a fee. The sites feature copyright protection so the economic and moral rights of the creator/artist are preserved. There are plans afoot to expand this type of online shop to a virtual cultural shopping mall with film scripts, books, musical scores and recordings, and visual art works.

The reach of the creator/artist may be universal; however, the expertise that has developed in the production and distribution part of the sector can be usefully applied to ensure not only a geographic distribution of the work, but also a fair measure of financial return to the artist/creator.

Breaking Down the Wall Between Artist and Producer

If the goal of public policy is to enable growth, promote diversity, and sustain excellence in the cultural sector, it is clear that the firewall in the public policy machinery that has been erected between the artist/creator sector and the producer/cultural industry sector must be dismantled.

A more holistic approach to cultural policy is required to accommodate the changing roles of key elements within the creative continuum. The challenge to policymakers is to develop approaches which foster diversity and reward excellence but otherwise do not restrict the manner in which new roles are defined or put into operation.

Building on the commonalities of the two inter-related communities, public policy must:

- ensure that the interests and rights of the creator/copyright owner are clearly defined and respected in a rapidly evolving environment;
- address the rights of mediators of copyright materials (such as book and magazine publishers) and converters of copyright materials (producers who convert material from one format to another, such as electronic publishing);
- assess the adequacy of existing policies and programs ensuring that they are supple enough to accommodate shifts in the relationships between the creator/artist and the producer/cultural industries;
- ensure that ownership restrictions preserve the ability to reflect the diversity of the Canadian creative community and provide the highest production standards;
- develop a mechanism to ensure the impact of vertical integration continues to allow diversity of expression and openness to new talent in all forms and disciplines;
- be able to accommodate quickly to technological change by drawing it into the larger cultural policy agenda and disciplines;
- meet the contingencies of the international marketplace and be afforded the support necessary to develop new markets and audiences for Canadian artists, creators and cultural enterprises;
- retain the capacity to develop and enforce Canadian content requirements across all fields and forms of cultural endeavour;
- ensure that any new undertakings Canada makes in the area of international trade or intellectual property reinforces the ability of artists/creators and cultural enterprises to continue and enhance their cooperation;
- provide encouragement through funding bodies for new permutations of creative expression and new technologies (ebooks, telephone television, satellite radio and broadcasting, podcasting, etc);

This is probably not an exhaustive list. What else should a cultural policy do? Are there key elements missing?

In the development of a new deal between the two communities of interest, usually isolated from each other in a policy sense, the government has the capacity to further strengthen cultural and artistic life in Canada by building some resilience into the policy framework.

The question becomes not should the government pursue this line of policy development but how quickly it should proceed down this path. Inactivity or unnecessary delays potentially compromise the ability of Canadian artists/creators and enterprises to continue to weave the fabric of their experience in whatever media they so choose. Dithering could place Canada at a competitive disadvantage with its international partners and trade competitors.

Since the building of the national railway, Canada has seized upon every successive wave of technology to bind together the far-flung communities that constitute this country. Canadians are rapid adopters of new technologies. Our experience with telephone, cable, automated tellers, and satellites demonstrates our consistent appetite for innovation in communication technologies.

In re-charting the policy course to facilitate early adoption not only of new forms of production and distribution technologies, but also fostering new forms of co-production and cooperation between the artist/creator and the cultural enterprises, Canadian public policy would be consistent with our own experience as a nation.

Public policy must enable Canadians to put their stamp on these new technologies and do so with a minimum of anxiety and public policy uncertainty. This is an opportunity to be seized, not an onerous burden to assume.

Amalgamating the series of concerns previously outlined into a single public policy lens, would create a more transparent series of tools designed to achieve relatively clear objectives. It lets everyone engaged in either policy development, or artistic/cultural development, understand the instruments deployed in support of Canadian creation/production and distribution. Such would be a welcome development.

A Single Public Policy Lens Looks to the Future

In recent days, there have been pronouncements by the CRTC about its intention to review commercial radio, and later television. Parties vying for power in the federal election speculated about a review of the CRTC and the CBC, and other cultural institutions have been cited as worthy of review.

A review of Canada's foreign policy is likely to take place early in the life of the next Parliament: are we prepared to address trade and international relations

issues with an eye to the future? Have we collectively developed a coherent agenda for the international arena that moves us forward on the path of adapting quickly to new technologies and the opportunities that flow from them? If not, how do we proceed?

When confronted with these kind of global changes, it is imprudent to proceed piecemeal with such critical revisions, without the benefit of a global perspective. It must be equally clear that it is just as imprudent and impossible to separate our domestic policy agenda from our international policy agenda. Globalization and liberalization of trade reach deep into domestic policies and politics. What work remains to be done to bring us to a point where this is not merely a truism but a firm orientation point for all of our thinking?

When these reviews are undertaken, it is clear that the position of the cultural sector cannot be merely a defence of the status quo. Too much has changed to justify such a position, and even more change is on the horizon.

The challenge for policymakers within government and within the sector is to facilitate a visionary dialogue to seize these and other opportunities for cultural policy make-over. The ground has been prepared by government and our political parties for this discussion to occur in the coming years. Is the cultural sector ready to make the most of it?

Before reaffirming the validity of all existing policies and precedents, the cultural sector needs a collective rethinking and reconciliation of where we are headed and what tools will be needed to achieve our goals. Clinging to outmoded policies and practices is not merely sentimentality but could also prove fatal to that which we are most eager to preserve and protect – our artistic and cultural vitality and diversity.

Political will must be expended to move any policy agenda forward. It is critical for Canada that informed political will rise to the challenges and opportunities for the Canadian producer/cultural industry communities.

This is the challenge facing all of us.

QUESTIONS FOR CONSIDERATION

How can the sector move forward with new technologies and the opportunities that flow from them?

Given rapid technological advances (e.g.: the Internet), are traditional roles and disciplines changing or even disappearing?

What contribution should new distribution undertakings be required to make to the health and growth Canadian culture?

How can we encourage production and innovation while at the same time ensuring Canadian ownership of those undertakings crucial to our national culture?

Is concentration of ownership detrimental to diversity of cultural expression?

A review of Canada's foreign policy is likely to place soon; is the sector prepared to address trade and international relations issues with an eye to the future?