Ownership by Canadians

To enrich the social, political and cultural fabric of Canada

A discussion paper on the
foreign ownership rules
in broadcasting
by the Canadian Conference of the Arts

October 2003

The CCA has been the leading advocate for the Canadian cultural community since its founding in 1945, at the dawn of the development of Canadian culture and cultural policy. It is the national forum for the arts and cultural community in Canada; a leader, advocating on behalf of artists in Canada; an authority, providing research, analysis and consultation on public policy in arts and culture; and a catalyst, fostering informed debate and collection action. The CCA has a vision of Canadian society in which artists are valued for the essential role they play, and the fundamental contribution they make to a creative, dynamic, and civil society.

In recent years, the CCA has been active on trade policy issues that affect Canada's ability to implement domestic cultural policies. It has expanded its mandate internationally and houses the International Network for Cultural Diversity, a worldwide network of artists and cultural groups dedicated to countering the homogenizing effects of globalization on culture. The CCA's elected Board of Governors, whose members have a vast expertise in all aspects of the arts and cultural industries, are adamant about improving and strengthening Canada's cultural policies.

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Introduction

Canadian public policy in the cultural industries has always been predicated upon ownership of Canadian cultural enterprises, to the extent possible, by Canadians. In some cases, the opportunity to reach this goal was compromised as foreign-owned businesses and Canadian branch plants had established a foothold in the country prior to the implementation of domestic ownership policies. In book publishing, film making and recording, the presence of foreign-controlled businesses has characterized the industries for some time.

However, in broadcasting, because of the need for technical regulation, ownership by Canadians has been the policy almost from the industry's inception. In fact, the Aird Commission into broadcasting in the 1920s was largely driven by the concern that emerging Canadian radio stations were essentially re-broadcasters of American commercial radio networks. The Commission concluded that in broadcasting, the choice was "the state or the United States", meaning if public ownership was not established, foreign ownership and programming would prevail.

Recently, there has been some public debate about whether the ownership rules in broadcasting should continue. Positions on both sides of the issue have been taken by broadcasters, cable and telecommunications companies and the production industry and creator groups. The CCA believes it is important that the creators and independent producers make their voices heard on this important issue of public policy.

We do not believe that it is sufficient to justify the rules merely because they have always been present. However, it is also difficult to speculate about what would happen without the existing rules in Canada since this has always been the context within which our broadcasting industry has evolved. Consequently, we have decided that the best way to analyze this issue is through the lens we know best - the results of foreign ownership in other cultural industries.

This paper makes the case for maintaining Canadian media ownership. It is based on a belief that public policy on culture and heritage in Canada must ensure that the widest diversity of Canadian voices are heard and that policy is not merely oriented to the market and ensuring that "the stars" are heard. While we celebrate the domestic and international successes of our leading actors, comedians, novelists, poets, rock, pop and jazz stars, we also believe that a successful cultural policy ensures that Aboriginal, French and English and multicultural voices from all regions are heard and that the experiences of men, women and children, whether born

The CCA intends this paper as a contribution to a wider public debate, providing a focus based not on the well being of a few stars or of a segment of the cultural industries but rather rooted in the experiences of creators from a wide range of backgrounds. In the late 20th century and the early years of the new millennium, our electronic media have become the major means of receiving news, information, and entertainment. These media are far too important to our national sovereignty for us to allow the debate to be based upon market criteria alone.

here or having chosen to live here, are also accessible.

The paper goes on to criticize the arguments put forward in support of eliminating or weakening the rules. It also examines some of the flaws in our system, where the intent of public policy has not been well translated into policy instruments or where governments and their agencies have not adequately enforced their own policies.

Why this paper now?

The rules governing foreign ownership of Canadian broadcasting entities have recently been subject to public discussion. Three different Committees of Parliament have or will soon take a look at the rules. In June 2003, François Macerola released a report commissioned by the Department of Canadian Heritage (the Macerola report) concerning Canadian content in film and television production in the 21st Century.[1]

→ **The Standing Committee on Industry, Science and Technology**

While the Industry Committee was not mandated to review the rules concerning foreign ownership of broadcast licensees, it did indicate in its report on foreign ownership in telecommunications that carriage and control can be distinguished, and that therefore, broadcast distribution and programming entities can be treated differently. The Committee also recommended that the rules concerning telecommunications and broadcast distribution be eliminated and in a press release indicated that there was no reason that broadcasting should be treated differently.

> *"The committee believes that full liberalization of foreign ownership rules on a symmetrical basis for all carriers of signals competing in the same markets is the best way of achieving the government objectives laid out in the Telecommunications Act and the Broadcasting Act."*[2]

→ **The Standing Committee on Canadian Heritage**

The Heritage Committee came to a much different conclusion regarding this question, recommending that there be no change to the existing rules. It also suggested a number of key policy changes, including strengthening the funding of Canadian programming in general and the CBC in particular.

> *"The Committee believes that broadcasting is an essential preserve of the Canadian culture and imagination. Thus, it is opposed to increasing the level of foreign ownership in the indus try. In essence, the Committee holds the view that once Canadians give up control over what amounts to our cultural sovereignty, we can never get it back."* [3]

→ **The Senate Committee on Transportation and Communications**

This Committee has been mandated by the Senate to look into all aspects of Canadian media. It is inevitable that the foreign ownership rules will be one of the questions examined. The mandate of the Committee is to study:

> *"…the current state of Canadian media industries; emerging trends and developments in these industries; the media's role, rights, and responsibilities in Canadian society; and current and appropriate future policies relating thereto."* [4]

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[1] Macerola, François. *Canadian Content in the 21st Century in Film and Television Productions: A Matter of Cultural Identity*. Commissioned by the Department of Canadian Heritage. Released June 2003.

[2] *Opening Canadian Communications to the World*. Report of the Standing Committee on Industry, Science and Technology. Released April 2003.

[3] Lincoln, Clifford (MP, Chair). *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*. Standing Committee on Canadian Heritage, House of Commons, Canada. Released June 2003.

[4] *Proceedings of the Standing Senate Committee on Transport and Communications, Issue 1 - Order of Reference*. Extract from the "Journals of the Senate" of Wednesday, March 19th, 2003.

→ **The Macerola Committee** was mandated to look into the definition of Canadian content in television and film for purposes of access to public funding. The significant recommendations in this context are that the current requirements for Canadian ownership and control not change, including the requirements for producer control, that copyright be held by Canadians and that distribution in Canada be via a Canadian owned distributor.

> *"The ownership and control requirements, we believe, should remain in place. They help foster the development of Canadian-owned and controlled production companies and ensure that revenue resulting from the exploitation of Canadian content in both the domestic and international markets ultimately flows back to Canada"* [5]

Why is this issue important to creators?

Much of the current public debate on this issue has been based on the needs of the industries involved from both a cultural and from a business point of view. The issue of access to capital has been a significant driver of the debate concerning telecommunications carriers. Competition between the broadcast distribution activities of telecommunications enterprises and the telecommunications sides of cable companies has widened the debate to broadcast distribution. Convergence between telecommunications, broadcast distribution, broadcasting and film and television productions companies has now widened the discussion to include the rules concerning ownership of broadcasting companies.

The ongoing convergence in these industries, once trumpeted as the means to provide strong Canadian competitors to converged international media conglomerates is now being used to argue that foreign entities should be allowed to increase their ownership in Canadian broadcasting. The elimination of foreign ownership controls or a significant increase in the limit, will effectively permit control of Canadian radio, TV, pay and specialty stations and cable, Multi-point Distribution Systems (MDS) and direct-to-home-satellite (DTH) undertakings by foreign companies. This seems particularly ironic at a time when these same industries are urging government to combat the grey and black markets for foreign satellite services.

The CCA contends that while it is important to ensure that Canadian businesses are able to compete effectively, this should not be our only goal for cultural policy, nor should it be the overriding concern of public policy. These tools should be used as means to a more significant end: ensuring that expression by Canadian creators flourishes and that Canadians have access to cultural products that reflect their diverse cultural experiences and give voice to their aspirations and imaginations.

The CCA is deeply concerned about a drift towards relaxation, or worse, removal of the limits on foreign ownership in broadcasting based on needs identified in the telecommunications sector. The reasoning seems to be that in order to have sustainable competition in telecommunications, new entrants must be better capitalized. Because new entrants, in some cases are also involved in broadcast distribution, they will also need access to capital to ensure competition in this industry sector. And finally, because some of the same players are also involved in broadcast programming, it is a logical and inevitable consequence that the rules for broadcasting should also be relaxed. We do not share this view.

This paper is intended to place that perspective foremost in the public policy debate.

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[5] Macerola, François. Canadian Content in the 21st Century in Film and Television Productions: A Matter of Cultural Identity. Commissioned by the Department of Canadian Heritage. Released June 2003.

Some background

What are Canada's cultural goals?

From the Aird Committee's Review of Broadcasting during the 1920s to the 1951 Levesque-Massey Report on the Arts to the Broadcasting Acts of 1958, 1968 and 1991, Canadian expression has been seen as essential to national sovereignty and national goals as the railroads were seen in the first years of Canada's existence. In the words of the 1991 Broadcasting Act, the Canadian broadcasting system "provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty". Further the Act states, "the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada". It is worthwhile noting that there has never been a nay in the Parliamentary votes that passed the various Broadcasting Acts.

Parliament has given to the Department of Canadian Heritage the responsibility to ensure cultural expression and the protection of our heritage. Its website indicates that its mission is to develop a more cohesive and creative Canada with four strategic objectives:

→ **Canadian content** - Promoting the creation, dissemination and preservation of diverse Canadian cultural works, stories and symbols reflective of our past and expressive of our values and aspirations.
→ **Cultural engagement and participation** - Fostering access to and participation in Canada's cultural life.
→ **Connections** - Fostering and strengthening connections among Canadians and deepening understanding across diverse communities.
→ **Active Citizenship and Civic Participation** - Promoting understanding of the rights and responsibilities of shared citizenship and fostering opportunities to participate in Canada's civic life.

Taken together, the goals of both Parliament and Government for cultural policy are intended to ensure that Canadians from all backgrounds have the opportunity to experience each other's cultural expression and to have access to Canada's cultural heritage. The effect of Canada's cultural polices is to build a stronger nation through celebrating cultural diversity.

The CCA argues that diversity should be interpreted as widely as possible, and should include both official language groups, Canada's Aboriginal peoples, and those born in Canada and elsewhere. Our cultural richness stems from a multiplicity of sources, whether it be our authors, our musicians, our visual and craft artists, our photographers, our film and video makers and documentary producers, or our ethnic programs on community channels and specialty channels. The unifying theme is that the creators of our cultural richness are all Canadian and have a particular experience to offer.

What mechanisms are used to meet these goals?

Canadian governments, both federal and provincial have used a variety of measures to ensure that our cultural goals are met. These can be grouped as follows:
→ **Policy statements** - often an expression of intent, such statements have an important function in expressing direction of government action. Such statements are important signposts to creators, producers, cultural industries and other sectors as to the importance and weight placed on various aspects of cultural policy.
→ **Legislation** - legislation such as the Broadcasting Act, the Copyright Act, the Intellectual Property Act, the Income Tax Act, the Status of the Artist Act and many other pieces of legislation translate pol-

icy statements into law, setting the framework for government action in the cultural sector.
→ **Regulation** - the CRTC is a good example of this mechanism. The Broadcasting Act gives a mandate and certain powers to the CRTC to implement the goals of the Act. Through its public processes, the CRTC has created the framework within which broadcasters meet the policy goals of the Act. In particular, Canadian content regulations have assured that Canadian creators' products have access to Canadian audiences and that Canadian services have pride of place in our broadcasting system.
→ **Creation of Institutions** - the Government of Canada and most provincial governemnts have created bodies to provide cultural expression. The CBC, the National Film Board, the Museum of Civilization and TéléQuébec are all examples of government cultural institutions.
→ **Fiscal supports** - by use of tax and other fiscal policies, both the Federal and Provincial Governments have provided supports for cultural expression. A good example in this area is the provision for tax credits for the labour portion of Canadian and foreign film and television production in Canada and in individual provinces.
→ **Subsidy** - there are a range of subsidy programs, Federal and provincial, public and private or a mix of public and private. These include direct subsidies to creators by the Canada Council, support for recording through the Foundation to Aid Canadian Talent on Records (FACTOR) or MusicAction, equity investments in feature films from Telefilm, equity investment and grants to television production from the Canadian Television Fund (CTF) or postal subsidies for Canadian periodicals.

These mechanisms have worked with varying degrees of success in the different cultural industries. Canada has created cultural industries that provide world-class products in a wide variety of genres. But in many cases, the cultural industries are poorly capitalized and very vulnerable to cyclical fluctuations. For example, despite the critical and financial success of many Canadian recording artists in the pop and rock field, in both official languages, the Canadian independent recording industry remains weak. Similarly despite the success of Canadian authors such as Atwood, Shields, Mistry and Vanderhaege, the Canadian publishing industry is faltering, with many publishers either closing up their businesses or selling to multinationals.

Conversely, broadcasting companies in Canada, including Astral Media Inc., CanWest Communications Corp. CHUM Limited, CTV Inc. and Groupe TVA Inc. are flourishing. Note that a primary difference between broadcasting and the other cultural industries mentioned is a regulatory system that provides pride of place for Canadian works and services. To be eligible to broadcast in this country, an undertaking must be effectively owned and controlled by Canadians.

What are the foreign ownership rules related to broadcasting and why were they created?

The current rules in foreign ownership in broadcasting are based on an order by the Governor-in-Council to the CRTC. Essentially the rules require majority ownership and control of Canadian broadcasting entities by Canadians. The Direction gives the general rules that the CRTC must apply.

At the licensee corporation level, no more than 20% of the voting equity of a company holding a broadcasting licence may be foreign, the Chief Executive Officer must be Canadian and no more than 20% of the directors of the company may be foreigners. If there is a holding company that holds shares in the licensee company, no more than one third of its voting shares may be held by non-Canadians and no more than 20% of the seats on the Board of Directors may be held by foreigners. If the CEO of the holding company is non-Canadian, less than 2/3 of the shares are held by non-Canadians or less than 2/3 of the Board of Directors are Canadians, the holding company may not have any control or influence on any programming decision taken by the licensee. Taken together, this means that a foreign company may effectively hold up to 46.3% of the voting equity in a Canadian broadcasting undertaking.

The CRTC also examines the shareholders' agreements and other corporate documents to ensure that Canadians hold effective control. For example, if a significant minority foreign shareholder is also the principle provider of programming, the CRTC would examine the agreements to ensure that control of the undertaking did not effectively rest in the hands of the foreign company.

The Case for Canadian Ownership

How does the contribution by Canadian owned cultural enterprises differ from that of those that are foreign owned?

In order to ensure vibrant and diversified cultural expression, the CCA believes that we must ensure that a thousand flowers bloom. These blooms should not only be numerous but should demonstrate the great bio-diversity of our cultural life. We need Canadian science fiction and thriller writers as well as poets, historians and novelists. We also need textbooks that discuss not only our own history but also the world's from our own perspectives. Similarly, we not only need Grammy pop and rock (and polka) winners, we need Newfoundland folk music, Cape Breton fiddle music, Acadian and Franco-Ontarian music, cowboy and folk music from the Prairies and BC and native music from the North, classical music from our own orchestras and jazz from our own bistros. Television programs must not only address our history or our 'mean streets', they must explore our multicultural past, present and future and our scientific achievements and experiments.

Multinational cultural businesses have been very successful in promoting the success of the most commercially viable Canadian artists, whether they are musicians, writers, comedians or screenwriters. Many of these performers started with a smaller Canadian record company, publisher or film company. Similarly, many of the television and film stars that have gone on to Hollywood launched their careers with Canadian broadcasters at various levels.

The next sections review statistics from three cultural industries with a view to how comparing the roles of Canadian and foreign-controlled cultural enterprises.

Sound Recording

The pie charts on this page are a pictorial representation of statistics drawn from Statistics Canada's reports on the Canadian sound recording industry. A more detailed chart showing performance from 1987 to 2002 is appended as Appendix 1.

Figure 1 shows that in 2000, Canadian companies released 29.6% of all recordings (foreign and domestic) released in Canada. The same Figure also shows that Canadian companies only received 14.9% of all revenues from record sales in Canada.

Figure 1: Releases (%) and share of revenues ($) by Canadian controlled companies, 2000.

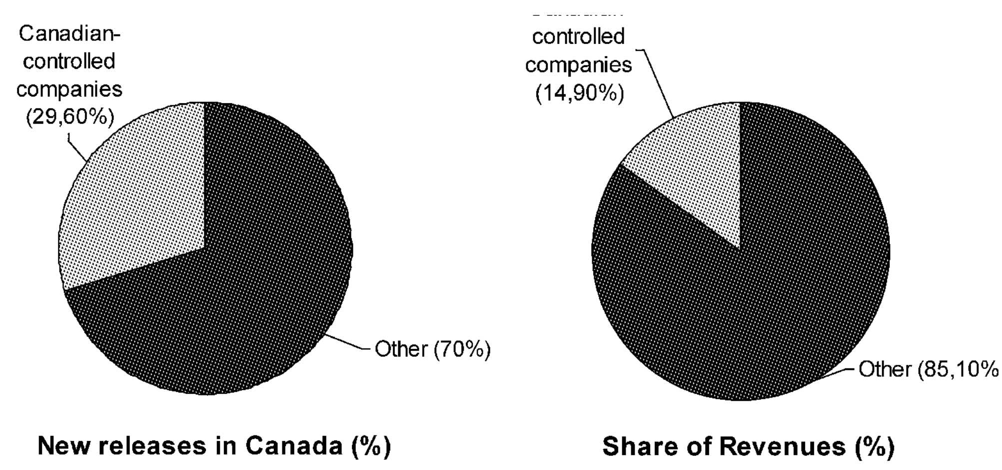
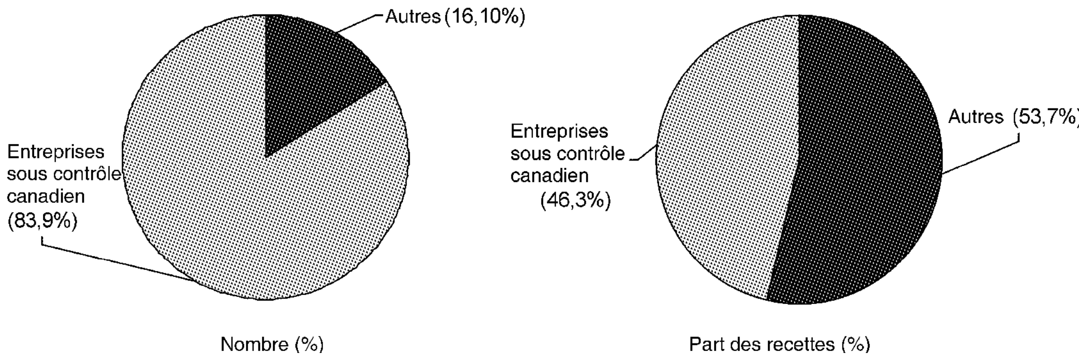


Figure 2 shows that 83.9% of the recordings released by Canadian artists or with Canadian content came from Canadian companies. The same Figure also shows that Canadian companies only derived 46.3% of the revenues that recordings by Canadian artists drew that year.

Figure 2: Recordings by Canadian artists: number (%) and share of revenues (%), 2000



Nombre (%)
Part des recettes (%)

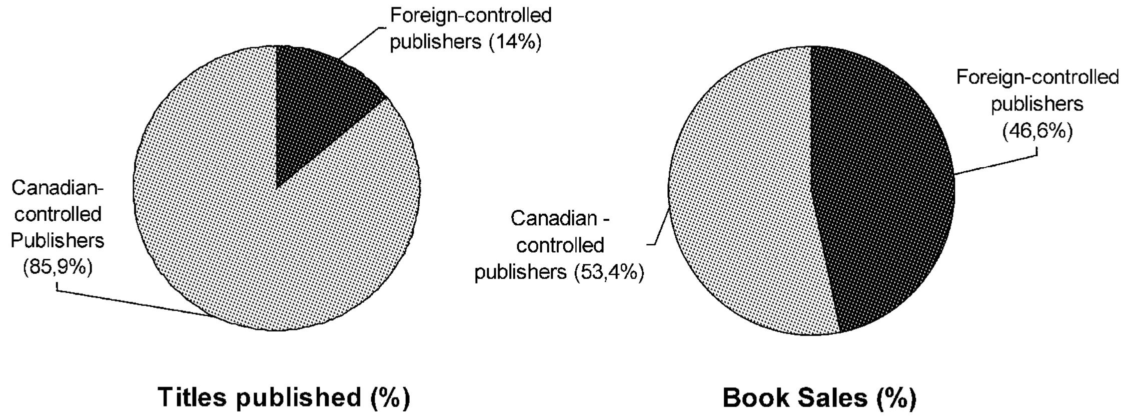
The pie charts and the table in Appendix 1 demonstrate clearly that over the twelve-year period leading to 2000, it was Canadian-controlled record companies that released the lion's share of recordings with Canadian content or by Canadian artists. During the same period non-Canadian controlled companies picked up on average just over half of the revenues that went to Canadian content recordings despite the fact that they released less than a quarter of the recordings. In fact, over the period 1987-88 to 2000, the number of Canadian content releases and total releases from Canadian controlled companies has increased as a percentage of all releases in these categories but the revenue share has declined. It is clear that the increase in the number of Canadian content releases by Canadian labels is significantly due to the support of FACTOR and Musicaction and other programs of Canadian Heritage.

Clearly, foreign controlled companies that are generally vertically integrated with distribution have been able to better choose, promote and distribute Canadian artists than Canadian controlled companies, with a view to attracting record sales. Many Canadian owned companies provide recordings in genres that are culturally important but that attract niche audiences. These companies are still profitable, although not to the same extent as the foreign controlled companies. Without their presence, we would not have the same regional and genre diversity of music.

Book Publishing

A review of trends in the book publishing industry demonstrates the importance of the Canadian-owned publishers to that industry as well. The following pie charts are based upon data provided by Statistics Canada for the year 2000-01. The detailed data are provided in chart form in Appendix 2. Figure 3 shows the number of titles printed by both Canadian and foreign-controlled publishers in 2000-01.

Figure 3: Titles printed and book sales by Canadian and foreign controlled publishers, 2000-01.



Canadian-owned publishing firms were responsible for 86% of the titles published in that year with foreign-owned firms responsible for the remainder. This means a healthy book publishing industry is essential for Canadians to be able to read Canadian stories. The figure also shows that the Canadian firms accounted for 53.4% of book sales in Canada.

Unfortunately, we do not have the raw numbers that show from which sector publishers drew their revenues in 2000-01. However, we do have a chart, also in Appendix 2, that shows trends in sales in the various kinds of books from 1993 to 1998. The following tables show statistics for 1998 and are drawn from this data. Figure 4 shows that the average sales per book by foreign publishers were triple those of Canadian-owned publishers.

Figure 4: Total revenues per title published ('$000), 1998-99.

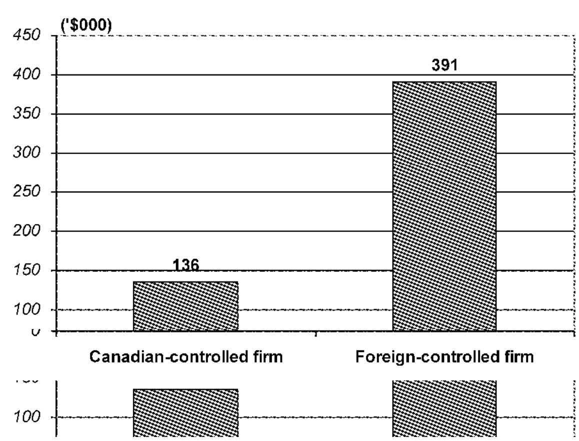
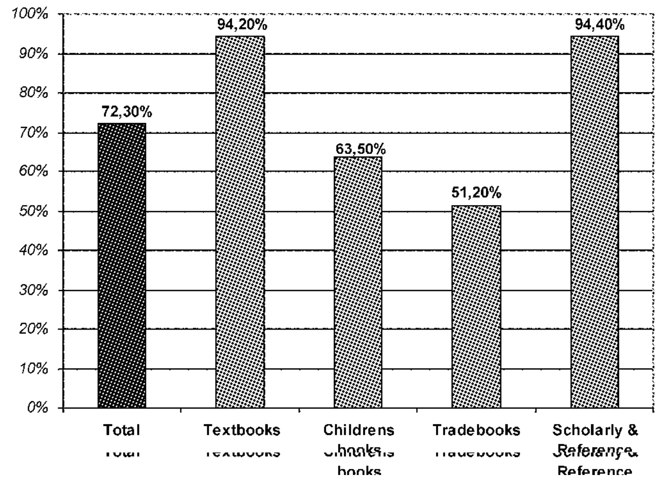


Figure 5 shows the number of titles in a variety of categories that were Canadian-authored. Canadian-authored titles represented 72.3% of all titles with almost all textbooks and scholarly, reference, professional and technical titles being Canadian-authored. About two-thirds of children's books are Canadian-authored. But just over half of the trade books, which includes fiction are foreign-authored.

Figure 5: Share of Canadian-authored own titles (%), 1998-99.



We would conclude from these charts that much of the foreign revenue comes from trade books, both foreign and Canadian-authored. These statistics also make it clear that Canadian owned publishers undertake the vast majority of the wide diversity of publishing outside the bestseller charts. Canadian fiction has earned a wonderful reputation both domestically and internationally with Canadian authors winning a variety of Canadian and international prizes for their work. We often see that foreign-controlled publishers adopt a Canadian author once his or her work is established. For example, if we look at recent fiction:

→ Wayne Johnston's novels *The Navigator of New York* and *The Colony of Unrequited Dreams* were published in Canada by Knopf Canada. But his first fiction was actually published by Oberon Press, a Canadian publishing house.
→ Austin Clarke's novel *The Polished Hoe* is published in Canada by Thomas Allen & Son Limited although most of his earlier work was published by Canadian publishers including Anansi and McLelland & Stewart.
→ While much of Carol Shields' fiction was published by Random House Canada, a significant number of her earlier publications came from Blizzard Press in Winnipeg.
→ Timothy Findley's earlier books were published by Vancouver publisher, Talon Books, although the later bestsellers were published by HarperCollins Canada.

Film and Television Production

In the film and television production industries Canadian companies have a stronger toehold, due to the combination of regulations, subsidy and fiscal support and other public policy mechanisms. An important key to the building of the industry is Telefilm's insistence on a Canadian domestic distributor. Moreover, contrary to the case in the recording industry, for a program to be considered Canadian and eligible for Canadian content benefits, it must be financially controlled by Canadians. At the same time, there is a difference between the film and television components of this industry. While regulation ensures a place for Canadian television production, it does not provide one for Canadian feature film.

The English-language Canadian film and television industries must contend with the presence of Hollywood's products throughout our country. The Canadian content regulations on television have carved out a space for Canadian products, but 40% or more remains foreign production. Cable or satellite provides all of the American networks as well as many other American services. It is the exercise of public policy that has resulted in a significant part of English Canadians' viewing going to Canadian programs.

Without the requirement for Canadian content exhibition, the feature film industry has a much smaller share of the national box office. While in French-speaking Canada, domestic feature films do capture a reasonable share of the box office; the picture in the English-speaking industry is dismal. In 2001, Canadian features captured only 0.2% of the box office receipts and this rose to 1.2% in 2002, on the strength of a single film, Men With Brooms. In introducing a new feature film policy and funding in 2000, the Department of Canadian Heritage has set a very modest target of 5% of the box office by 2006.

By contrast, viewing to Canadian television programs represents between 31 and 33% of English-Canadian television viewing. Among French-speaking Canadians, domestic programs capture between 77 and 79% of all television viewing.

There are important differences in this industry compared to records or book publishing with regard to dealing with foreign production:

- → The provision of tax incentives as well as the low Canadian dollar has made Canada an attractive place for foreign producers to shoot. While these products are not considered Canadian content, they do provide important professional opportunities for the creative community and the craft community, ensuring the presence of a strong Canadian production community.
- → To be considered Canadian content, a program must be financially controlled by Canadians. In particular, the rights for future use must be held by Canadians, allowing companies to build catalogue and exploit these rights in later windows of broadcast and in different territories. Companies can therefore build a library of products that can provide cash flow to finance future productions.
- → To be eligible for Telefilm investment, productions must use a Canadian domestic distributor and to the extent possible a Canadian international distributor. This has allowed the emergence of strong Canadian distributors who make monies on the distribution of both domestic and international productions. This means that they can invest in Canadian production as well.

We do not intend to imply that all is perfect in the Canadian production world. There are many under funded and poorly capitalized companies and the returns on investment are not spectacular. However, the industry has shown growth over the past decade. It is vulnerable to changes in government funding policies and to regulatory changes and the industry sees a slowdown because of changes in the amount of money available to the Canadian Television Fund and changes in the CRTC's television policy. Nonetheless, the industry is in a relatively healthier state than the book publishing or independent record industries.

The requirements of CAVCO, private funders and the Canadian Television Fund have pushed producers to make their programs increasingly Canadian. The industry provides programming in both official languages and in Aboriginal languages. Requirements for Canadian content have also ensured that programming in third languages is available on both conventional television and on specialty third language television.

The CCA's Observations from the three Industries

→ Canadian-owned enterprises provide the widest variety of Canadian stories and the widest genre of products. Intuitively, we know that regional stories and interests, Aboriginal and French-language production and culturally significant products are most likely to come from Canadian creators. The statistical review confirms that, in fact, it is Canadian-owned producers and publishers who are most likely to invest in these creators, particularly at the beginning of their careers.

→ Success in these industries is relatively precarious and relies firmly on a wide variety of Canadian support mechanisms. Regulation, Canadian distribution, subsidy and other financial supports and public policy must all be present if we are to have successful industries. Given the presence of the world's largest entertainment industries on our border, this will ever be the case.

→ Canadian cultural enterprises operate in a complex environment with the presence of well-funded transnational companies. Where foreign ownership is permitted, foreign companies capture the lion's share or a disproportionately large share of the commercial marketplace.

The CCA also notes the fragility of the Canadian-owned enterprises, other than those in the broadcasting sector, with profit margins generally being much lower than those of the foreign-controlled companies. We must conclude that if Canada wishes to have a wide diversity of cultural expression, it can only rely on these small players and that a variety of public policy measures, including support for Canadian ownership must be in place.

The Pressures to Change the Rules

Why are the foreign ownership rules being reviewed? Who is asking them to be reviewed?

The push for review of the ownership rules comes from several sources. The new competitors in telecommunications who are having a very difficult time competing with the former monopoly telephone companies in a sustainable way are leading the push for a change in the rules. These competitors argue that they need access to foreign capital, expertise and brands in order to be viable. Furthermore, a number of Canadian media companies purchased additional media outlets and paid near the top of the market for their acquisitions. A subsequent slowdown in the economy has left them with debt loads that they would like to ease by access to foreign investment.

The CCA does not have a deep understanding of the telecommunications industry and therefore is not in a position to comment on the need for access to capital in this industry. We would note that where broadcast distributors are competitors with the existing telecommunications incumbents, they have done so as a business choice. In many cases, they have seen opportunities to use their existing infrastructure to enter a new business, whether this is high speed Internet, long distance competition or local exchange competition.

To now invoke the need for capital to finance competitive entry as inevitably requiring changes in the rules for broadcast distribution is far fetched. While telecommunications carriers and broadcast distributors may compete in each other's core businesses, the two industries operate in different circumstances. Moreover, the fact that Bell Canada has ownership in CTV Inc. and that Rogers and Shaw have ownership in broadcasting does not mean that the industries should be regulated in the same way, nor that the same ownership rules should apply.

If the rules are changed for telecommunications companies, shouldn't they also be changed for cable and satellite companies?

Competition in broadcast distribution has had some impact on the cable industry - with its basic revenues falling by 1.6% in 2002 and by 1.3% in the previous year. However, when one considers all the services distributed as a regulated entity, in fact, cable's revenues have risen an average of 9% per year for the past five years. Operating margin was 40% and Operating Income increased an average of 10% per year over the past five years, according to financial statistics released on an annual basis by the CRTC.

It is true that the profits before interest and taxes fell by approximately $ 50 Million between 1998 and 2002 and that pre-tax profits practically disappeared during the same period. This must be examined more carefully to see the causes. As noted above, the operating income grew over this period - the principle cause for the decline in the other levels of profitability was the dramatic increase in depreciation expense, which more than doubled, in the same period. The increase removed over half a billion dollars from the industry's profit levels.

This increase in depreciation is directly related to a significant jump in capital spending - in fact net fixed assets increased by over $ 2.1 Billion between 1998 and 2002, an increase of 68%. The cable industry has been quite frank in its explanation of this expansion of capital costs - it is to provide a digital platform that will provide it a number of opportunities:

- → High-speed Internet, and marketing the service
- → Competitive packaging and service offerings with DTH satellites;
- → Greater revenues per cable subscriber through the sale of more pay per view and more services, as well as offering High Definition Television; and
- → Higher unregulated revenues through high speed Internet access.

The major cable companies are public companies with a significant degree of both vertical and horizontal integration. For example, Rogers Cable is effectively owned by Rogers Communications Inc., which is also one of Canada's largest media operators with a significant number of radio stations, two television stations and holdings in specialty services. Rogers is also a significant player in the magazine industry. Vidéotron is controlled by Québecor Inc., which also controls Québec's largest television broadcaster, TVA and some specialty undertakings. Québecor operates one of the larger newspaper chains, both in Québec and elsewhere in Canada, as well as having other extensive holdings in printing. Shaw Communications Inc. not only controls Canada's second largest cable company but also controls the DTH operator, Star Choice, which is effectively integrated with Shaw Cable. Shaw is also the controlling shareholder of Corus Entertainment Inc., one of Canada's largest radio companies and with extensive interests in television, specialty and pay television and the production industry. The new DTH entrant Expressvu is owned and controlled by Bell Canada Enterprises (BCE), which controls Canada's largest telephone company, Bell Canada, and is the controlling shareholder in Bell Globemedia, which owns CTV and its many specialty services, as well as the Globe and Mail. All of these companies are publicly traded and benefit from all the synergies that come from the degree of integration that we have described.

It does not seem that the distribution industry is taking advantage of the levels of foreign ownership available under the existing rules.

- → Rogers Cable is 100% controlled by Rogers Communications Inc., a publicly traded company of which 0.22% of the voting shares are held by non-Canadians.
- → Shaw Cable is 100% held by the publicly traded Shaw Communications Inc. of which all but 23.49% of the voting shares are held by Canadian members of the Shaw family. Of this, 4.39% is held by a non-Canadian member of the family and the rest are publicly held.

→ Canada's third largest cable company, Cogeco Cable is a publicly traded company of which 1.21% of the voting shares are held by non-Canadians and which is controlled by
→ Cogeco Inc., another publicly traded company of which 0.85% of the voting shares are held by non-Canadians.

Clearly, if the need is access to capital, these companies could seek out additional investment within foreign capital markets. Of course, the problem is whether large foreign companies with expertise and synergies in the industry can control within the existing rules.

Let us maintain our current position and, to capitalize upon a growing Canadian confidence in our own authors, musicians and stars, Canada must maintain all of the tools in its cultural tool chest - including strong Canadian ownership. We must not only keep these tools, we must use them - in the words of Neil Young, Rust Never Sleeps.

If the rules were changed for cable and satellite, shouldn't they also be changed for radio, TV and other programmers?

The CCA does not accept that there is a case to alter the rules for broadcast distribution. Moreover, it is clear that when we examine the links between the distributors and the broadcasters, there is no compelling case for changing the foreign ownership rules for broadcasters based upon connections with distribution undertakings.

First, not all of the programming companies are involved with distribution undertakings. The largest television companies in Canada are CTV (affiliated indirectly with Expressvu), CanWest Global (no cross ownership to distribution), TVA (affiliated with Vidéotron through Quebecor), CHUM Ltd. (with no distribution involvement), Astral Media (with no distribution involvement) and Alliance Atlantis Broadcasting (with no broadcast distribution involvement). Smaller television companies Cogeco and Craig do have a distribution connection.

In the radio industry, only Rogers Radio and Corus have any distribution connection. All the other major radio broadcasters - Standard, CHUM, Newcap and Astral have no distribution connection. Of the smaller radio broadcast groups, only Cogeco has such a connection.

Secondly, where there is a connection with a distribution undertaking, the programming undertaking's licences are held in a separate company from the distribution company. Where these companies are public, they are often traded separately on the stock exchanges and often the major shareholders are different. For example, CTV is held by Bell Globemedia, which is a publicly traded company controlled by BCE with the Thomson Family as a large minority shareholder. Corus Entertainment is controlled by Shaw but is separately incorporated with American broadcaster Liberty Media, holding 20% of the shares. Rogers' radio and television licences are held by Rogers Media and Quebecor holds TVA through a separately incorporated company with different shareholders. Clearly, these companies are separate entities and a change in the rules for distribution does not automatically require a change in the broadcasting rules.

Thirdly, as is the case for distribution, few broadcast companies have any significant foreign shareholding now, despite the fact that the current rules allow foreigner to hold up to 46.3% of the voting shares. If there is a need for access to capital for these companies, they still have lots of room within the existing rules to increase foreign voting equity.

Some broadcast companies, and particularly conventional television companies, will argue that they need access to additional capital to deal with the costs of conversion to digital and to High Definition Television. Once again, we do not understand why these companies do not seek out additional capital through the sale of shares up to the existing rules, unless the question is one of control. If the question is one of control of our broadcasting undertakings by foreign undertakings, then the question is once again whether Canada really wants its broadcasting controlled by foreigners.

A look at the publicly traded broadcast companies seems to indicate that they are doing quite well. We decided to look at three companies - CanWest, CHUM and Corus. We looked at the Research Comments on each by RBC Capital Markets. These comments provide the investment community with RBC's evaluation of the value of the stocks of these companies.

→ CanWest - RBC's April 25, 2003 report is quite positive on the television operations of CanWest. Despite concerns about the debt load carried by the company and the sluggish performance of its newspaper division, RBC believes that the stock could reach $ 13 from its present level of $ 8.05.
→ Corus - the April 25, 2003 report indicates that Corus is outperforming expectations and is expected to continue to do so. Its strongest divisions are radio and television with its content production side (Nelvana) the only slow part of the company.
→ CHUM - the April 25, 2003 report indicates that CHUM as well is outperforming expectations and is expected to continue to do so. The stock is trading at $ 61 and is predicted to rise to $ 68.

Clearly, these companies could and will attract additional investment, if it is needed.

Do we need foreign ownership rules if we have Canadian content regulations?

The CCA's answer is a resounding yes. Given that Canadian broadcasting entities already have the option of increasing foreign ownership beyond the current levels, there is really only one reason that they have not done so. A foreign broadcast investor wants control in exchange for purchasing as much as 46.3% or more of a Canadian broadcasting company.

Who is likely to buy into Canadian broadcasting but foreign broadcast undertakings, largely but not completely owned by transnational conglomerates? These conglomerates are already both vertically and horizontally integrated. The elimination of the rules that kept production and broadcasting separate in the United States often result in programming decisions on television undertakings being made on the basis of what is best for the parent company, in cases where the broadcaster has a corporate relationship with the production company.

If these broadcasters control Canadian companies, will the resulting Canadian newscasts, look like CNN's coverage of the Iraq war, or like the more balanced approach that our own news organizations took? Will the choice of Canadian programming be to reflect Canadian values and audience needs or to appeal to American audiences?

Admittedly, some decisions driven by such concerns have been made by Canadian broadcasters and producers. But with common ownership across the border guaranteeing broadcast in the larger market, how long would it be before most of the decisions are made that way?

What would be the downside of increased foreign control of Canada's cultural industries?

An example of the difference that ownership makes is the way the Discovery Channel works. In

Canada, while the American broadcaster has a minority interest, the Canadian broadcaster, CTV, controls the Canadian Discovery Channel. Elsewhere in the world, the American parent controls the Discovery family of channels.

A review of the program schedules is quite instructive. We looked at a Monday, a Saturday and a Sunday for each of Discovery Canada, Discovery India and Discovery Middle East. We chose Monday since the schedules are similar from Monday to Friday. On the Canadian Discovery channel, there were 11 hours of Canadian programming on Monday, 12 hours on Saturday and 13 hours on Sunday. On the Discovery Middle East, none of the programs were made in the Middle East; in fact the vast majority of programs were from the United States with a few Canada and the UK, with one from Botswana. In India, with its huge population, we found only one program made in India, Discover India. It is clear from a description of the program on the website that the program is the single opportunity for India's large film industry to develop programs.

Given Canada's strong interest in American programming and its history of access to US programs of all kinds, we could expect that while there would be initial compliance with the Canadian content requirements, pressure through the US Trade Representative and other means would be exercised to make the channels more like they are elsewhere in the world. And we can expect that this would be true across the gamut of program types. With the CBC and other public broadcasters as one or two oases of Canadian programs, it would not be long before we would not recognize ourselves on our television screens. In fact, we might see lots more Hollywood North programs, made in Canada for a US or international audience.

Is Canada meeting its cultural goals? And if not, why not?

In a context where there are enormous on-going pressures on our cultural industries, Canada has continued to ensure that high quality cultural expression in both official languages, in the languages of our First Nations and, increasingly, in the many other languages spoken here is available.

But our cultural industries, with the exception of broadcasting, remain fragile. This is particularly true in English-speaking Canada. In the recording sector, the number of independent Canadian labels has decreased and while there are a few notable successes, many of the labels that were considered industry leaders ten years ago no longer exist.

The English-language book publishing industry is also in crisis with the loss of the largest Canadian distributor, General Publishing as well as many other structural changes. According to a survey of the publishing industry released in March 2003 by Canadian Heritage, there is a real succession issue in the publishing industry with many of the smaller private companies facing the retirement of the owner-operators and no immediate successors in view. Moreover, inconsistent enforcement of the ownership policy by federal officials, perhaps as a well-intentioned effort to remain flexible for an industry in crisis, has resulted in a significant loss of Canadian ownership in the publishing industry.

In the film and television industry, declines in funds available to the CTF and poorly considered changes to the CRTC television policy in 1999, along with a steady public appetite for American reality-based programs, has meant a precipitous decline in drama production, and particularly in indigenous drama that expresses a Canadian point of view. [6]

[6] Solutions on how to improve the health of Canadian broadcasters are proposed in Trina McQueen's May 2003 report, *Dramatic Choices: A Report on Canadian English-Language Drama*, prepared for the CRTC and Telefilm Canada. Another, more activist view, is articulated in The Canadian Coalition of Audio-visual Union's (CCAU) March 2003 report, *The Crisis in Canadian English-Language Drama*.

Despite these threats and those posed by aggressive American trade policy, Canada continues to meet many of its cultural goals. Canadian authors rule the bestseller lists, Canadian singers top the charts and we have even seen a slight increase in the market share of Canadian films. The presence of a culturally activist Québec government, strong federal support of French-language cultural industries and francophone citizens who have a taste for domestic cultural products makes for a better picture in French-speaking Canada.

Conclusion

We have argued that the broadcasting industry is flourishing today because of the regulatory framework that requires the broadcast of Canadian programs, limits the entrance of foreign services and limits foreign ownership, while permitting some access to foreign capital. With a few adjustments in areas to favour Canadian content and the development of specific forms like drama, the industry could maintain its growth, even within the trend towards globalization. We speculate that, could we reverse history and apply similar but appropriately tailored regulations to sound recording, publishing and parts of the film industry, they would be more creative, financially stable and expansive today. We contend that by enforcing the regulations we have and constantly adjusting and modifying our cultural policies, Canadians will continue to reap the cultural and financial befits that flow from the creative industries. If on the other hand we give in to pressure to liberalize our policies, and especially in this case foreign ownership restrictions for the broadcasting industry, the result will certainly be a dramatic decline in the success of the industry with all it concomitant sets of problems.

Appendix 1

Data on Canadian Controlled Sound Recording Companies

The following chart shows the performance of Canadian owned Sound Recording Companies. In the section new releases, the row entitled with Canadian content/by Canadian artists shows the percentage of new releases by Canadian artists or with Canadian content in each year that Canadian owned companies were responsible for. The other shows the percentage of foreign artists that Canadian companies released in Canada in the year and the row Total shows the percentage of the total number of releases of all records in that year in Canada that Canadian companies originated. Similarly, with regard to the share of revenue, the first row shows the percentage of revenues from Canadian artists that Canadian controlled companies achieved.

	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1995-96	1998	2000
% of all new releases										
With Canadian Con/. by Canadian Artists	74.3	69.5	74.1	71	77.4	75.2	71.1	80.6	80.3	83.9
Other	17.5	20.2	13.0	13.0	13.0	16.5	29.8	22.3	19.8	22.3
Total	25.8	27.8	21.5	20.7	22.3	22.8	34.4	29.6	29.0	29.6
% Share of revenue										
Sales of Recordings - Canadian Con./Artists	57.2	60.1	59.3	57.3	54.5	42.0	44.6	43.7	51.0	46.3
Total Sales	13.3	11.4	11.1	11.6	13.1	14.2	16.0	13.9	11.6	13
Other Revenue	30.1	27.8	25.1	29.7	37.6	38.0	34.7	24.8	15.5	16.8
Total Revenue	18.3	16.0	15.3	16.8	18.6	19.8	20.3	16.4	12.9	14.3

Source : Statistics Canada, 87F008XPE – Table 11.1 section 8.

To take the example of 1987-88, while Canadian controlled companies released 74.3% of all Canadian content recordings, they only received 57.2% of the revenues for Canadian artists' recordings. In the same year, while these companies were responsible for 17.5% of releases from foreign artists, they only received 13.3% of the revenues. And finally, while they were responsible for 25.8% of all new releases, their revenue share 18.3%.

Appendix 2

Data on the Canadian Book Publishing Industry

The following charts are reprints of information provided by Statistics Canada's publication The Daily of June 26, 2003.

Profile of book publishing and exclusive agency in Canada

	1996/97	1998/99	2000/01
Firms	**Number**	**Number**	**Number**
Publishers	498	643	627
Exclusive agents	51	57	45
Titles			
Titles published[1]	11,356	14,439	15,744
Titles reprinted[1]	7,607	10,262	12,053
Sales	**$ '000**	**$ '000**	**$ '000**
Sales in Canada	1,536,044	1,686,691	1,814,696
Own titles	672,511	736,799	961,528
Exclusive agency	863,533	949,892	853,169
Exports	120,611	133,177	154,785
Other foreign sales	284,845	292,081	313,411
Personnel	**Number**	**Number**	**Number**
Full-time employees	7,233	7,374	8,635
Part-time employees	1,241	1,298	1,638
Total personnel expenses[2]	$ 321,535	$ 352,477	$ 423,106
Total revenue	**$ 2,012,232**	**$ 2,208,463**	**$ 2,416,045**
Total expenses	**$ 1,927,944**	**$ 2,071,020**	**$ 2,248,255**
Before-tax profit margin	84,288	137,442	167,790
As a percentage of revenues	4.2%	6.2%	6.9%
% of firms with a profit	51.0%	58.4%	56.4%

Includes salaries of full and part-time staff as well as outside fees.

% of firms with a profit 51.0% 58.4% 56.4%

Profile of foreign-controlled book publishing firms in Canada			
	1996/97	**1998/99**	**2000/01**
Firms	Number	Number	Number
Publishers	20	16	17
Exclusive agents	12	16	10
Titles			
Titles published[1]	1,403	1,803	2,208
Titles reprinted[1]	1,176	1,316	2,397
Sales	$ '000	$ '000	$ '000
Sales in Canada	673,195	730,796	846,170
Own titles	224,426	231,646	408,517
Exclusive agency	448,769	499,150	437,653
Exports	5,468	4,325	8,403
Other foreign sales	29	185	171
Personnel	Number	Number	Number
Full-time employees	2,373	2,207	2,789
Part-time employees	239	428	610
Total personnel expenses[1]	$ 101,727	$ 100,853	$ 147,656
Total revenue	**$ 690,382**	**$ 741,143**	**$ 872,388**
Total expenses	**$ 653,315**	**$ 688,545**	**$ 789,595**
Before-tax profit margin	$ 37,068	$ 52,598	$ 82,793
As a percentage of revenues	5.4%	7.1%	9.5%
% of firms with a profit	62.5%	59.4%	66.7%

[1] Includes the activities of publishers only

[1] Includes the activities of publishers only

Profile of Canadian-controlled book publishing firms in Canada			
	1996/97	**1998/99**	**2000/01**
Firms	Number	Number	Number
Publishers	478	627	610
Exclusive agents	39	41	35
Titles			
Titles published[1]	9,953	12,636	13,536
Titles reprinted[1]	6,431	8,946	9,666
Sales	$ '000	$ '000	$ '000
Sales in Canada	862,850	955,895	968,527
Own titles	448,086	505,153	553,011
Exclusive agency	414,764	450,742	415,516
Exports	115,143	128,851	146,382
Other foreign sales	284,616	291,896	313,239
Personnel	Number	Number	Number
Full-time employees	4,860	5,167	5,846
Part-time employees	1,002	870	1,028
Total personnel expenses[2]	$ 219,808	$ 251,624	$ 275,450
Total revenue	**$ 1,321,850**	**$ 1,467,320**	**$ 1,543,657**
Total expenses	**$ 1,274,630**	**$ 1,382,475**	**$ 1,820,135**
Before-tax profit margin	$ 47,220	$ 84,845	$ 84,997
As a percentage of revenues	3.6%	5.8%	5.5%
% of firms with a profit	50.3%	56.3%	56.0%

1 Includes salaries of full and part-time staff as well as outside fees.

1 Includes the activities of publishers only

Canadian Book Publishing Industry: Language of Firms and Origin of Control, 1998-99				
	French-Language Firms	English-Language Firms	Canadian-controlled Firms	Foreign-controlled Firms
Number of publishers	112	188	285	15
Number of titles published	3,152	8,617	9,981	1,788
Full-time staff	1,646	5,212	4,718	2,140
Total revenues ($'000,000)	$357	$1,701	$1,360	$699
Total revenues per title published ($'000)	$113	$197	$136	$391

Canadian Book Publishing Industry by Category of Title, 1992-93 to 1998-99					
	1992-93	**1993-94**	**1994-95**	**1996-97**	**1998-99**
Number of titles published	**9,711**	**10,537**	**10,611**	**10,546**	**11,769**
Textbooks	1,893	2,274	2,469	2,309	2,676
Children's books	-	-	-	1,087	1,257
Tradebooks	5,390	5,746	5,533	4,447	5,098
Scholarly, Reference, Professional and Technical	2,428	2,517	2,610	2,703	2,738
Share of Canadian-authored own titles published	**74.4%**	**72.7%**	**73.9%**	**74.7%**	**72.3%**
Textbooks	96.2%	94.4%	90.9%	93.1%	94.2%
Children's books	-	-	-	59.6%	63.5%
Tradebooks	57.5%	55.3%	56.6%	55.4%	51.2%
Scholarly, Reference, Professional and Technical	94.9%	93.0%	94.5%	97.3%	94.4%
Net Sales in Canada of own titles ($'000,000)	**$598**	**$606**	**$656**	**$663**	**$702**
Textbooks ($'000,000)	$257	$229	$252	$244	$267
Children's books ($'000,000)	-	-	-	$53	$56
Tradebooks ($'000,000)	$150	$164	$182	$169	$189
Scholarly, Reference, Professional and Technical ($'000,000)	$199	$213	$217	$197	$190
Total Exports ($'000,000) [2]	**$62**	**$102**	**$110**	**$105**	**$104**
Textbooks ($'000,000)	$9	$10	$10	$15	$15
Children's books ($'000,000)	-	-	-	$45	$43
Tradebooks ($'000,000)	$42	$77	$61	$29	$29
Scholarly, Reference, Professional and Technical ($'000,000)	$11	$15	$19	$17	$17
Scholarly, Reference, Professional and Technical ($'000,000)	$11	$15	$19	$17	$17