



CANADIAN ARTISTS = CANADIAN PROGRAMS

EXECUTIVE SUMMARY

In this era of globalization and the concentration of media ownership, we can't choose to watch Canadian productions on our screens, either big or small. Yet, we have the talent and resources necessary to create high quality and popular Canadian programs that will attract audiences. What is needed is a radically new approach that starts from a simple truth:

A Canadian program is one conceived, written, performed, directed and produced entirely by Canadians – such a program will look and feel Canadian, regardless of what the story is about, or where it is set.

This must become the new definition of a Canadian program, with relevant policies and programs amended over the next three years to conform to it. This new definition is but one piece of a larger puzzle. Achieving the objective of bringing more and better quality Canadian programs to our audiences requires a comprehensive series of reforms, including:

- Levies from film distributors for the production, marketing and promotion of Canadian movies, adequate space on theatre screens for those movies and a significant television movie channel for Canadian filmmakers.
- Reinstatement of strong CRTC regulations to stimulate the production of drama programs.
- A radically new public broadcaster – with more television channels, not more transmission towers – with more drama programs and films, not more staff.
- Public/private partnerships that eliminate the need to rely on foreign financing to make Canadian shows.
- CRTC regulations that give priority carriage to public interest television services; that recognize the changing nature of the broadcasting system and the growing importance of the smaller private broadcasters, such as the specialty services; and that ensure the larger players, who use public airwaves for private profit, contribute handsomely to the public/private partnerships; and
- A revitalized independent production sector – Canadian tax dollars should support only those who bring Canadian stories to the screen and who share in the financial risk, not those who merely line their own pockets.

Alliance of Canadian Cinema, Television and Radio Artists

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BACKGROUND

The Alliance of Canadian Cinema, Television and Radio Artists represents professional artists working in Canada's recorded media. ACTRA's principal function is looking after the collective bargaining needs of more than 18,000 performers whose work in films, television, commercials, digital media, sound recordings, radio and other productions entertains, educates and informs Canadians and audiences in other countries. ACTRA members live and work in every part of the country.

Through our collective agreements with producers, we have established minimum terms and conditions of engagement for actors, singers, dancers, hosts, stunt performers and coordinators, puppeteers, variety artists, cartoonists, animation performers, narrators, announcers, background performers, panellists, models, sportscasters and other performers. When audiences watch English-language Canadian television programs, series and movies, they are watching and hearing ACTRA members.

ACTRA members have a vital stake in Canada's cultural future. Our members believe that Canada needs a strong Canadian presence wherever entertainment and information services are created and however these services might be provided to Canadians. For this reason, ACTRA is an active participant in the public policy discussions about our industries and Canadian culture.

ACTRA has a significant interest in the review of the definition of a Canadian program launched by Minister of Canadian Heritage, Sheila Copps, since the issues raised touch directly on the livelihood of the members and our passions as Canadian artists. We look forward to participating in the public dialogue.

AFTER FIFTY YEARS WE CANNOT CHOSE A CANADIAN PROGRAM

Canada needs a television and film industry so we can tell our stories. So we can communicate with one another across this vast expanse of land and build an understanding of what it is to be Canadian. Telling Canadian stories helps us understand our place in the world community and contributes to a new global citizenship. Artists want to celebrate Canadian successes and explore our failures, to teach new citizens and future generations about Canadian values, traditions and history, to articulate the Canadian sensibility, through movies, television programs and digital media.

Television came to Canada 50 years ago, and we have been in the film business even longer. We have succeeded when it comes to Canadian news and information programming; our children's, family, animation and comedy programs are among the best in the world; and we have ample opportunity to see our sports heroes in action. But generally we cannot choose to watch Canadian fiction programs, on either the big screen or small. Yet, these are the most culturally significant and the most watched program genre.

There are many reasons for this failure and it is not the place of this submission to provide a detailed analysis of them. However, for purposes of this review, one thing is clear. The existing Canadian content regulations permit the production of material with little relevance to Canadian audiences to qualify as Canadian for regulatory and funding purposes. This is unacceptable.

CANADA HAS BECOME A SET FOR FOREIGN PRODUCTIONS

In 2000, for the first time in the 60-year history of ACTRA, members were engaged to do more work on the movies and television programs of others than on Canadian content. In 2001, this trend accelerated, with foreign location production reaching \$1.8 billion, while English-language Canadian content production stood at \$1.4 billion.

And the situation gets worse when you dig deeper into these figures:

- production of 8 to 10 point Cancon declined by 5% between 2000 and 2001;
- production of Canadian fiction programs declined by 3% between 2000 and 2001;
- some of the programs that qualify as Canadian are creatively and financially driven from outside Canada, and this is reflected both in the use of non-Canadian actors, writers and directors, and in the stories that are told.

ACTRA members increasingly work on productions that reflect the values and aspirations of others, for an industry that is supplanting our own. The hollowing out trend we see in other economic sectors is reflected in the film and television industry: many so-called Canadian producers are little more than service producers, shell companies for head offices located in Hollywood. While we appreciate the income that helps us to survive as professional artists, it is not satisfying work for Canadian actors, and most of the substantive roles in these productions are cast outside Canada.

A recent informal Internet poll asked members of ACTRA if, given a two-tier fee structure, they would forego a bonus export rate to work on a fully Canadian film. Almost 80% of respondents said that, faced with competing work offers, they would chose the fully Canadian film despite this differential. This is a powerful statement of the commitment of ACTRA members to Canadian culture.

TELEVISION DRAMA DECLINES AND CANADIAN MOVIES DISAPPEAR

The Writers Guild of Canada has analyzed trends in the production of adult television drama series. In 1999, we produced 35 Canadian Content series, 17 designed for the Canadian market, and 18 designed for the export market. By 2001, total production had declined to 25 series, with 10 designed for the Canadian market, and 15 designed for the export market.

The decline in television drama production coincides with the 1999 decision of the CRTC to expand the definition of priority programming to include regional programs and documentaries of 30 minutes or more and to reduce the regulatory burden on the larger Canadian broadcasters. ACTRA believes this policy must be reversed, to return to the larger private broadcasters a clear responsibility to acquire and program Canadian drama as a fundamental priority.

The problems in Canada's feature film industry are well known. The recent box office success of *Men With Brooms* merely highlights the fact there are virtually no English-language Canadian movies on our theatre screens. It also shows that when a high quality Canadian movie is promoted and marketed aggressively, Canadian moviegoers will go to see it. But overall, according to Telefilm Canada, only 0.2% of our screen time is devoted to these movies. Between 2000 and 2001, total Canadian theatrical production declined by 7%, while the production of foreign movies increased by 3%. In 2001, total budgets of foreign movies produced in Canada were more than double Canadian ones, and the ratio is far higher when French-language movies are eliminated and you restrict the analysis to the production of English-language films.

In case there is any doubt, ACTRA appreciates the work opportunities brought to us by foreign producers and fully supports efforts that ensure we remain competitive in the global marketplace. But we must also acknowledge the serious crisis of our industry. We must act decisively to foster the indigenous production community while we still have one, and to increase the opportunities for Canadians artists to create Canadian content productions.

THE CANADIAN CONTENT POINT SYTEM

The definition of a Canadian program is an essential component of Canada's cultural policy framework and a fundamental basis of the CRTC's regulation of the television system. The point system is used by CAVCO for administering the tax credit program; by Telefilm Canada and the Canadian Television Fund for making investment decisions; and by other provincial, federal and private agencies that support production activity. It has become a touchstone for the entire film and television production industry.

The existing regulations have remained largely static since they were modified in 1984. Yet, in the 18 years since, the Canadian television landscape has changed profoundly. Eighteen years ago, commentators decried the poor quality of Canadian productions, broadcasters were the primary producers and Canadian content programming was virtually unknown outside Canada. But in the last decade, Canadian television programs and movies have become world-class, those that are available can attract audiences everywhere. They receive critical acclaim at home and abroad. Canada's independent production community has emerged, grown and matured in the last two decades.

The existing point system is used to assess whether a television program or series is Canadian. A prerequisite to recognition is for the producer to be Canadian, and the producer

must obtain 6 out of a possible 10 points awarded on the basis of citizenship of individuals filling key creative positions:

- Director - 2 points
- Writer - 2 points
- Leading Performer - 1 point
- Second Leading Performer - 1 point
- Director of Photography - 1 point
- Editor - 1 point
- Music Composer - 1 point
- Head of Art Department - 1 point

The producer is required to have a Canadian in one of the writer or director positions and one of the performer positions. A minimum percentage of total remuneration to individuals must be paid to Canadians.

ACTRA would stress it is thus possible to obtain recognition as a Canadian program with a foreign writer and foreign performers in key on-screen roles.

This is the minimum, additional obligations are applied by some of the agencies, often merely as a way of differentiating between competing applications. A producer must obtain at least 8-out-of-10 points to qualify for a **direct** financial investment through Telefilm Canada, but this threshold can be met with non-Canadian artists in key performance roles. Only the Canadian Television Fund regulations adopted in 2000 effectively limits funding to projects that are fully Canadian.

ACTRA believes there is growing and legitimate concern about whether some of the material which qualifies as Canadian content under the existing system adds substantively to Canada's cultural development. Further, as the quality of Canadian programs has increased, Canadians audiences have shown a growing preference for the more distinctively Canadian programs, recent examples being *The History of Canada* and *Trudeau*. But, we have far too few of these programs. ACTRA believes also that truly Canadian programs have the potential to sell best in world markets, precisely because they cannot be produced elsewhere.

REDEFINING A CANADIAN PROGRAM

ACTRA supports the basic cultural objective at the root of the Canadian content system, "to ensure that Canadians have diverse and accessible Canadian choices and to connect Canadians to one another and the world." The system must also meet the challenge of "ensuring the fair and equitable sharing of the opportunities and benefits for all." It is precisely with these principles in mind that ACTRA puts forward its proposal to radically reform the current system.

ACTRA begins by noting support for three underlying concepts:

1. It is fundamental to continue to base the assessment on the nationality of the creative personnel utilized on a project. While the themes and storylines are important, they should be addressed only through a requirement that Canadians be fully in control of the production and that Canadian writers are used on the projects. When Canadian creators tell a story, they bring a Canadian sensibility and perspective to it, regardless of what the story is about or where it is set. ACTRA supports the underlying basis of the current system, since it is appropriate to leave the storytelling to the creators.
2. The requirement for the beneficial owner of the copyright in the movie or television program to be Canadian remains valid.
3. ACTRA does not favour residency requirements. Canadians who have chosen or been forced to pursue their career abroad should continue to be treated equally with Canadians who live and work in Canada, and with foreign artists who become permanent residents of Canada and build their careers here.

In the current public policy system, there are distinct advantages to Canadian content status. This status can lead to preferential tax treatment, funding support from public and private sector agencies, increased license fees and a prolonged shelf-life. As a result, the status should be guarded securely.

RECOMMENDATION NUMBER 1

The first step in turning our production industry around and in achieving our great promise as a creative industry is to acknowledge a fundamental first principle:

A Canadian program is one conceived, written, performed, directed and produced entirely by Canadians. If the actors, singers, dancers and other performers are Canadian; if the scriptwriter, cinematographer, editor, costume designer, technicians and narrator are Canadian; if the post production work is done by Canadian artists – the project will look and feel Canadian, regardless of what the story is about, or where it is set.

ACTRA proposes that this definition of a Canadian program be adopted in principle immediately.

RECOMMENDATION NUMBER 2

ACTRA proposes that a committee of representatives of the production industry, broadcasters, guilds and unions and the government and its agencies be convened to develop the appropriate mechanisms for the implementation of this new definition in drama, comedy and other fiction program genres, and the necessary transitional measures. This process should be completed within three years.

IMPLEMENTING THE NEW DEFINITION

ACTRA appreciates there is a hierarchy of measures that support production in Canada, from CRTC content rules that increase the value of a Canadian production in the domestic market, to substantial direct investment of public money through Telefilm Canada and the Canadian Television Fund. In this section, we outline how the new definition of a Canadian program will be implemented, subject to further review by the committee.

RECOMMENDATION NUMBER 3

Where the Canadian public is essentially footing the bill for a drama program, the new definition of a Canadian program should apply as soon as practicable. The only exception to the fully Canadian rule in the performance categories should be where the engagement of a foreign artist is an essential element of the story being told and fundamental to the script.

ACTRA rejects all proposals and policies that a non-Canadian artist can be engaged for purposes of “marketing” the program or movie. If the use of a non-Canadian artist is required for the producer to obtain foreign financing, then the production should be financed privately in Canada as well, using only the support available through the tax credit system.

The use of tax credits to support production is different from direct public funding provided by Telefilm Canada, the Canadian Television Fund and others programs. While one can argue that foregone tax revenues are a form of public funding, the fact is that a private entrepreneur makes the investment in the production in the first instance. The tax credit represents a rebate of a portion of the salaries and wages paid out, a rebate that is claimed upon filing of a tax return. The system is also an industrial measure, since it generates production activity and results in additional taxes being paid by all of the participants in the production.

The Foreign Services Production Tax Credit is essential to Canada’s competitive position. Public support in the form of tax credits ought to bring a corresponding obligation. Foreign producers receiving the benefit of tax credits should ensure work is provided to all parts of Canada’s film community. It is unacceptable for the performers alone to be left out of the equation. Canada’s immigration policies must support adequate opportunities for Canadian performers in all productions filmed in Canada under the tax credit programs. Thus, ACTRA believes Human Resources Development Canada should eliminate the Net Benefit Test, and replace it with a program that encourages and assists foreign producers to search in Canada for actors and other performers.

Next in the hierarchy of support measures is the tax credit system for Canadian content production, where the producer receives a higher tax rebate for eligible Canadian labour expenditures. Typically, these productions also qualify as Canadian content for purposes of CRTC regulations and thus benefit from higher license fees than would otherwise prevail.

RECOMMENDATION NUMBER 4

ACTRA proposes that, effective immediately:

- Producers benefiting from the Canadian content tax credit system and CRTC recognition should be required to obtain 8-out-of-10 points.
- A television project that is patently not Canadian in character should no longer enjoy status as a Canadian program – this includes production packages, co-ventures, twinning and individual episodes in a series that fail to achieve the appropriate points.
- A program produced under an official co-production treaty that utilizes “third party country participants” should not qualify as Canadian.

The industry committee will be responsible for examining funding models not covered above and determining the corresponding obligations to Canadian artists that should apply. It will also develop the timetable for implementation.

RECOMMENDATION NUMBER 5

ACTRA proposes the following limitations on the use of non-Canadian performers in other program genres that benefit from designation as Canadian Content.

- Documentary Program – all voice performers must be Canadian.
- Quiz, Panel or Game Program – host must be Canadian and no more than 1-in-4 of the regular panel may be non-Canadian.
- Variety or Music Program – where a program or series features an act or star, such star must be Canadian – other performers may be non-Canadian, subject to the 1-in-4 limit.
- Talk, Interview or Public Affairs Program – recurring roles, such as host, must be Canadian – non-Canadians may appear as guests, without limit.
- Sports Program – sports broadcasters must be Canadian, with the exception of expert analysts, subject to an overall 1-in-4 limit.

ACTRA believes the use of Canadians in our own productions must become the norm, and the use of artists from elsewhere should occur only in the most exceptional circumstances, particularly where the Canadian public is footing most of the bill.

NEW MODELS FOR FINANCING CANADIAN CONTENT

ACTRA recognizes that, if the radically new approach to the definition of a Canadian program or movie is to work, we need as well a bold new approach to the production, distribution, promotion, marketing and exhibition of Canadian shows.

It is not acceptable to us to produce truly Canadian television and movies if Canadians will not watch them. An important element here is to redirect public funding, to create an environment in which it will be possible to tell Canadian stories and use our artists in productions people will choose. The following points are only a summary of what will comprise the key elements of a new system.

Independent producers, filmmakers and a revitalized public service broadcaster (which we will call CBC for the moment) will work together to create exciting new programs. The CBC will have several new television channels, including one devoted exclusively to Canadian drama programs and feature films. CBC2, the fiction channel, will be supported by commercial advertising revenues and additional public monies as the country's finances permit.

We will create new funding models that ensure we can fund our own productions in Canada and eliminate the need to rely on foreign financing. Private producers will continue to be involved and supplementary release rights and foreign sales will provide a reasonable profit to them.

MORE SPACE FOR HIGH QUALITY CANADIAN PROGRAMS

Canadians will watch our movies, if high quality Canadian choices are available. To achieve this, we must finally begin to solve the challenges that arise from our film distribution and exhibition business being fully integrated into the Hollywood system from the very beginning. ACTRA supports the immediate implementation of a special tax on film distribution profits, the proceeds from which will flow to the promotion and marketing of Canadian films. All Canadian films will receive an adequate run in an appropriate number of Canadian cinemas. NFB shorts will once again be available in our theatres. Given adequate marketing and promotion for Canadian movies, we expect cinema owners will cooperate in this campaign.

The CRTC will require priority carriage on all cable and satellite systems for a new *Public Interest Television Tier*, including the CBC, CBC2, Newsworld, a CBC Youth Channel, Vision TV, the local provincial educational broadcaster, Aboriginal Peoples Television Network, CPAC and the appropriate French-language services. The CBC will return to its core business – to produce and schedule Canadian programs. In this age of media convergence, a revitalized CBC is more important than ever and is critical to our nation's democratic dialogue.

ACTRA INVITES ALL CANADIANS TO HELP US REALIZE THIS VISION

In these trade-dominated times where references to the "bottom line" are constant, ACTRA maintains that the value of culture is inherent and cannot be measured in economic terms. We call upon all of our elected and appointed officials to demonstrate the courage and

integrity necessary to foster Canadian culture within Canada, and to prevent its commodification in the multilateral trading system.

We are at a crossroads. Down one road lies complete integration into a North American marketplace, where Canada becomes a small cog in the large Empire, fighting for its share of the pie. Down the other road lies a renewed Canadian industry producing high quality, popular Canadian programs. We intend to remain globally competitive and receive a share of global production. But, at the heart of our industry, we must have Canadian artists telling our stories.

This is only the broad outline of a bold new plan to save Canadian Culture. We know it needs more work and ACTRA will develop these ideas in the coming months. We invite industry partners, governments, agencies, and individual Canadians to join us in our quest to realize a new vision.

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