Film community appeal outlines economic, artists shortcomings

In a rare show of unanimity, the film industry has asked the cabinet to refer back to the Canadian Radio-television and Telecommunications Commission its decision to award six licenses (two national and four regional) for pay-television in Canada. Conspicuous by its absence was the Canadian Film and Television Association (see page 3 for list of groups supporting the appeal). The document which follows is the body of that appeal, and contains suggested remedies which should be regulated, should the Cabinet not wish to send the decision back for revision.

GENERAL CONCERNS

The CRTC's Decision 82/240 contradicts some of the basic policy objectives announced by the Commission in its call for license applications dated April 21, 1982 and in the decision itself, i.e. that:

a) "*Through its capacity to generate revenue*, pay television should *contribute significantly* to the broadcasting system by *increasing the diversity of programming* available to all Canadians coast-to-coast and by *enhancing the quality and distinctiveness of Canadian programs*;

b) "Pay Television should provide *new opportunities and revenue sources* for the program production industry in Canada, particularly for producers currently unable to gain access to the broadcasting system;

b) "Pay Television should also provide *new opportunities* for developing programs that *reflect the various regions of Canada* and should provide *new programming in both official languages*."

It is our submission that Decision 82/240 will not create a pay television service capable of contributing significantly to the realization of any of these objectives; in fact, in some areas it may have the opposite effect.

1. The commission has effectively made it impossible for pay television to generate the funds necessary to realize these objectives by:

a. granting too many competing licenses;

b) fragmenting the revenue base of each licensee;

c) creating duplication of marketing expenses;

d) creating the need for more costly (at least 10 times more costly) cable hardware to carry the multiple services licensed;

e) removing the bargaining power a single national service would have in the purchase of foreign product, thus perpetuating competitive bidding, or rendering the licensee vulnerable to the anticipated U.S. movie cartel made legal under the U.S. Webb-Pomerene Export Trade Act of 1918.

Given these limiations, the Commission's expressed "view" that "overall revenues available for funding pay television should be higher, if more than one service is licensed," seems to us irrelevant. So will all costs! And these costs can only be met by reducing the amount projected by the licensees for Canadian programming. Our concern has always been how much money will the pay television system generate for Canadian productions. In our interventions before the Commission we asked that it keep in mind that the dollars promised to Canadian production is essentially a remainder figure: it is what is left over.

What will be left over?

First Choice Canadian Communications, the national licensee, warned the Commission that if it had to compete with other licensees, it would be forced to drop its expenditures on Canadian programming from $403.7 million to $162.9 million (60 percent) over the five year period of its license. *And* even this drastically reduced commitment would be conditional on: high penetration levels; the establishment of a common purchasing agency for foreign feature films; the requirement that cable companies offer their subscribers all the services licensed in their area; and, the regulation of the retail selling price of its services. The CRTC decision meets none of these conditions.

The three licensed regional applicants – Alberta Independent Pay Television, Ontario Independent Pay Television, and the Star Channel – advised the Commission that their commitment to Canadian programming was conditional on being granted exclusivity within their regions in the supply of first-run feature films and a priority position in startup and subscription. The CRTC decision meets none of these conditions.

2. Higher costs for foreign product, marketing and cable hardware will not only dramatically reduce the overall funds possible for Canadian production, they will diminish the overall quality and competitiveness of Canadian production, by reducing the amounts licensees will have to spend per hour of programming.

First Choice warned the Commission that competitive licensing would mean the "decline" of its average licensing fee to $118,794 from $330,000 per hour – a drop of 60 percent.

This at a time when, in Canada, the minimum cost for quality, competitive dramatic programming runs between $350,000 and $500,000 an hour; and, at a time, when our main competitors, the United States, spend from $800,000 to $1,200,000 an hour.

"The result will be obvious," First Choice observed. "It will be substantially more difficult to develop a high volume of high quality programs... productions which would be necessary to correct the current broadcast schedule imbalance in favor of U. S. shows. The result is likely to be a reduction in Canadian content and abandonment, in effect, of the rationale for introduction of Pay Television in Canada."

First Choice also warned the Commission that it would have to drop its average license fee for Candian feature films from $500,000 to $190,000 in the first year, if competitive licenses were awarded. It is hard to see this figure offering any inducement for Canadian feature film production.

3. While we applaud the Commission's condition of license that 60 percent of a licensee's total program acquisition and investment budget be spent on Canadian programs, we find it unrealistic.

We have been able to get no assurances from the licensees that these conditions can be met. The best they can offer is a "desire" to meet them. (See attached letter, dated April 5, from First Choice to the Producers' Council of Canada).

We do not criticize the companies offered licenses by the Commission. Any of the other applicants thrust into the pay system devised by the Commission would have been faced with the same problem: how to meet the conditions of license when essentially they were not viable.

4. In the absence of regulations to enforce these conditions of license, we don't think it irresponsible to project that they will be honored more in the breech than in the performance.

5. As a result of Decision 82/240, we don't see pay television in this country:

a) enhancing the quality and distinctiveness of Canadian programming; and

b) providing new opportunities and revenue sources for the Canadian private sector.

Rather, we see it:

a) generating low-quality, noncompetitive Canadian programming;

b) creating programming that is indistinct from U. S. programming, necessarily forcing the weak, underfunded licensees into co-financing arrangements with the U. S. pay operations, in order to generate product;

c) providing new opportunities for U. S. producers to generate product masquerading as Canadian under loose CRTC Canadian-content regulations. (Such arrangements are already underway).

6. We see the decision providing even less opportunity for new French-language programming. We find it reprehensible that the CRTC could institute a full, French-language national service for only two years; and, at that point, entertain a regression to a policy of territorial bilingualism.

Studies done by all the national applicants established that, in order to generate new French-language production for the small, relatively uncabled French-language market, the French-language side would have to subsidize it. Quebec government studies support that conclusion. That is why no applications were made to provide a Quebec regional service. And that is why we question the Commission's assumption that any will be forthcoming in the near future.

As designed by the Commission, French-language pay service will amount to no more than cheap, unattractive Canadian fare and dubbed first-run foreign movies. Most of these will be American, all of which will be available in the same areas *first* in the English language, due to the delay of dubbing.

7. We see no new opportunities created by the Decision for programs that reflect the various regions of Canada. The weak regionals, we feel, will be forced to form, in effect, a third national service, and like the other nationals have to direct most of their Canadian programming funds into material with export potential, mainly to the United States.

8. In short, it is our contention that Decision 82/240 will realize none of the Commission's own objectives; in fact, it will bring about the almost immediate integration of the Canadian and American pay television systems.

SPECIFIC CONCERNS

1. We find insufficient guarantees in the Decision that licensees will act at arms length from program suppliers and foreign pay services.

2. There is no start date provided for the acquisition and investment in Canadian programs. The industry needs an inflow of funds now.

3. There are no specific requirements for investment in new production, as opposed to the acquisition of shelf material.

4. There is no encouragement let alone protection, of the independent, Canadian distribution sector.

GENERAL REMEDIES

If the pay television system conceived by the Commission is to become fact, we strongly urge the implementation of the following:

1. An on-going full French-language, national service with cross-subsidization from the English-language services.

2. Enforcement of the conditions of license by regulation. The CRTC Decision 82/240, page 19, paragraph 3, should read: "The Commission will automatically revoke the licenses of those who, at the end of any year during the term of their license commencing 1 July, 1982, have failed to contribute to the achievement of the Commission's objectives by reason of their non-compliance with the conditions of their license." Page 19, paragraph 3, now states only that "the Commission will consider denial of application to renew licenses. Presumably, it will also consider renewal of the licenses of those "who have failed to contribute to the achievement of the Commissions's objectives for Pay TV by reason of their non-compliance with the conditions of their licenses."

3. Tighter reporting requirements. The CRTC decision 82/240, Appendix A, Section 6, subsection (2), page 78, should read: "A licensee shall furnish to the Commission, within 30 days after the end of each semester:

a) an accounting of its total revenues from its operations under this license during the semester, and

b) an accounting of its total expenditures on the investment in, or acquisition of, both Canadian and foreign programs during the semester." Adding a Sub-section (3) reading: "A licensee shall furnish to the Commission upon request any additional information pertaining to its activities as the Commission deems necessary for the proper and effective administration of the Act and these regulations."

4. Regulations requiring licensees to purchase all foreign product through independent, Canadian-owned distribution companies. No Canadian production industry can survive and grow without an equally strong independent Canadian distribution arm. Also, we urge that regulations be put in place requiring that the foreign sale of Canadian product be handled only by independent Canadian-owned companies and that licensees be prevented from acting as their own foreign sales arm.

5. A common buying agency. Virtually all applicants and intervenors at the Pay TV hearings asked for such an agency for the purchase of foreign product in the event that competitive licenses were awarded.

SPECIFIC REMEDIES

1. Regulations of the pay services retail price. The amortization of the more expensive cable equipment required by the multiple licenses should be distributed over all the services (Telidon, etc.) this new generation equipment will carry.

2. The setting of a realistic average, per hour licensing fee for Canadian programming, with a provision for the upward indexing of the fee on a per subscriber basis.

3. The requirement of a time commitment from all licensees as to when funds will begin to flow into the production sector and in what size and form. The industry has been on hold for the past year waiting for the promised funds from Pay TV.

4. Section 5 of the CRTC Decision 82/240, Appendices C, D and F should be changed to read: "Not less than 50 percent of the monies required by condition of license to be expended by the licensee on the investment in, or acquisition of Canadian programs shall be expended on dramatic programs, *of which not less than 50 percent shall be new programs – i.e. produced after March 18th, 1982.*" (N.B. This should probably also apply to Appendix G (LAMB), where nothing like Section 5 now exists.

5. Regulations to prevent licensees from acting as producers should be further strengthened by regulation and changing CRTC Decision 82/240, Appendix A, Section 5, page 77 to read: "subject to sub-sections (2), (3) and (4) and except for filler material, any program produced by itself, another licensee, or by any production company related to them, after the date of issue of the license."

IN CONCLUSION

We, the undersigned, submit that the motion picture, however delivered, is the ruling art form of the period. The Canadian market however, is too small, too fra

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Media Centre launches Prof N. Frye

TORONTO – The University of Toronto Media Centre has launched its largest and most ambitious educational video series, 30 half-hour programs documenting Professor Northrop Frye's lecture course on the Bible and literature. The series, which took over two years to produce at an estimated cost of $250,000, is designed for use as a broadcast telecourse, a classroom aid, and a library resource, and its launching coincides with the recent publication of Professor Frye's study of the Bible, ***The Great Code: The Bible and Literature.***

The series was conceived and produced by Bob Sandler, executive producer Bob Rodgers, and directed by Bill Somerville. The Media Centre, which produces between 60-80 educational programs per year, has already received over 100 preview requests for the series from across North America, Europe, Australia, and the Far East.

Pay TV appeal

(cont. from p. 8)

mented (geographically, linguistically, economically and culturally) to support by itself the production costs of this, the most expensive of arts. Only through the exercise of public policy can the necessary funds be generated to help Canadians gain a proper measure of control of the art for Canadians.

We make this appeal at a time when Canadian producers, artists and craftspeople have a least a dozen feature films (***Quest for Fire, Porky's, Meatballs, Ticket to Heaven, Atlantic City, Scanners, Les Plouffe, Les bons débarras, The Amateur, Heavy Metal, If You Could See What I Hear, Videodrome***) gaining international popularity and acclaim.
when the world perception of the Canadian movie is undergoing a radical change ; at a time when we could take a great step forward.