

# The struggle for Canadian content

by Tanya Ballantyne-Tree

With the Canadian Radio-television and Telecommunications Commission's (CRTC) just-released proposed criteria for recognition of Canadian television programs (see box), 1984 looks like a watershed year in the history of the Canadian broadcasting system. The pressing challenge of rapid technological, industrial and cultural change, sometimes referred to as the "information revolution", has prompted the department of Communications, under the direction of its minister, Francis Fox, to proceed with what looks like a fairly complete overhaul of some of the major Canadian communications institutions. These changes—accompanied by uniformization of the Canadian content definition—are designed to control the threat to Canadian cultural sovereignty from American domination, a threat which increases with every advance in communications technology.

That the government's involvement in regulating the Canadian broadcasting system stems from a cultural concern has been evident in every policy paper since 1932. But today, the challenge which Fox has accepted is to see whether these cultural objectives can be reached via the private sector. Given financial backing and proper regulation, can Canadian producers create an industrial base which will create entertaining programs, make adequate profits to become self-sustaining, and still satisfy the political/cultural imperative to promote an image which reflects Canadian reality?

In current strategies, the Canadian content question is central—indeed, can be taken as the barometer of the strategies' success. As we measure the quantity and quality of the Canadian content in the programs distributed through the Canadian television system, we will see whether the recent policy initiatives finally add up to a viable "mix" for the production industry or whether the government has once again (as it did with feature film production) created an untenable and ultimately self-destructive system.

On Dec. 31, 1979, the CRTC confirmed "that existing regulations may no longer be adequate to carry out the aims of the Broadcasting Act and cope with the realities of a changed broadcasting environment. In the area of television broadcasting there is a serious question as to whether the present quantitative approach has achieved the goals intended, both from the perspective of the broadcaster who

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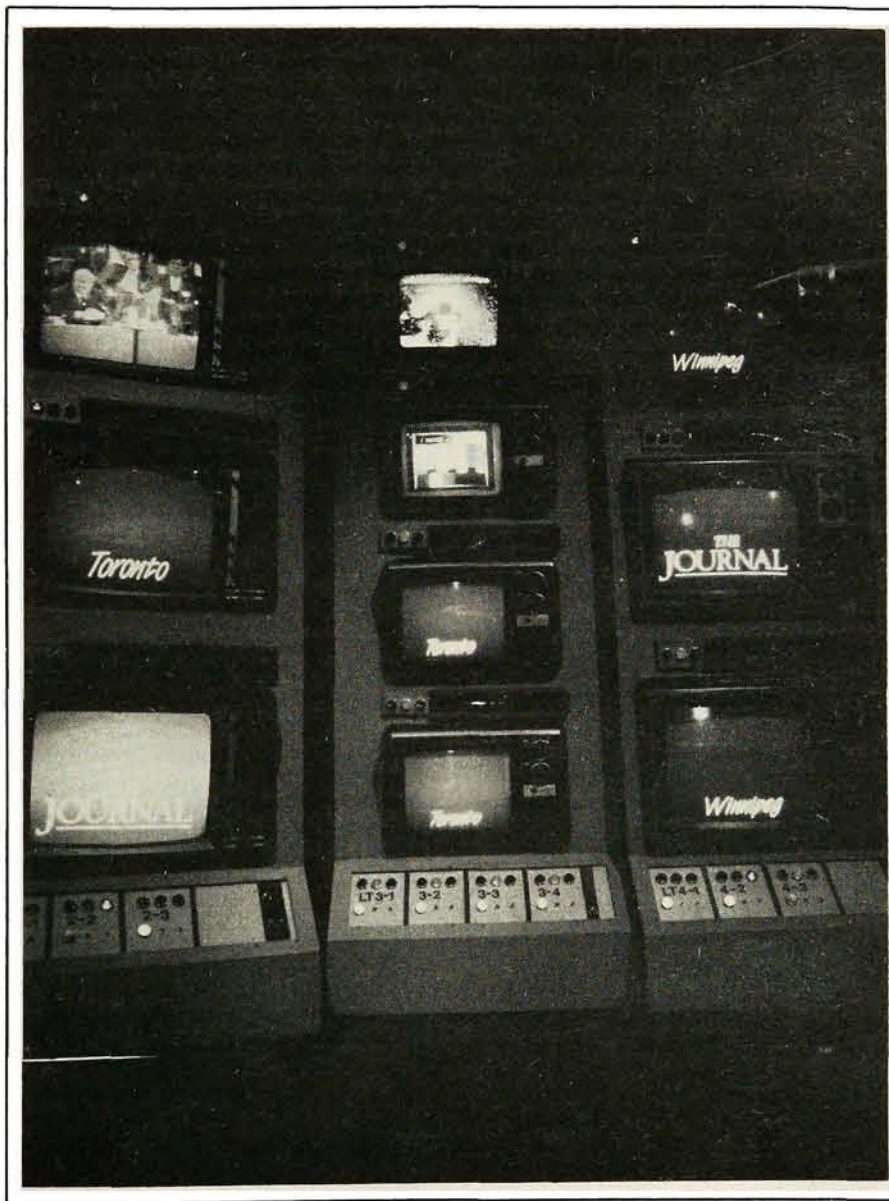


Photo: Fred Phipps, CBC Creative Services

must meet them and from that of the public which views the programming" (CRTC, Public Announcement, Dec. 31, 1979).

Since the Canadian Radio Broadcasting Act of May 1932, the intentions of the architects of a Canadian broadcasting system to develop a publicly owned and operated national organism, serving the national interest, were clear. The philosophy of public ownership was stated in a speech in the House of Commons on May 18, 1932, by then Prime Minister R.B. Bennett:

First of all, this country must be assured of complete control of broadcasting from Canadian sources, free from foreign interference or influence. Without such control radio broad-

casting can never become a great agency for communication of matters of national concern and for the diffusion of national thought and ideals, and without such control it can never be the agency by which national consciousness may be fostered and sustained and national unity still further strengthened...

Secondly, no other scheme than that of public ownership can ensure to the people of this country without regard to class or place, equal enjoyment of the benefits and pleasures of radio broadcasting...

The use of the air... that lies over the soil or land of Canada is a natural resource over which we have complete jurisdiction under the recent decision

of the privy council [and] I cannot think that any government would be warranted in leaving the air to private exploitation and not reserving it for development for the use of the people.

The evolution of the Canadian broadcasting system since the creation in 1932 of the Canadian Radio Broadcasting Commission through the replacement of the CRBC by the CBC (1936 Broadcast Act) and the development of first the U.S. and then the Canadian television industries, witnessed the emergence of Canadian content as a primary issue. "With the sudden appearance of television stations all over the United States and the availability of U.S. signals in Canada by 1948, it became clear that Canada was moving into a new broadcasting era and might have to reexamine the roles played by both the CBC and its 'competitors' in the private sector."<sup>1</sup>

In its May 1951 report, the Royal Commission on National Development in the Arts, Letters and Sciences (the Massey Commission), praised the national system for keeping in view "its three objectives for broadcasting in Canada; (1) an adequate coverage of the entire population, (2) opportunities for Canadian talent and for Canadian self-expression generally, and (3) successful resistance to the absorption of Canada into the general cultural pattern of the United States."<sup>2</sup>

The next 10 years saw a constant expansion of radio and television broadcasting, including the formation of a private TV network, CTV. In 1968, a new broadcasting act defined a framework that is still operative today. Radio frequencies were henceforth considered public property. The Canadian broadcasting system was to be composed of private and public sectors and once again the importance of a uniquely Canadian system was stipulated in Section 3 of the 1968 Broadcasting Act:

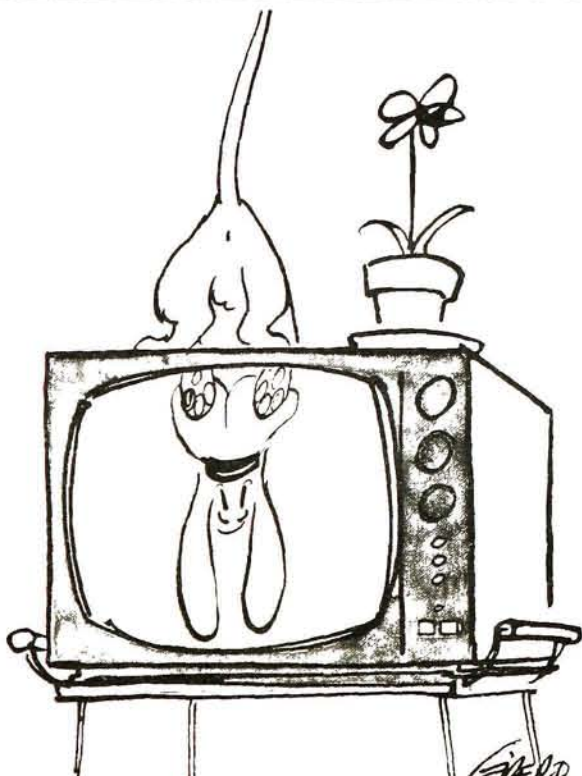
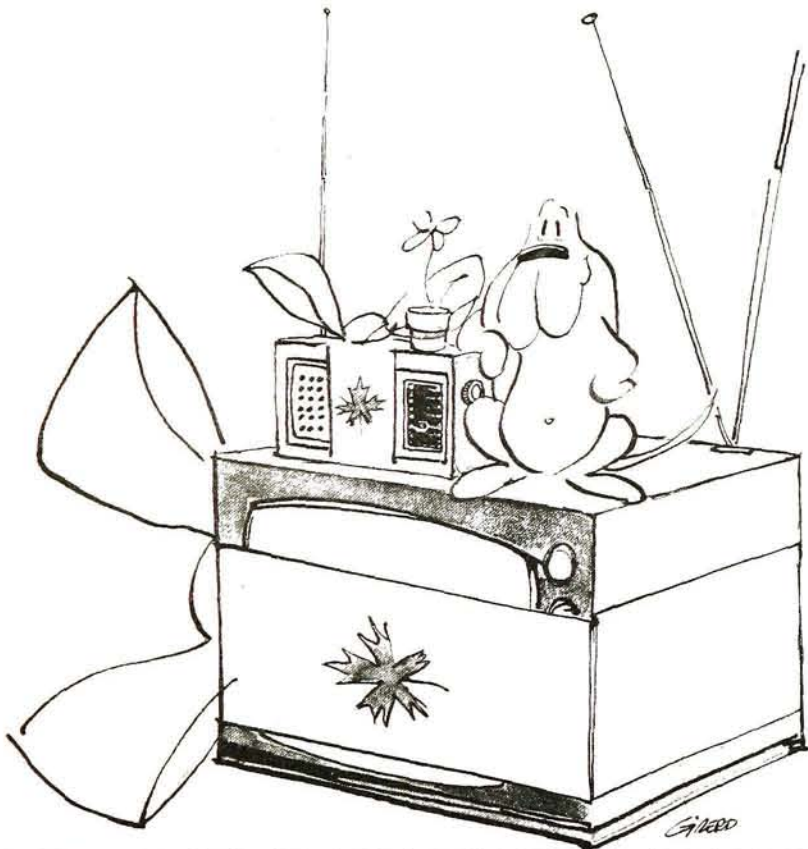
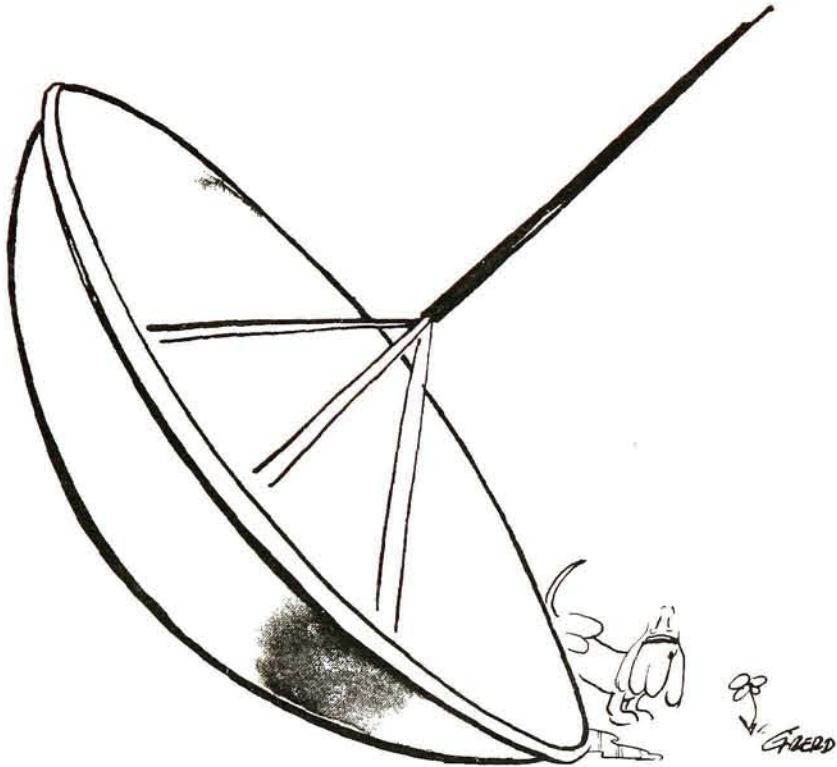
(b) the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;

(d) the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources;

(f) there should be provided, through a corporation established by Parliament for the purpose, a national broadcasting service that is predominantly Canadian in content and character.

(g) the national broadcasting service should contribute to the development of national unity and provide for a

# BROADCASTING



continuing expression of Canadian identity.

These general aims were reiterated in the CRTC's *Special Report On Broadcasting In Canada, 1968-78* :

*The Canadian broadcasting system is a national cultural resource dedicated by statute for the benefit of all Canadians in all regions of Canada to safeguard their identity and unity, to enrich their cultural understanding and to strengthen the fabric of their country. If the system does not provide those programming benefits then it is nothing. If the programming of the system does not display the images, sounds, and accomplishments of Canadians, then Parliament's clear objectives and expectations have been neglected.*

Thus the CRTC stands as the defender of the Canadian national identity through regulation of the all-powerful medium of broadcasting.

Nevertheless, there was an ambiguity in the Canadian broadcasting system since its inception. On the one hand there was a public system guided by federal policy objectives ; and, on the other, there was the private system – a fundamental distinction which the 1968 Broadcasting Act's description of the mixed nature of Canadian broadcasting as "a single system" attempted to bypass.

For without question, the impact of the private sector, with its cable companies, pay-TV stations and national network had made itself increasingly felt. Still the government, committed to honor its national responsibilities, continued to regulate the private sector in the hopes that its cultural aims would be met. The war to reconcile a cultural imperative with the equally imperative rules of private sector free enterprise is now being fought out at the CRTC, and the crucial battle is the one over Canadian content, its definitions and applications.

## A definition of Canadian content

But what is the nature of that elusive Canadian identity which lurks behind the rhetoric of innumerable Royal Commissions, government and CRTC reports, that identity which the Broadcasting Act has been designed to protect, promote and project? Until now, the CRTC has been nonchalant about its definition of a Canadian program. It has issued Canadian content numbers to any program which was produced by Canadians and had Canadian performers. There were no hard definitions as to what constituted a "producer." The decision to issue a number was a simple staff decision, and so many programs of questionable Canadian character have filled the airways, serving as Canadian content and helping licensees meet the CRTC regulations which stipulate percentages of required Canadian programming.

Having acknowledged that the Canadian character of a program can hardly be insured by such a loose definition, the CRTC proposed early in 1983 to establish new criteria for identifying a program as "Canadian," in consultation with the industry.

In August, 1983, guidelines for this new definition were first published, and will come into force on April 15, 1984. As the CRTC stated :

*In response to strong representations made at the public hearing supporting the development of an effective definition for Canadian content, the Commission proposes to introduce a*

*definition for Canadian programming, based on a point system, which would focus primarily on the two observable aspects of any program : performance and production.*

*The Commission considers it desirable to move towards having a single definition for Canadian content for all federal government departments and agencies concerned. Consultation with the industry and governmental agencies (is) essential to develop an effective and practical Canadian content definition... (Public Notice 1983-174).*

The ultimate result of this consultation process – a new definition of a Canadian program – has been anxiously awaited by all concerned, producers and broadcasters alike.

Coming as it does on the heels of the feature film industry's boom and bust, producers are anxious. They do not want to repeat the pattern through which, to access funds, they contorted their projects to "fit" the government's guidelines, only to end up with a product which finds no market whatsoever. Although no one has yet analysed the role of the Certification Bureau in the overall boom and-bust process (see box), the CRTC Cancon discussions appear to echo those which took place a decade ago and which resulted in a Canadian definition for films.

It is no accident of course, that the CRTC feels the need to toughen its definition of a Canadian program just at the time the federal government is pumping money into the production of these programs through the CFDC Broadcast Fund. Just as the tax shelter for films behooved the government to define a Canadian film, so the availability of funds to produce television programming has now forced the government to define these programs. And here, in a nut-shell, is the conundrum.

Wanting to insure the cultural content of programs it supports, the government has embarked on an industrial strategy to achieve its ends. Hoping, once again, to reconcile the (perhaps) irreconcilable objectives of Canadian cultural policy and free-enterprise economics, the government has asked the CRTC to settle the differences through its Canadian content regulations and so provide the missing piece of the puzzle that would allow the new Broadcasting policies to fit together as a coherent whole.

## The New Broadcasting Policy

Concern with these difficulties was reflected in the publication of the government's new Broadcasting Policy in 1983 and will be further addressed in the new Film Policy, awaited this April. It is important to recognize the scope of the changes in television and film production and distribution envisaged by the department of Communications, changes which purport to transform the conditions and criteria for Canadian production, and hopefully setting them on the right road for survival into the next century :

*New technologies increase greatly the reach and number of broadcast signals which are transmitted both within Canada, and across our borders from abroad. While these innovations promise many benefits, they also hold the potential for undermining Canadian broadcasting and culture. Action must be taken now to ensure that Canadian content is maintained and strengthened in the distribution of new services. Steps must be taken now to help Canadian broadcasters become more*

competitive. With new policies for this technological environment, Canadian viewers will be able to receive greater program choice, including a steady and reliable supply of programming which reflects Canadian cultural values.<sup>3</sup> There are three fundamental goals for the new broadcasting strategy:

- To maintain the Canadian broadcasting system as an effective vehicle of social and cultural policy in light of a renewed commitment to the spirit of the broadcasting objectives set out in the 1968 Broadcasting Act.

- To make available to all Canadians a solid core of attractive Canadian programming in all program categories, through the development of strong Canadian broadcast and program production industries.

- To provide a significantly increased choice of programming of all kinds in both official languages in all parts of Canada.<sup>4</sup>

As it has been expressed in the declared aims and policies of previous governments and as specified in the 1968 Broadcasting Act, the major goal of achieving a Canadian national service designed to foster our unique cultural identity has changed very little from the days of the 1929 Aird Commission that recommended creating the Canadian Broadcasting Corporation. And while managing to simultaneously protect the burgeoning private communication industries, successive governments have respected and funded the institutions created to effect this goal. Through a very thorough process of self-examination and restructuring, based on continuous assessment of the impact of current technologies on the system, successive Royal Commissions, government-appointed committees and CRTC Reports have addressed the issues confronting broadcasting production and distribution over the last 60 years. The current round of investigations initiated in 1978 by the publication of the CRTC's *Special Report On Broadcasting* and culminating with the publication of the government's new Broadcasting Policy, the forth-coming Film Policy, the CRTC's recent new definition of a Canadian program, all fall well within a well-established tradition of government regulation of film and television in Canada.

## The Canadian broadcasting dilemma

One has to admire the effort, time and money expended by these earnest seekers for an answer to the dilemma of Canadian broadcasting; to be able to compete for audiences with more expensive and better-liked American programming and still maintain, through the same system, control of the networks to the extent of ensuring a Canadian presence in programming and production.

The problem is well-summarized in the 1980 CRTC Report, *Canadian Broadcasting And Telecommunications; Past Experience, Future Options: The attraction of foreign programming is highest in the entertainment category. Foreign entertainment programs attract over three-quarters of the audience for English-language Canadian and U.S. television stations. The attractiveness of foreign entertainment programs is not really a matter for surprise. The population of the United States is about 10 times that of Canada, and so, presumably, the pool of talent is also 10 times as large. Canada's emergence as a qualitative competitor, and progress*

towards a better ratio will necessarily be slow.

Of equal or greater importance than this consideration is the economic factor. "It costs \$2,000,000 a season to replace a half an hour U.S. show with a Canadian one, even if the Canadian show is a commercial success."<sup>5</sup>

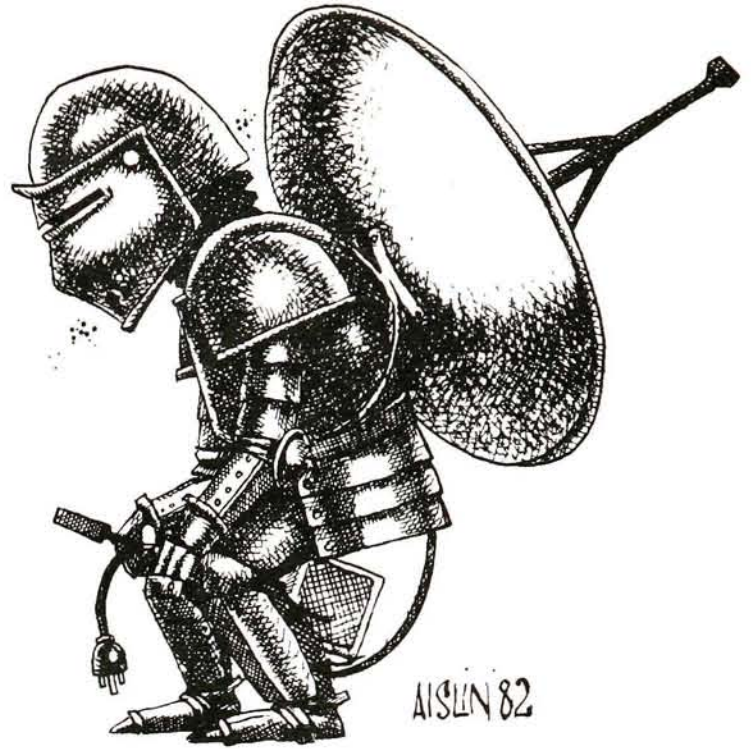
But after 50 years of government regulated broadcasting and 15 years of CRTC regulations, it is time to consider whether the Canadian broadcasting system is any closer to fulfilling the national role set for it in 1929 by the Aird Commission. Despite all the best intentions and efforts of those proponents of a Canadian media identity through regulation and tax incentives, Canadians have not lost their fascination for the cultural offerings of the United States. They have yet to vote with their television dials and endorse what is offered to them as their own.

Canadians spend more than one quarter of their leisure time watching television. Although three-quarters of this time is spent tuned to Canadian channels, less than 30% of our viewing is of Canadian programs.<sup>6</sup> Pay-TV, "the last cash crop in Canadian broadcasting," according to *The Globe & Mail*, March 19, 1982, has experienced serious difficulties. It is questionable at this stage whether the present 50% Canadian content required as a condition of license, can be maintained, given rising production costs and comparatively few subscriptions. Fred Klinkhammer, who took over March 1, 1984 as president of First Choice, is already on record as saying that a reduction in the Canadian content required on pay-TV is his first priority.

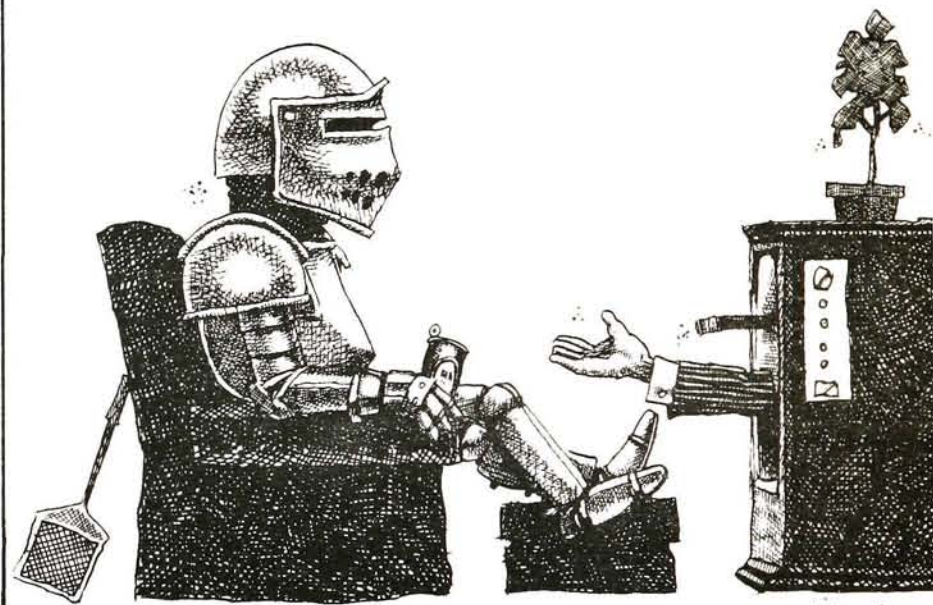
The pay-TV experiences only highlight, once again, the Canadian dilemma. Star Channel and C Channel are out of business, and First Choice has changed hands. All have blamed over-regulation by the CRTC as a crucial element in their difficulties, and furthermore claim that unregulated access to American programming would have bailed them out.

The problems faced by the policy-makers are not radically different therefore from those of the past although the odds against success are, if anything, higher than ever. Due to advancing and ever more powerful technology, the potential for American encroachment onto our receivers and into our consciousness increases daily. American, (euphemistically referred to as "foreign") programming is available and in demand and Canadians do not want to be deprived of access to it anymore than American stations and producers will abandon their Canadian market. And to compound the insult, Canadian producers themselves seek to emulate, wherever possible, successful U.S. entertainment programs by suppressing any distinctly Canadian characteristics which might detract from their appeal not only for American audiences but for Canadians as well.

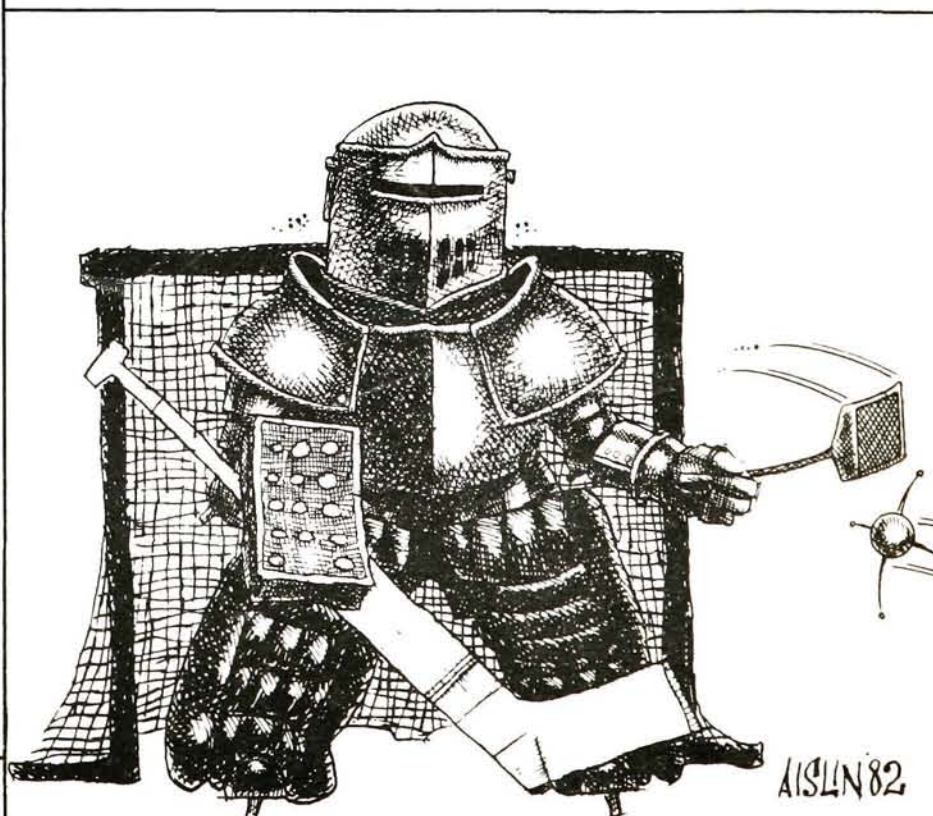
In examining the elements of the new broadcasting policy in conjunction with the proposed amendments to the Canadian content regulations, one perceives the familiar theme of broadcasting as the vehicle for Canadian national identity. Faced with the conditions outlined above, Canadian media policy-makers can find no alternative means to influence producers and broadcasters to resist the lure of U.S. programming than through a combination of regulation and financial incentives. Yet these methods have not worked in the past. Is



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there reason to believe they will do so in the future, when the threat, as acknowledged, is greater than ever?

## Canadian content:

### A new definition

Cancon regulations, in effect since 1970, established the quantitative requirement that 60% of all programming broadcast on television be Canadian. Between the hours of 6 p.m. and midnight 60% of CBC and 50% of private broadcasters' programming must be classified Canadian. The major change provided by the new definition of what constitutes a Canadian program is that it will be based on a system in which points will be assigned according to how many key members of the production team and cast are Canadian citizens. However, it remains to be seen to what degree the new regulations will effectively alter the Canadian production and broadcasting climate, at whose expense and for whose benefit.

As the new definition aims to reduce the quantity of American "Canadian" productions which, to date, have qualified for CRTC Canadian content numbers, how will this affect the private production industry? Will it step into the breach to provide the required amount of real Canadian product with which to replace those hybrid creations which now qualify as Canadian TV content? The answer, according to the Broadcast Strategy, lies in the creation of the Broadcast Program Development Fund. Once again, faced with the chronic problem of under-production of Canadian drama, variety and children's programming, the government has no choice but to subsidize this type of production, hoping, as in the past, for a breakthrough in the struggle against American cultural domination.

### The Canadian Broadcast Program Development Fund

The Canadian content regulations have

been designed, in theory, to promote and protect the Canadian identity on videotape and film. This strategy was complemented and reinforced by the recent creation of a new Canadian Broadcast Program Development Fund, administered through the CFDC.

Canadian films and programs designed for television distribution may receive financing from the fund in three forms: a) equity, b) guaranteed loan or c) loan guarantee, where the production meets the established criteria as presented in the July 1, 1983 *Policies On The Management Of The Canadian Broadcast Program Development Fund*. As the basis for evaluating Canadian content, the Fund would rely on the certification regulation for Canadian feature productions found in sub-sections 1104(2) and 1104(10) of the Income Tax Regulations, and take into consideration the definition now established by the CRTC. Clearly, there is room, once again for interpretation in terms of

Canadian content criteria, including the possibility, with the CRTC now falling into step behind the Certification Bureau with an identical Canadian definition, that the CFDC, through its Program Development Fund, might finance a program which would not qualify as Canadian before the CRTC.

### A distinctive CBC

The other aspect of the new broadcasting policy which promises to stimulate Canadian production, "primarily in the areas of drama, variety and children's programming," is the development of an updated version of the CBC and its role in the new broadcasting environment. The main focus of the nine new policies announced for the new CBC are towards its reorientation as a "distinctive and predominantly Canadian service," aiming at 80% Canadian content levels and 50% use of independent producers within five years.

### And a new film policy

As yet, the "dark horse" in this comprehensive new broadcasting policy is the National Film Board whose role in the revised scheme of things will be announced in the much-awaited new Film Policy. In terms of film production, it is difficult to anticipate the road the government will now take. One can safely state that prior to 1970, there was no such thing as a film "industry" in this country. Film production was traditionally in the hands of the public sector and Canadians wishing to involving themselves in the production of private features designed for a mass audience simply emigrated south to realise their Hollywood dreams. When the government, in 1974, introduced the first tax incentives for investors in a private Canadian film industry, it did so with little consideration for the problems of film distribution, permitting the American Majors to continue their domination of the Canadian market. Having failed to create a viable production industry through the tax shelter incentive to feature films, the government is now making a second stab at the problem through the promotion of television program production. At least this time, the means of distribution - the networks, cables and pay-TV companies - are owned and controlled by Canadians. The new policies, strategies, and funding measures are all part of a concerted effort to create a clearly identifiable Canadian production industry.

### Conclusion: the future of Canadian content

For the same reasons that we are dominated and controlled in other aspects of our national life by the immensely richer and more powerful United States of America, so our output in the domain of film and television production is inexorably linked to the hard facts of our economic, geographic and political situation. The greatest problem in all of this results from an unwillingness to accept these facts.

The vision of a distinct and identifiable "Canadian" identity has motivated successive governments to attempt through regulation of films and TV programs, to foster the growth and expression of a national identity. Until now, the requirements of commercial success have not permitted us the luxury of such development. Unfortunately, the audience (the market) has not shared the government's enthusiasm or concern with Canadian content. Most Canadians prefer American films and programs or,

## 'Canadian' film and the tax-shelter

Unheralded, and almost unnoticed by producers and financiers in Canada, the government in 1974 introduced a capital cost allowance of 100% for investments in feature films. To qualify for the tax shelter, one had to invest in a "Canadian" feature - a film which had a Canadian producer and in which 2/3 of the creative personnel were Canadian.

The Canadian industry was slow to react to the golden opportunity being offered, but people off-shore, some of whom were used to tax shelter situations in other countries, were alert. Among the first producers to take advantage of the shelter were Harry Allan Towers and Julian Melzack, neither of whom had previously worked in Canada. Films unlike those made in the early '70s blossomed, and budgets likewise. Co-productions with France, Italy and England gave us features like *Little Girl Who Lived Down the Lane* (Jodie Foster and Richard Harris), *The Night of the High Tide*, and *Tomorrow Never Comes*. Films like *Angela* with Sophia Loren and *Ilsa Tigress of Siberia* were fully Canadian.

By 1976, pressure was building to more carefully define a Canadian film, and much of this pressure came from the department of Revenue which needed to justify the tax advantage in a way which could be quantified. That was the year in which a point-system was introduced and the certification process was expanded to include short films and videos.

By 1978, the boom was on, and Canadian producers - most often in tandem with foreign producers - began turning out "international" features: films with stars and big budgets, built to meet the certification requirements and to wow the brokers and investors who knew very little about the film industry. *Running* with Michael Douglas, *Tribute* with Jack Lemmon and Robby Benson and *City on Fire* with its host of foreigners in cameo roles were typical.

At the same time, the provincial securities commissions, with their mandate to protect the public welfare, were getting concerned about the high-rolling going on, and began

to clamp down on the producers, making prospectuses for public offerings mandatory, and pushing the requirement for disclosure beyond what many producers felt comfortable with.

There were at least two flies in the ointment by the end of '79. Most important was the refusal of the department of Revenue to relax its regulation concerning pre-sales. Every pre-sale agreement for a film was interpreted as reducing the investor's risk, and therefore, reducing the amount he could claim for his deduction. Although producers and even government people from the department of the Secretary of State tried to explain that pre-sales did not reduce risk, given the nature of the industry, Revenue would not be moved. The result was that while more and more films were being made, producers simply ignored the problem of selling their films. The unfortunate *Circle of Two* is a case in point.

The second problem was that Canadians began to feel that their industry was slipping away from them as foreigners took an ever-greater role in production and as leading players. By 1980, the Certification Office triggered an industry-wide consultation, asking the various agencies, associations and unions what modifications they would like to see in the point-system. The result was predictable, as each group tried to protect itself. Producers wanted to be in control, but wanted leeway as to the employment of the cast and crews. Actors wanted the top positions but cared less about the control of the shoot (with results, as we see today, that two American films are in nomination for a Genie award), and technicians wanted to rid themselves of foreign supervisors.

Finally, the point-system was revamped once more and made tougher so that either the director or the screenwriter had to be Canadian, and at least one of the two highest paid actors also had to be Canadian. The resulting system is the one on which the CRTC has based its new definition (see box).

By 1980, the system began to cave in under its own weight. The industry had gone from \$5 million of production in 1977 to \$60 million, then \$130 million and then over \$165 million. But by that final year, the inability to sell the product translated itself into angry investors and disgruntled brokers, and the industry fell short by about \$40 million, leaving producers on the hook with interim financiers and souring the atmosphere thoroughly.

The *coup de grace* came when the government rolled back the capital cost allowance to 50% each year over two years, beginning Jan. 1, 1983. By then, there was no important tax shelter production and in that year, only two features even bothered to request certification from the department of Communications.

Where had the production gone? Over to the CRTC. As the bottom fell out of the theatrical feature industry, television began to flex its muscle, and the promise of Canadian pay-TV, the interest shown by HBO in producing in Canada and the expanding video market caused producers to talk about "program production" instead of film production.

Moreover, the ill-defined nature of the definition of a Canadian program at the CRTC allowed most of the productions and co-ventures done in tandem with foreigners to be eligible for CRTC Canadian content numbers. It was 1974 all over again. The government, picking up on the possibilities of television production for the withering film industry, offered the industry a final crutch in the \$39 million Broadcast Program Development Fund in March '83. And, as had been the case a decade earlier when it introduced the tax shelter, the government would soon clamp down on the definition of a Canadian program in an effort to channel Canadian funds into *bona fide* Canadian productions. The CRTC Canadian content announcement of March 2, 1984, finally renders coherent the effort to define and apply Canadian content criteria to productions destined for television transmission in Canada.

at best, programs which resemble American ones. Can tougher regulations recondition audience choice?

The decision of the department of Communications to reorient the CBC is a promising solution to this difficult situation. If we are to endorse the notion of a national cultural identity in need of protection and promotion, then the obvious vehicle for doing so is the national network.

The government's allocation to CBC has been increased by \$65 million. And another \$50 million has been earmarked to supply the Canadian Broadcast Development Fund in 1984. With these additional funds the upcoming season should see a pronounced increase in Canadian drama produced for television, thereby providing much needed employment to our beleaguered "industry" workers. This production will, of necessity, meet the definitions of Canadian content. Whether these made-for-TV films and programs will live on to make back their production costs and produce profits which, in turn, may be ploughed back into further production will be the measure of the new production strategies.

Ultimately, the films produced in Canada must find an audience outside of this country if they are to be made with budgets comparable to those in other producing countries. Otherwise, the dream of a unique and individual Canadian identity in drama production may turn into another nightmare like that engendered by the "tax-shelter industry" of the '70s or the fantasy of the first year of pay-TV. Although the tax write-off in films is still in place (100% over two years), only two feature films requested certification last year. Meanwhile pay-TV continues the struggle to establish itself as a viable outlet for Canadian programming. The situation is, indeed, critical. Will the creation of the Broadcast Fund serve to bridge the gap between what a production costs and what it makes back? And how much of this kind of subsidization can we really afford? Assuming that this form of financial assistance combined with realistic regulatory measures of Canadian content can serve to shore up our threatened film and television industries, how long will it be before Canada can hold its own in the highly competitive international market?

In the proposed stricter Canadian TV program regulations and in the creation of the Broadcast Fund, the government is trying to create the conditions necessary to achieve this goal. These circumstances are most encouraging. For the first time, the financing and distribution necessary for Canadian domestic production are available. Whether in the context of Broadcast Fund-financed Canadian content productions, or as strictly commercial packages designed for the international market, producers must seize whatever opportunities exist to define a "real" Canadian media identity which will attract audiences.

Such opportunities may be found in the encouragement of local talent in all regions of the country and in the recognition of our specific national characteristics as expressed by local writers and directors in low-budget regional productions. Films and television programs do not have to cost a fortune to be of merit or even to make money, if well promoted and distributed. Examples of this type of production are such Broadcast Fund-financed feature films as, *Unfinished Business* (Don Owen) and *King of Friday Night* (John Gray).

It must be recognized that the production of such genuine Canadian films and programs is only one dimension of the struggle to get our media industries on their feet. Ultimately, markets for this type of Canadian product must be found outside of the country, in Europe and the United States. As has been learned from past experience, proper distribution is an essential component of a viable industry. Without it, this hopeful new trend toward the creation of an identifiable Canadian film and televi-

sion production situation could still founder.

Like the products of the German and Australian industries, those from Canada must be promoted and distributed both at home and abroad. To be appreciated, they must be seen. Only then will their excellence be tested and judged and, it is hoped, accepted. Only when Canadians and non-Canadians choose of their own accord to "buy Canadian" will we be safely out of the dangerous waters of our present circumstances.

## Notes

<sup>1</sup> David Ellis, *Evolution of the Canadian Broadcasting System, 1932-1968*, Minister of Supply and Services Canada 1979.

<sup>2</sup> *Ibid*

<sup>3</sup> *Towards a New National Broadcasting Policy*, department of Communications, Ottawa, 1983, p. 9.

<sup>4</sup> See *ibid*.

<sup>5</sup> CRTC, *Canadian Broadcasting and Telecommunications: Past Experience, Future Options*, 1980.

<sup>6</sup> *The Globe and Mail*, June 15, 1977.

## The CRTC's Canadian program definition

A Canadian program is a live, videotape or film production of any length, that meets the requirements of the point system and cost criteria currently used by CFVCO for feature productions, as varied by the Commission as stipulated below, and in which case such variances would prevail for the present purposes.

### Basic Application Process

Upon request, the Commission will issue an advance ruling, preliminary or final recognition or special recognition, as the case may be, to any licensee, producer or property rights holder, where the program satisfies the requirements of the definition of a Canadian program. Submission of an application for advance ruling or for preliminary recognition is not mandatory; it is at the discretion of the applicant.

### I. BASIC DEFINITION OF A CANADIAN PROGRAM

The Commission will recognize as a Canadian program, a live, videotape or film production of any length, that meets the following:

**1. PRODUCER(S)**: the producer, the individual who controls and is the central decision-maker of the visual production from beginning to end, must be Canadian. Additionally, all individuals fulfilling producer-related functions must be Canadian. Exemptions will be considered for non-Canadians to receive credits for producer-related functions as described in the CFVCO certification process booklet.

**2. THE POINT SYSTEM**: a production must earn a minimum of six units of production or "points" based on the following key creative functions being performed by Canadians:

Director - 2 points  
 Writer - 2 points  
 Leading performer - 1 point  
 Second leading performer - 1 point  
 Head of art department - 1 point  
 Director of photography - 1 point  
 Music composer - 1 point  
 Editor - 1 point

**3.** Notwithstanding the above, at least one of the director or writer and at least one of the two leading performers must be Canadian. The points for writer may be obtained if all screenwriters are Canadian or if both the principal writer and the author of the original work on which the production is based are Canadian. Determination of leading performers may take into account billing, screen-time and payment; this determination could be changed after further discussions with ACTRA, Union des artistes and other guilds, producers, CFVCO and CFDC.

**4.** Productions in which non-Canadians are the only leading performers will not be accepted as Canadian, and the addition of Canadians in minor roles will not be sufficient for a production to qualify.

**5.** Upon application, the Commission may recognize as a Canadian program, a production in which the positions of either:

a) director and writer, or  
 b) both leading performers  
 are filled by non-Canadians, as long as all other key creative functions are filled by Canadians.

**6.** Key creative functions could vary for different types of productions. Such variations will be taken into consideration by the Commission for the present purposes. (See attached Appendix A.)

**7. EXPENDITURES**: At least 75% of total remuneration paid to individuals, other than the producer and key creative personnel as listed above or for post production work, must be paid to, or in respect of services provided by, Canadians; and at least 75% of processing and final preparation costs must also be paid for services provided in Canada.

**8.** The Commission may require audited statements and/or affidavits in support of an application.

**9. The Canadian content certification** given by the Minister of Communications upon recommendation by the Canadian Film Development Corporation (CFDC) or CFVCO will also constitute recognition for Canadian programs by the Commission.

**10.** Established CFVCO forms and procedures are acceptable to the Commission, except where variances are outlined in this document. The descriptions and interpretations detailed in the CFVCO certification process booklet will be used by the Commission, unless or until the Commission develops its own definitions and interpretations, if need be.

### II. SPECIAL RECOGNITION FOR CO-VENTURES

Co-ventures are defined as international co-productions not included under the treaties administered by the CFDC. They include all ventures with co-producers of any foreign country that does not have a film or television production treaty with Canada, and ventures with co-producers of any treaty country, where such ventures are not specifically covered by any treaty. The key function in these co-ventures is that of the producer.

Such co-ventures will qualify for special recognition and will be given 100% Canadian program credit when broadcast or otherwise distributed by any licensee of the CRTC, even though some of the producer functions are performed by non-Canadians, where co-venture agreements and other documentation substantiate that the Canadian production company:

- has no less than an equal measure of decision-making responsibility with other co-venture partners on all creative elements of the production, and
- is responsible for the administration of not less than the Canadian element of the production budget.

A "Canadian production company" is a licensee of the CRTC or is a Canadian company which carries on business in Canada with a Canadian business address, which is owned or controlled by Canadians and whose principal business is the production of film, videotape or live programs for distribution on television or in theatrical, industrial or educational markets.

The application for Canadian recognition must be made by the Canadian production company and must be accompanied or supported by signed agreements between the co-venture partners. Such co-ventures agreements will be kept confidential.

The decision-making responsibility for the production will be deemed to be in the hands of a Canadian production company when that company:

a) has sole or co-signing authority on the production bank account: for co-ventures shot entirely in Canada, the production bank account must be in Canada; for those shot partially in Canada, a Canadian bank account would be required for that portion of the production shot in Canada; in the case of co-ventures shot entirely outside Canada, there must be a Canadian bank account for payment of the Canadian elements of the program;

b) has an equity position in the production and the entitlement to profit sharing;

c) is at financial risk and/or has budgetary responsibility, including responsibility for overruns;

d) has no less than an equal measure of approval over all elements of the production with the co-venture partners, regardless of the number of foreign persons fulfilling the functions of executive producer or producer.

With regard to points and expenditures, a co-venture with a co-producer from a Commonwealth or French-language country, or a country with which Canada has a film or television production treaty, will be considered as qualifying for Canadian program special recognition where, in addition to meeting the foregoing requirements, it attains 5 points, and at least 50%

of the total remuneration paid to individuals, other than the producer and the key creative personnel listed above, or for post production work, is paid to, or in respect of services provided by, Canadians, and at least 50% of processing and final preparation costs are paid for services provided in Canada. Notwithstanding the above, the director or the writer and at least one of the two leading performers must be Canadian. All other considerations for recognition of a Canadian program apply to such a co-venture.

Any other co-venture will be required to meet the same points and expenditure minimum requirements as a domestic production.

### III. SERIES

Recognizing that the production elements of a series of programs may vary and that some of the episodes, if considered individually, could fall below the minimum requirements of the point system, the Commission will examine a series in its entirety and may grant it recognition if, on an overall average, it meets the minimum requirements.

For the present purposes, a "series" means two or more programs produced by the same production company, having a common theme, situation, or set of characters, and completed within a 12-month period.

A licensee will only be entitled to claim Canadian program recognition for any episodes in a series which might not meet the Canadian program recognition criteria when at least the same number of offsetting episodes which exceed such criteria are broadcast or otherwise distributed, at equitable times.

### IV. PRODUCTION PACKAGES

For the present purposes, a "production package" means two or more co-productions or co-ventures, undertaken by a Canadian production company together with one or more non-Canadian production companies, where a production that qualifies as a Canadian production, with minor foreign involvement, is matched with a foreign production, with minor Canadian involvement.

The production packages may be accepted as Canadian, where a Canadian production company is involved and the co-production partners are the same for all the productions. The role of the Canadian production company is as defined for co-ventures. In assessing a production package, the Commission will examine it in its entirety and may qualify it if, on an overall average, the minimum requirements for co-ventures are met. Furthermore, a licensee will not receive credit for the production with fewer Canadian elements unless it also carries the production with the larger number of Canadian elements, at equitable times.

All other considerations for recognition for Canadian programs apply.

The Commission will follow closely the extent to which licensees make use of co-venture productions or production packages to meet Canadian content requirements. It will review before April 1987 the suitability of continuing to accept production packages for the present purposes.

### IX. DRAMATIC PROGRAMMING CREDIT

The Commission will award a 150% time credit for a drama carried by a licensee which meets the following criteria:

a) is produced by a licensee or an independent production company after 15 April 1984;

b) is recognized as a Canadian program and achieves 10 points; and  
 c) is scheduled to commence

(i) between the hours of 7:00 p.m. and 10:00 p.m., or  
 (ii) in the case of a dramatic program intended for children, at an appropriate children's viewing time.

Each licensee will receive a dramatic programming credit for each showing of a drama occurring within a two year period from the date of first showing.