

- (i) a majority of the members of which are Canadians as herein defined, and
- (ii) at least two-thirds of the ownership interests in which are beneficially owned by Canadians as herein defined; or
- (e) a corporation incorporated under the laws of Canada or a province
 - (i) a majority of the directors of which are Canadians as herein defined,
 - (ii) a majority of the outstanding shares of which are beneficially owned by Canadians as herein defined, and
 - (iii) at least two-thirds of the outstanding voting shares of which are beneficially owned by Canadians as herein defined;

"voting share" means a share carrying a voting right under all circumstances or under some circumstances that have occurred and are continuing, and includes a bond, debenture or other debt obligation currently convertible into such a share and a currently exercisable option or right to acquire such a share or convertible debt obligation.

9. (1) On application in the prescribed form and manner and payment of the prescribed fee or a fee determined in the prescribed manner, the Minister shall, subject to this Act, grant a proprietary licence to the applicant authorizing the applicant to import any cinematographic work, or any film product derived from a cinematographic work, specified in the licence for distribution, or for reproduction and distribution, in Canada, if the Minister is satisfied that

- (a) the applicant has a business establishment in Canada;
- (b) the applicant or any one affiliate of the applicant has or will have the right to distribute the cinematographic work in all media throughout the world either at the time of the completion of principal photography of the cinematographic work or at the time the cinematographic work or film product is to be imported; and
- (c) no person, other than the applicant or an affiliate of the applicant, has distributed, is distributing or will have distributed, in the two years immediately following the date of the first commercial use of any film product derived from the cinematographic work, any such film product in any medium in any country in which the

applicant or an affiliate of the applicant carries on business.

(2) The Minister may refuse to grant a proprietary licence to an applicant, if the Minister is satisfied that the applicant or any affiliate of the applicant has, in the two years immediately preceding the date of the application, contravened or failed to comply with any provision of this Act or the regulations, any term or condition of a general licence or proprietary licence granted to the applicant or affiliate or any undertaking given pursuant to subsection 12(1).

10. It is a term of every general licence and every proprietary licence that the licensee shall not transfer to any person, other than a person who holds a general licence, any right to distribute, or to reproduce and distribute, in Canada any film product imported under the authority of the licence.

11. (1) It is a term of every general licence granted after the coming into force of this section that the licensee will invest in the production and distribution of Canadian film products such amount, not exceeding ten per cent of the annual gross revenue of the licensee from the distribution, or the reproduction and distribution, in Canada of film products imported under the authority of the licence, as may be prescribed or determined under the regulations.

(2) On the request of the Minister, the holder of a general licence granted after the coming into force of this section shall furnish the Minister with such information as the Minister considers necessary to verify compliance with the term of the licence referred to in subsection (1).

12. (1) No general licence or proprietary licence shall be granted to an applicant who is
- (a) a motion picture exhibitor or an affiliate of a motion picture exhibitor,
 - (b) a person who sells film products at wholesale or an affiliate of such a person, or
 - (c) an affiliate of a person who operates a broadcasting undertaking as defined in the *Broadcasting Act*,
- unless the applicant or an affiliate of the applicant delivers to the Minister such written undertakings to Her Majesty in right of Canada as the Minister considers appropriate in the circumstances to ensure, as the case may be, that
- (d) Canadian film products have fair access to the markets served by the applicant or affiliate,

- (e) imported film products or copies thereof are offered, at fair and reasonable terms, to persons who are not affiliates of the applicant, or
 - (f) affiliates of the applicant will give fair and reasonable access to imported film products or copies thereof distributed by persons who are not affiliates of the applicant.
- (2) In this section, "motion picture exhibitor" means any person who operates five or more theatres or other premises in Canada for the theatrical exhibition of film products to the general public and, for the purposes of this subsection, any theatre or other premises operated by an affiliate of a person shall be deemed to be operated by that person.

13. No general licence or proprietary licence may be transferred.
14. (1) The Minister may suspend or revoke a general licence or a proprietary licence if the Minister has reasonable grounds to believe that
- (a) the licensee has ceased to be a person to whom the licence could be granted, if the licensee were then to apply for the licence,
 - (b) the licensee or an affiliate of the licensee has contravened or failed to comply with any provision of this Act or the regulations or any term or condition of the licence; or
 - (c) the licensee or an affiliate of the licensee has failed to comply with an undertaking given pursuant to subsection 12(1).
- (2) The Minister shall not suspend or revoke a general licence or a proprietary licence, unless the licensee has been notified of the action that the Minister proposes to take and has been afforded a reasonable opportunity to make representations to the Minister in relation thereto.

Regulations

15. The Governor in Council may make regulations
- (a) exempting any film product or class of film product from the application of this Act on the basis of the length, language, intended audience or content of the film product;
 - (b) prescribing what constitutes Canadian film products for the purposes of this Act;
 - (c) prescribing the amount or the manner of determining the amount to be invested by a licensee for the purposes of section 11;
 - (d) prescribing the form and manner of making applications for licenses under this Act, the infor-

- mation to be furnished in connection therewith and the procedure to be followed in the consideration of those applications;
- (e) prescribing fees or the manner of determining fees for the purposes of this Act; and
- (f) generally for carrying out the purposes and provisions of this Act.

Enforcement

16. No person shall knowingly furnish any false or misleading information or knowingly make any misrepresentation
- (a) in an application for a general licence or a proprietary licence,
 - (b) for the purpose of procuring the grant of a general licence or a proprietary licence, or
 - (c) in connection with the use of a general licence or a proprietary licence.
17. Where the Minister notifies the Minister of National Revenue that the Minister requires copies of invoices of film products that have been imported or of other customs documents relating thereto for the purpose of enforcing this Act or the regulations, the Minister of National Revenue may, notwithstanding section 107 of the *Customs Act*, make such copies available to the Minister or to persons employed in the Department over which the Minister presides who have been designated by the Minister for the purposes of this section.
18. (1) Every person who contravenes or fails to comply with any provision of this Act or the regulations or any term or condition of a general licence or proprietary licence granted to that person is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months or both.
- (2) Where an offence under subsection (1) is committed on more than one day or is continued on more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.
- (3) Where a body corporate commits an offence under subsection (1), every person who at the time of the commission of the offence was a director or officer of the body corporate is guilty of the like offence unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence.

Curtains for Act?

by John Timmins

On Oct. 14, 1987, Michael Wilson stood in the House of Commons during Question Period and, skillfully, neither confirmed nor denied that any new Canadian film distribution policy would be subject to retaliation under a new free-trade agreement with the United States.

It was not as easy for the Finance minister to deflect questions on the following day, but he did. On that day, the opposition had in its hands a briefing paper addressed to James Baker, U.S. secretary and Clayton Yutter, U.S. trade ambassador.

Under the sub-heading CULTURE in upper case letters, the paper, dated mid-Oct., outlined

the Canadian position on free-trade in three short paragraphs including "a promise to solve Jack Valenti's problem on film distribution within the next two weeks."

Wilson told Ed Broadbent, (NDP-Oshawa), that there was "no commitment, no understanding to solve Valenti's problem."

He reminded the house that Flora MacDonald, minister of Communications, had made a commitment to "ensure that Canada is treated as a separate market for film distribution."

"That commitment still stands," said Wilson.

Broadbent's reply: "Some of us are inclined to believe something other than that. We are going to look with interest at the Bill the minister has promised to introduce."

Repeated efforts to control what is seen on Canadian screens and where box office receipts are spent have gone down to defeat with a succession of Canadian governments. The most recent minister to try wresting control away from the Americans, who consider the Canadian feature film market a domestic market and whose product dominate 96.5 per cent of North American theatrical box office, is Communications Minister Flora MacDonald.

Her fight began in July 1986 when she succeeded Marcel Masse in the Communications portfolio. Masse, some say, was too strong and thus conveniently moved to Mines and Resources where he could be as strong as he wanted to be.

No sooner had MacDonald landed her new job when she in-

herited the Report of the Film Industry Task Force; Canadian Cinema - a Solid Base, commissioned by Masse in Nov. 1985 around the time the Parti Québécois was abandoning tough distribution legislation in Bill 109 under threat of a Quebec boycott by Jack Valenti's Motion Picture Export Association of America (MPEAA).

Authored by Stephen Roth and Marie-José Raymond and delivered to Masse in Feb. 1986, the report strongly recommended a feature film fund and the Canadianization of the film distribution industry. If Canada were going to foster an indigenous production industry and take more than three per cent of box office, we would have to create an indigenous distribution industry.

It was clear to the authors that

the seven U.S. major studios were unsympathetic to "our" problem and self-assured that cinema lay safely within the sacred realm of free-enterprise. Distribution rights, where the Majors were concerned, were non-negotiable.

Several weeks later in April 1986, the Gulf and Western-owned Paramount Pictures, one of the Majors, bought out the Canadian distribution rights of Atlantic Releasing. This effectively cut off Norstar, which had previously held sub-distribution rights from Atlantic Releasing, from many independent U.S. and foreign titles and gaining unrestricted access to the distribution of these titles in Canada.

When Norstar cried unfair

Distribution

cont. from p. 25

competition, Jeremy Kinsman, deputy minister of Communications, went on record saying "it would never happen again," (hinting for the first time that there might be a new distribution policy in the works) and the Roth-Raymond report on the weakness of Canadian distributors in their own market, remained an open book.

In July, MacDonald unveiled the feature film fund, an annual \$33 million to be administered by Telefilm Canada for Canadian films with a Canadian distribution agreement. It was well received by the industry but did not solve the marginalization problem and, what's worse, the free-trade debate was beginning to rear its ugly head.

On Oct. 22, Jack Valenti slipped in and out of Montreal under cover of darkness to sign a deal with Lise Bacon, Quebec's minister of Cultural Affairs. The deal was condemned by many as a distortion of the original intent of Bill 109 because it failed to curb the Majors who still control 80 per cent of Quebec box office revenues.

By the new year, it was still uncertain whether Macdonald would take action on the distribution recommendation in the Roth-Raymond report. The free-trade debate had found a focus on whether cultural industries were negotiable which prompted U.S. trade ambassador Clayton Yeutter to utter, at a Washington trade conference, Feb. 3, "We're not afraid of competing with Canadian culture so they shouldn't be afraid of American culture."

Yeutter's unfortunate words were answered 10 days later by the communications minister who announced the National Film and Video Products Act with which she promised to create a domestic market for commercial/theatrical film and video and to stem the importation of foreign product.

Legislation would create a licensing system for the importation of film and video which would divert close to seven per cent or \$26 million of \$365.5 million in U.S. movie box office, video and TV sales to Canadian distributors who would in turn re-invest in Canadian production. The altruistic view was that distribution legislation would, for the first time, codify U.S. film distribution rights to 85 per cent of the Canadian market.

MacDonald told a very receptive Canadian film industry that legislation could be expected within "a few weeks." Aside from concerns that licenses be specific and the definition of world rights be as tight as possible, most of the industry believed the thing would fly, if

given a chance.

She also said that the proposed legislation was not likely to be regarded as a barrier to free-trade. This was an easy assertion to make as Canadian cultural industries represent five per cent of total trade with the U.S. and film a mere fraction of that.

"No one ever said that we were going to stop our cultural development because there are ongoing trade negotiations. In a sector of the economy were

there is such development, no one is going to put a cover on it and wait until trade negotiations are over," she said (*Cinema Canada* No. 139).

April ("the cruelest month") came and went with no sign of distribution legislation, only Hollywood's chief lobbyist knocking on MacDonald's door to say that her exemplary legislation would cause a "contagion effect" around the world and that 25 per cent (not seven per

cent) of revenues to U.S. distributors in Canada would be lost.

Ronald Reagan had, reportedly, already given Mulroney an earful during a state visit in March just as he had done in March 1985 when the Quebec Bill appeared to be getting out of hand.

By May, the industry was still on-side with MacDonald, respectful of the minister's busy schedule which included a

backlog of legislation and the Parliamentary committee hearings on the Report of the Task Force on Broadcasting Policy. The industry was patient with the delays naturally incurred in drafting any pivotal piece of legislation.

Rumor had it that the introduction of this legislation would be timed with the opening of the Cannes Film Festival, May 7, where distribution deals are

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→ bought and sold. It was not to be.

A few days earlier on May 4, MacDonald had met with the Parliamentary Standing Committee on Communications and Culture and discredited any possibility of a Canadian-wide boycott by the U.S. majors.

MacDonald said she did not have to answer to anyone outside of Canada and that her government had a commitment to

introduce legislation shortly. On May 8 and 9, during the House of Commons Question Period, she restated this commitment.

By this time, the free-trade debate was permanently situated on the front page of most Canadian newspapers and occasionally on the back pages of the odd U.S. daily. When asked in the absence of Flora MacDonald whether the ways and means committee of the

U.S. Congress had called the proposed legislation an impediment to free-trade, Pat Carney, minister of International Trade said that the Americans had overreacted and that legislation will be introduced.

Thus, there was hope that legislation would be introduced for first reading prior to the summer recess of the House of Commons (June 30-August 11).

Despite explanations of gov-

ernment legislative priorities, problems with tax reform and legal technicalities in the drafting of the Bill – and despite repeated assurances from MacDonald – there seemed to be a consensus throughout the Canadian film industry that legislation had been politely shelved for the duration of the free-trade talks which raged behind closed doors through the summer to its fateful conclusion at midnight Oct. 3, 1987.

Mifed welcomes Canadians with record sales

MONTREAL – Canadians reported far-reaching sales at the annual MIFED 1987 (Oct. 26-Nov. 5) in Milan, Italy.

Jan Rofekamp of Films Transit in Montreal concluded a four-picture deal with Channel 4 which includes the films *Sonatine*, *Marie s'en va t'en ville*, *It Can't Be Winter Because We Haven't Had Summer Yet*, *Le Lys cassé*.

These Quebec-made films will be part of a 12-film Canadian contemporary feature film series to be aired by Channel 4 in 1989. Among other films being looked at by Channel 4, says Rofekamp, are *The Decline of the American Empire*, *Anne Trister*, *Family Viewing* and *Train of Dreams*.

Aska Films reports sales of *The Kid Brother*, winner of the Grand Prize of the Americas at the 1987 Montreal World Film Festival, to France, Italy, Iceland, Switzerland, Greece, Belgium, Taiwan, Korea, Israel and Bahrain.

Simcom International concluded package deals with a number of countries. The most popular titles were *Switch in Time*, *Blindside*, *Hello Mary Lou (Prom Night II)*.

Cinema Plus International announced sales of *Un Zoo la nuit (Night Zoo)* and *Train of Dreams* with France, Switzerland, Greek Home Video. A major deal for *Un Zoo la nuit* was finalized with Japan.

The SC Entertainment Corporation announced that it reached a total sales of \$12.5 million (U.S.), mostly in pre-sales, for domestic and foreign rights to its seven-picture package.

Image Organization's Pierre David announced that the film *Pin* was sold to Japan, Australia, U.K., West Germany, South Africa, Switzerland, Holland, Norway and Denmark. *Babar: The Movie* went to West Germany, Switzerland, Austria, Greece, Israel, Mexico, Singapore and South Africa. *The Care Bears in Wonderland* sold throughout Europe as did *Crazy Moon*.

The René Malo film *Les Portes tournantes (Revolving Doors)*, scheduled for completion in January, was sold to West Germany, France, Australia, Switzerland, Belgium, Portugal, South Africa and Israel.

Vancouver-based Modern Cinema Marketing concluded video deals with Greece for *Deadly Intruder* and *Ticket to Heaven*.



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NEWS

NFB LINKS UP WITH READER'S DIGEST

In its debut into the home video market, Reader's Digest has turned to the National Film Board for material. This month 70,000 Canadian households will be offered the opportunity to acquire *Norman Summer*, one episode in the 13-part series *Canada at War* which was produced in 1962. An initial order of 900 cassettes have already been shipped to the magazine. This historic series of half-hour films has continued to be a popular product over the years and is now available in its entirety on video cassettes.

NFB ATLANTIC PRODUCER HONOURED

Rex Tasker founder of the NFB's Atlantic production centre and its first executive producer is the recipient of this year's Pioneer Award presented by the Canadian Broadcasting Corporation at the recent Atlantic film festival held in Halifax. Mr. Tasker who stepped down as executive producer in 1981 to return to producing NFB films was cited for "his pioneer work in the film industry in the Atlantic region."

NFB RECEIVES TEN GEMINI NOMINATIONS

The National Film Board has won ten nominations for this year's Gemini Awards of the Academy of Canadian Cinema and Television. Nominated as the year's best documentary program is *The Champions part III: The Final Battle*. Director Donald Brittain also earned a nomination for best director of an information or documentary program or series for the same



• Victoria Snow nominated for best performance by a lead actress.

film. Brittain was also nominated for best writing in an information/documentary program or series for *Tommy Douglas: Keeper of the Flame*. In the category of best picture editing in an information or documentary program or series, the Board took two nominations; one for *The Final Battle* edited by Richard Bujold and Roger Hart and one for *After The Crash* from the *At the Wheel* series edited by Judith Merritt. Sharon Riis has been nominated for best writing in a dramatic program or mini-series for the Board's *The Wake*, an episode in the series *Daughters of the Country* and, for best director in a dramatic program or mini-series a nomination went to Norma Bailey for *Ikwe* also from the *Daughters of the Country* series. Victoria Snow was nominated as best actress in the

same category for her role in *The Wake*. *Lucretia*, directed and animated by Heidi Blomkvist, has been nominated in the category of best animation program or series. The awards honouring English-language television will be presented December 8-9 in Toronto.

VIDEO DISTRIBUTION CONTRACT

The NFB has signed an exclusive retail distribution contract with the Calgary-based distributor Canadian Video Factory. The initial contract gives the company the right to 47 National Film Board titles. Video Factory deals primarily in alternative video product lines focussing heavily on educational and children's programming.

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