The distribution gag
An analysis of the proposed federal film distribution legislation

BY MICHAEL BERGMAN

Hat! Hat! The new Canadian film distribution policy recently announced by the federal Communications minister Flora MacDonald is certainly worth a good laugh. Even more amusing is the generally favourable response of the Canadian filmmaking community. There is certainly nothing like good slapstick and watching people put bags over their heads so they can't even get a sale of them while they carry lemons orange. Let me share the joke with you.

First the warmup. The Canadian government will spend an extra $200 million over five years on the film industry. This amount sounds impressive but don't forget it only breaks down to $40 million a year. Not only that but the $40 million is divided up into $15 million per annum for Telefilm's Feature Film Fund, $3 million per annum for its dubbing and subtitling fund, $5 million per annum for the National Film Board to co-produce features, $2 million per annum for the Film and Video Centre's Supply and Services Canada to fund non-theatrical, $1 million per annum for the New Film Products Importation office and $17 million per annum for a new Film Distribution Fund to be run by Telefilm.

A drop in the bucket

Think about these figures carefully. The only amount which will directly fund feature film production is the additional $15 million a year for Telefilm's Feature Film Fund. This amount is a drop in the bucket which could only finance three or four productions assuming that one is high-budget and the rest are low-budget. This amount can in no way replace the last private investment from the demise of the former federal film tax shelter, nor can it reduce American film financing which makes up the bulk of the industry's money. Far better for the government to persuade Canadian distributors to acquire properties and with the new foreign film production tax credit, the government's commitment to reducing functionaries and red tape. The capstone of all this funding is the $17 million a year for Canadian film distributors. Surprisingly this money will help Canadian distributors to acquire properties and with the revenue they garner, help finance Canadian films. In other words Canadian productions already heavily subsidized by the government will be distributed by distributors heavily subsidized by the government who will re-invest subsidized revenues to make more subsidized Canadian films. What's the point of having a commercial film industry if a substantial part of its operations at all levels is a process of exchanging governments' commitments to reducing functionaries and red tape.

There is, however, a process of growing dependence of the film community on direct government subsidy. For an industry that is supposed to be commercially driven and competing in the world market largely dominated by independent film ventures, the failure to devise schemes that attract private capital to Canadian film is harmful and can only perpetuate our industry's mediocre commercial success.

Three million dollars a year for dubbing is certainly a valid expense. It will be absolutely necessary given the Province of Quebec's new but as yet unimplemented film visa law which prohibits the exhibition of non-French language films unless an equal number of French-dubbed but not subtitled prints are also exhibited. Canadian filmmakers or distributors who cannot afford the dubbing costs will, with this new law, lose one-quarter of their domestic market.

While the beleaguered and neglected National Film Board will appreciate another $5 million a year, this amount, although destined for co-production with independent filmmakers, is more an indirect way of financing the National Film Board than encouraging Canadian feature film production. Since Canada is distinguished for its documentary and non-commercial films, it's hard to see how $2 million a year to Telefilm and Services Canada will mean very much, but what the heck. This amount certainly will not benefit feature film production.

It is hard to see how $1 million a year for the new Film Products Importation office can be usefully spent especially in light of the criticisms you will read below. It's money to create another level of bureaucracy so that everybody can have more forms to fill out. So much for the current government's commitment to reducing functionaries and red tape.

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Now let's begin the joke in substance. There is to be a new Canadian investment policy on foreign investment in Canadian film distribution. Takeovers of Canadian-owned and controlled distributors will not be allowed. Investment in any new distribution business in Canada will be permitted only for the importation and distribution of films which the importer owns world rights or a major interest. Direct and indirect takeovers of foreign distributors in Canada will be allowed only if the investor undertakes to reinvest some of its earnings in accordance with national cultural policies. Finally, all applications to invest in Canada made after February 13, 1987 are subject to the new policy.

Why isn't this terrific? But also too late. First of all there probably aren't any Canadian distributors that foreign investors would be interested in taking over. There probably won't be too much demand to take over Canadian distributors in the future since there is no reason at present to believe that their situation will be much improved from what it was in the past. Since most foreign distributors, particularly American, see to it that in most cases they either own world rights in a picture or are the major investor, it is unlikely that the new rules will prevent a proliferation of new foreign distribution in Canada. But then again since most of not all of the distributors that count already have offices in Canada, it's hard to see why this new rule prevents; unless of course it's Canadian companies entering into agreements with other distributors. If the regulations are not carefully worded the new policy may prevent Canadian distributors from acting as representatives for foreign distributors or entering into joint ventures with them.

Most pointedly of all, is that the new foreign investment policy for distributors probably violates the Free Trade Treaty. Readers who have read my essay on the treaty and cultural industries (Cinema Canada No. 149) will know that there is good reason to believe that the cultural industries are not as exempt from the treaty as claimed. In any event it is difficult to imagine how in the spirit of free trade the Canadian government could refuse an American takeover of a Canadian distributor.

Creating a separate market

Now for the punchline. No one will be able to distribute a film, video or made-for-TV movie in Canada unless they hold world rights or produced the film or have filed an affidavit with the new Film Importation office attesting that the Canadian distribution rights were acquired in separate negotiations and in a separate contract for a specific fee for the Canadian market.

Now this is surely ridiculous! Whether or not Canadian distribution rights are contained in one agreement, two agreements, 10 agreements or a thousand bits of paper that fit together like a jigsaw puzzle has nothing to do with American domination of film distribution in this country. It certainly won't create a separate Canadian distribution market. Supporters of Ms MacDonald's new policy obviously don't understand why Canadian distribution rights are almost invariably lumped in with the American domestic market.

American distributors control the North American market and a large part of the world market because they own or control their own domestic product, a product which is in exceptionally high demand. With their financial clout and resources, they are able to offer independent or unaffiliated filmmakers one-stop-shopping. While an independent filmmaker may have to compromise certain markets when giving an American distributor world rights, he is nevertheless assured of American penetration and access to numerous marketing facilities which more than balance out any negatives. Besides, it's much easier to deal with one reputable giant than monitor several lesser lights.

Up until the last 10 or 15 years Canada did not really produce any feature films of its own. The primary source of films watched by the viewing public were American, mostly produced by the majors. This situation permits the Americans to dominate Canadian distribution...
since they were marketing their own product. Given the proximity of Canada to the United States, not having a film industry of its own but having a population watching and wanting to watch American films, it’s quite easy to see how Canada became part of the American domestic market. The advent of a Canadian feature film industry presents the problem of how to convince the dominant American distributors to properly market Canadian films which may have limited appeal in the American market. This emphasis on the American market has made Canadian producers think in terms of films destined for that market. Since Canadian film-makers have proven poor copiers of the American style, their films have met with little success in the States (or in Canada for that matter). This has engendered the debate which pits the notion that better Canadian films would be more successful wherever the distributor is and the claim that American distributions are not interested in properly marketing Canadian films whatever their quality.

It is often said that distributors finance films. There is much truth to this, except that they’re often financing films which their production arms are producing or in which they are the major investors. There is no guarantee that an independent Canadian distributor will behave the same way especially if the Canadian product is not commercially viable. For Canadian distributors to grow strong they must have access to foreign markets while Canadian products become, one hopes, more consistently viable.

Intent of the new proposal
So what does the proposed new film law do? First of all it ensconces the Americans in their market to watch American films, it’s quite easy to see how this would be to the advantage of the American distributors to properly market Canadian films which may have limited appeal in the American market. This emphasis on the American market has made Canadian producers think in terms of films destined for that market. Since Canadian film-makers have proven poor copiers of the American style, their films have met with little success in the States (or in Canada for that matter). This has engendered the debate which pits the notion that better Canadian films would be more successful wherever the distributor is and the claim that American distributions are not interested in properly marketing Canadian films whatever their quality.

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