Mixed reaction to film legislation

OTTAWA – Film industry insiders are not yet convinced that the new film distribution policy or Film Products Importation Bill is as "tough" as Communications minister Flora MacDonald says it is.

Tabled in the House of Commons June 8, the bill, according to MacDonald, assures that Canadians "will be producing – and seeing – more Canadian films, better Canadian films, on Canadian screens."

"This is not immediately clear," says Sam Jephcott, executive director of the Canadian Film and Television Association (CFTA), who explains that the bill must travel down the treacherous road of second and third reading before legislation is enacted. Chances are that this will not happen before the next election, says Jephcott. "It is difficult to see the advantages before the regulations are known. But we must make sure that whoever wins the next election will put this sort of legislation in place."

There is no doubt, he says, that the federal government is treading softly (with this legislation) so as not to disrupt the free-trade deal with the U.S.

Recalling the near-impossibility of getting Canadian rights to imported (U.S.) films, Jephcott says the new bill "may not be as tough as the first proposal (February 1987) but anything is an improvement over the past 60 years."

The bill is designed to regulate the importation of foreign film and create a distinct film distribution market in Canada. With financial assistance ($200 million over the next five years to support production and distribution) also included in MacDonald's package, Canadian distributors will be given the opportunity to bid for the domestic rights on independent films entering the country, thereby creating a separated Canadian market (as distinct from the U.S.-dominated North American market) for film distribution.

Jephcott says he expects "ferocious bidding" for the "very few important independent films" distributed every year. He says there are several Canadian distributors such as Astral, Cineplex and Norstar who have resources to go head-to-head with the Americans in the bidding process.

Daniel Weinzweig, consultant for Norstar Releasing, favours the legislation as "a beginning." He says it will bring long-term results.

"We (Canadian distributors) may lose some films to the minimajors but they are going to find it more difficult to convince independent producers to sell to them," says Weinzweig.

Independent producers, he says, prefer to sell to separate territories and are willing to negotiate a separate Canadian contract. Also in our favour, says Weinzweig, is that the U.S. majors are not going to risk losing their right to import feature films into Canada, the third largest English-language market in the world, by contravening film import regulations governing contracts for independent films.

"The independent producer knows that if he sells to Canada as a separate territory, he may get overages. In other words, the Canadians are not going to cross-collateralize their losses with profits earned in another market like the Americans do."

Weinzweig says that although it can still be argued that the U.S. majors control too much of the Canadian market, this legislation is an unprecedented step towards recognizing a domestic Canadian market.

He says all Canadian distributors, regardless of size, will, for the first time, have the opportunity to pick up rights to the little films with big box office potential. One or two *Crocodile Dundees* is all that is needed to make independent producers take notice and to revolutionize the Canadian industry.

Jean Zaloum, president of Les Productions Karim, a Montreal-based distributor, is much less optimistic than Weinzweig.

Zaloum says the legislation undermines the status quo and allows the majors "to buy pictures they didn't produce."

"It is going to be very difficult to bid against them and many small companies will close. We might as well tell them to handle distribution in this country," he says.

Zaloum says it will be next to impossible to govern the bidding process.

"Let's get serious. Even if the system did work, there is no way we can hope to competitively bid against the majors now that they can bid on the only European independent films which are the only products available to us."

Zaloum expects that producers won't even begin to negotiate with Canadians before they have closed their U.S. deal and that the Americans will buy with the intention of selling to Canadians.

The "tough" part of the bill is the formation of a new Film Products Importation Office which, with Canada Customs will oversee the licensing of films, backed by a threat of $200,000-per-day penalties and the denial of authorization to import films into Canada.

The big stick will also be wielded over the heads of the U.S. majors whose distribution is closely integrated with film exhibition chains. The business practices of those companies in the Canadian distribution market will be monitored by an advisory council reporting directly to the communications minister.

A proprietary importation license will indicate that the importer has acquired world distribution rights or has a 50 per cent investment in the film. The importer of an independent film (Canadian or otherwise) into Canada must show a non-proprietary license indicating that the importer has acquired the Canadian distribution rights in a manner which has clearly separated the Canadian rights from all other distribution rights.

Sheila Finestone (Lib. - Mount Royal), communications critic, calls this licensing system a weakened version of the original licensing proposal (Feb. 1987) which included a general licence for Canadians distributors who would automatically get access to films made by foreign independent producers.

"This bill," says Finestone, "has left unchanged the distribution of proprietary films. However, Canadian rights for non-proprietary films could remain in control of the Americans as long as they swore an affidavit that they had negotiated for them under a separate agreement for a separate fee."

Finestone says that this licencing arrangement will leave Canadian distributors with less than 10 per cent of the Canadian market.

She adds that the bill is evidence that Canadian culture is not exempt from the Canada-U.S. free trade deal despite what the Mulroney government claims.

Marie-José Raymond, co-author of the 1985 Film Industry Task Force Report, commissioned by the Mulroney government, has already gone on record (*Cinema Canada*, No. 153) criticizing the bill as a tip of the hat to the free trade deal.

The task force, co-chaired by Raymond and Stephen Roth, recommended that Canadian distributors control 100 per cent of the Canadian market.

Another essential component of MacDonald's distribution package is the new Investment Canada policy on film.

This policy stipulates: • that new foreign film and video distribution businesses in Canada will be restricted to distributing proprietary products only. • that foreign takeovers of Canadian-owned distribution businesses will not be allowed. • that (Canadian) takeovers of foreign distribution businesses operating in Canada will be reviewed for their contribution to the government's overall film policy goals.

Broadcasting legislation tabled after studies

OTTAWA – Canadian Voices: Canadian Choices, a New Broadcasting Policy for Canada was tabled in the House of Commons on June 23. The new broadcasting policy is the result of long and intensive research and numerous reports, starting with the Task Force on Broadcasting Policy established in May, 1985.

Known as the Caplan-Sauvageau report (after its co-chairmen, Gerald Caplan and Florian Sauvageau) this 727-page report was submitted in Sept. 1986 to Communications minister Flora MacDonald.

The Caplan-Savageau report, along with several submissions by the Parliamentary Standing Committee on Culture and Communciations written in response to the report, provided the foundation on which the broadcasting policy was developed.

Less than enthusiastic about the new broadcasting policy are the opposition critics in the House of Commons.

Sheila Finestone (Lib. - MP, Mount Royal) says there is not enough support for the CBC in the legislation and that the funding targeted for CBC falls "significantly short" of the $140 million that the CBC would now have if the government had let funding keep pace with inflation.

She also criticizes the legislation for allowing cable companies and other distribution systems "to be more than carriers" and participate in owning and originating programming.

Highlights of the broadcasting policy include the following: • a government commitment of $250 million over the next four years to improve the quality and quantity of Canadian content in private and public Canadian broadcasting.
• for increased spending by private broadcasters to bring more Canadian drama to primetime, and an incentive system that would, in effect, bring fines against broadcasters who did not increase their Canadian-content and reward broadcasters who did exceed their targets. • a nationwide alternative programming service to provide regional programming, multicultural programming and performing arts programming. • increased parliamentary appropriation for the CBC amounting to an extra $130.2 million over four years to CBC English-language and French-language programming. • an additional $75.9 million over the next four years for Telefilm Canada's Broadcast Program Development Fund. • an allocation of $31.1 million to improve access to broadcasting services by Canadians in remote and smaller communities. • start-up funding of $.6 million for a nationwide satellite-to-cable National Broadcast Reading Service for the visually impaired. • a definition of the respective roles of the federal government and the Canadian Radio-television and Telecommunications Commission. CRTC also receives an additional $5.8 million for operations.