Trade News

Distribution Fund: "closed shop" or viable industry?

MONTREAL – The new Feature Film Distribution Fund Policy which has caused a rift between Quebec-based distributors is not perfect, says Joseph Beaubien, executive director of the l'Association Québécoise des Distributeurs et Exportateurs de Films et de Vidéo.

Beaubien, who saw four member-companies withdraw from the 30- year-old distributors association in November after the $85 million distribution fund was introduced, says opposition to the fund's eligibility criteria is unreasonable.

Contrary to what the dissident group is saying, Beaubien insists that the fund was created to serve the industry as a whole by means of supporting the more viable distributors.

"There seems to be a lot of nitpicking," asserts Beaubien "This is uncalled for. You quickly reach the point where you want to say 'let's get on with it'.

"Remember that this fund takes into account the distributors as an industry and that no one has ever said it is perfect."

On this last point, there is unanimous agreement among members of the newly-formed Le Fédération Professionnelle des Distributeurs et Exportateurs de Films du Québec that the distribution fund is far from perfect.

These distributors say they will lobby against the fund because of the inevitability of inflated prices for foreign films and an overall unfair advantage created for the 15 recipients of the main fund. An additional $2 million per year is available in contingency funds on a film by film basis.

Pierre Latour of Max Films says the distribution fund policy will create a "closed shop" reality in the Canadian film distribution industry with companies virtually locked outside the main fund and using the contingency fund for their survival.

"Nonsense," says Beaubien who explains that "performance" is the operative word in this policy which makes provisions for distributors to become eligible for the main fund over the five-year life of the distribution fund.

On foreign film rights Beaubien says: "The cost of foreign films has been high for the last three years because of strong competiton for foreign films and whether the distributors get their money from the banks, the fund, or their mother-in-law is not going to change the cost of films.

"It's not as if he is getting 100 per cent of his costs. The fact that he must put up 50 per cent of his own money will certainly make him a prudent administrator."

The strongest point of contention between the two distributor associations is a question of eligibility and fairness (for the main fund).

Although Beaubien contends that a "total history" of the company is considered when determining eligibility, the applicant must have distributed at least 12 films during a 24- month period prior to application.

Beaubien says the AQDEFV was not advised that this 24-month stipulation would be in the final draft.

"We had nothing to do with that decision," says Beaubien. He said that members of the dissenting group, prior to their break from the AQDEFV, approved the fund's guidelines at a three- hour meeting with Telefilm and representatives of Communications Canada. This meeting was held, says Beaubien, prior to the writing of the final policy. He adds that consultation was industry-wide and that the industry should have made clear, at that time, what it wanted and did not want in the guidelines.

"In this life you have to live with your decisions, says Beaubien. "The association (AQDEFV) agreed to these guidelines."

Orval Fruitman, president of Brightstar Films Distribution Inc. in Toronto, whose company is eligible for the main fund was also involved in consultation with the framers of the distribution fund policy.

"They haven't misrepresented anything. There are certain rules that you have to go by. That is, you have to have so many Canadian pictures, have to be in business so long and have had certain experiences."

Gilles Bériault, a member of the Telefilm committee in charge of administering the fund told *Cinema Canada* that Max Film Distribution, headed by Latour, did not qualify for the main fund because the company is not two-years old and because Latour does not have 10 years experience as a "key executive" in film distribution.

Latour, who worked with two theatrical film distributors before joining the Quebec Film Institute and who worked for five years with Malo Film, argues that if the production side of Max Film can trigger Telefilm's Feature Film Fund because distribution is in place, why isn't he allowed into the main (distribution) fund.

"If I have the credibility to put together a deal with the producers of *Jésus de Montréal* (Arcand) and Telefilm, it is ironic that we are denied access to the fund," says Latour.

On the other hand, Bériault explains that Gordon Guiry, whose company Gordon Guiry Enterprises was also established less than two years ago, has the required experience as a former executive with Astral Films. He has also demonstrated that he will carry the requisite number of films within the next 24- month period. There are other requirements such as executive ownership and shareholder position.

Task force on tax policy

TORONTO – "Undercapitalization of independent Canadian film and television production companies is a historic feature of the industry which no government measure to date has addressed effectively." This precise analysis of the industry is to be found in the introduction of a task force report prepared by the Canadian Film and Television Association.

The report, which recommends a refundable investment tax credit for the industry to replace the old capital cost allowance, was made available to *Cinema Canada*. It concludes that an RITC would be a significant improvement over the CCA tax shelter and would be virtually automatic for qualifying productions. The report suggests that the credit would be unencumbered by previous requirements for Telefilm, provincial agencies, or broadcaster involvement.

David Patterson, vice president – television for Cineplex, and a member of the task force for the Association of Canadian Film and Television Producers, told *Cinema Canada*, "We needed to make sure that the government understood that tax reform would have a negative impact on the industry and to suggest alternative mechanisms to be examined.

"It appeared to us that a refundable investment tax credit was extremely useful from our point of view in terms of fostering the production of Canadian film and television programming and was more targeted from the government's point of view, in terms of their cultural objectives."

The way the scheme would work is this: For a production to be eligible, it would have to meet all existing requirements set out by the Certification Office (CAVCO). The rate of credit available would be consistent with the level of certification points attributed to individual productions. This would be achieved through the use of a sliding scale, a production with 10 points would be eligible to a 20 per cent credit. A production with six points would be eligible to a 16 per cent credit. In this way, the report suggests, the RITC can be targeted to achieve, with more precision, both the cultural and industrial objectives of the industry and government.

"Conceptually," the report says, "every dollar spent by a Canadian production company on eligible productions would qualify for an investment tax credit against corporate tax liabilities incurred by the production company. This credit would take the form of a refund in the case of profitable companies; in the case of companies without an incurred tax liability, qualified expenditures would still attract the credit, but it would take the form of a cash grant."

Patterson hoped to see the report studied before January by Communications Canada and that its recommendations make their way into the next federal budget, expected in February. Patterson was also involved in preparing a proposal for the Ontario Film Development Corporation that went before a committee of the Ontario Cabinet in mid-December. It is reported, also, to be a rebate proposal and calls for an Ontario film investment policy.

Jonathan Barker, legal counsel for the OFDC, would only say that the proposal is "before Cabinet and we expect to have a response over the course of the next few weeks."

Simply put, the Ontario proposal, which took the form of letters and meetings with the Ontario Treasurer and Premier David Peterson, would return 25 cents for every dollar invested in Ontario film and television production deemed indigenous. Patterson feels that the level of RITCs put into place by the federal government will determine the need at the provincial level.

However, he cautions that if Ontario waits to see what the federal government does to replace the private investment tax incentives of the CCA, as some analysts think might happen, "then there could a significant decrease of production potential in Ontario during the first quarter of 1989."

Fox calls for cultural vigilance

MONTREAL – With free trade moving into place, Francis Fox, former secretary of state and cultural policy consultant for the Quebec government, says Canada will have to "unite forces" with other countries to develop a code that will "permit encouragement of national cultures without fear of U.S. retaliation."

"Together, those who trade with the United States and fear the Americanization of their local culture must convince the United States that culture and cultural identity is more than the Fine Arts. A significant portion of the American entertainment industry when transposed in another country ceases to be mere entertainment and may become culture," says Fox.

Fox raised several unanswered questions about the impact of free trade on the Canadian film industry in a seech he wrote for a recent industry Conference in Montreal: The speech was delivered by Claude Brunet of Fashin Martineau, Walker.

Financing, Production, Distribution and Investment in Canadian Feature and Television Film was the title of the conference organized by The Canadian Institute, Nov. 25. Walter Senior, president and chief executive officer of Famous

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Players Inc., was the keynote speaker.

Fox commended Canada's cultural community for forcing sufficient protection in the free trade agreement for "short- term" interests.

This intervention by the cultural community, he says, was based on the premise that questions of national identity are inextricably bound with questions of cultural identity and that the subsidization of cultural industries must remain a legitimate public policy objective.

But, says Fox, it is now up to the cultural industries to understand what the deal says "in order to profit from the FTA or minimize its negative consequences as the case may be."

In the short term, the impact of the FTA is incalculable because it is indirect, he says.

For example, the abolition of tariffs on tapes and records combined with other factors such as reduced transportation costs and a low Canadian dollar (not a direct consequence of the FTA), may result in a move of laboratories to south of the border.

The FTA could alter the relative position of the American and Canadian dollars which might deter American productions shooting in Canada.

The lack of protection of the Canadian advertising community is another imponderable, says Fox, that could have an adverse affect on the audiovisual industry.

More specific free trade issues such as the agreement within the FTA to modify Canadian copyright legislation in order to introduce a retransmission right which entitles the copyright holder to royalty payment, may drain funding for Canadian productions.

Fox concluded his speech with a suggestion that the federal and provincial governments will have to adjust accordingly to the problems posed by the FTA and that the solutions will not be found within the context of the deal.

"Of course there will be a cost to Canadians. What price culture has always been an issue in Canada. It is the same debate. The presence of the FTA will merely force Canadians to reassess the Canadian public policy objectives with respect to culture. What is culture? What is Canadian culture? What is the best means to encourage Canadian culture?"

The keynote luncheon address at the day-long conference was given by Walter Senior, president and chief executive officer of Famous Players Inc. who reminded his audience that the decision to play a picture must be primarily based on economics followed by cultural considerations.

National strategies for developing a film industry and government-subsidized films do not guarantee success and often "remove the creative urge by creating a protected environment."

Producers who are dependent on working within this sort of environment "confine themselves to traditional, often exploitive, type of fare" says Senior.

"Terror, sex and violence are usually less innovative, giving the producer a predictable return and the ability to stay within the subsidies," he said.

The answer, says Senior, is commercially viable films.

"If there are enough people out there who want to see the picture," we will give it screentime."

The fact that Canadian feature films traditionally have been given only three per cent of screentime in Canadian theatres was partially addressed by Senior who says: "I have read reports and listened to people who believe that because the company is American-owned (Gulf and Western) it does not support the Canadian film industry. This is nonsense. The provision of first-rate facilities for the exhibition of film supports the industry as a whole. We are also actively involved in Canada Film Year, the film festivals of Vancouver, Montreal, Toronto, the Canadian Centre for Advanced Film Studies and the Academy of Canadian Cinema and Television."

Famous Players is also involved in Cinexus/Famous Players Films established to fund the development of Canadian screenplays.

Famous Players has recently invested in such Canadian films as *Dead Ringers* and *Bethune*.

Of viewing trends, Senior claims, "Box office figures for North America show an upward trend every year from 1980 to 1988." At the same time, he says, the viewer is becoming more selective about which films he would rather see in a theatre than rent at a video store.

Telefilm amends export program

MONTREAL – Telefilm Canada has approved major amendments to the Canadian Production Marketing Assistance Fund.

While assistance for promotional campaigns and media remain intact the acquisition component of the fund now provides a fund for exporters that has been described as a parallel fund to the new Feature Film Distribution Fund.

The amendments, approved by Telefilm on Dec. 1, limit qualifying applicants to export companies that have carried five feature films produced in the last two years. Three of these films would have to be produced at arm's length.

Maximum assistance is 75 per cent of a $75,000 minimum guarantee.

Exporters complained bitterly in November when the new Feature Film Distribution Fund threatened to undermine their position in the market by providing distributors with the financial leverage to buy all rights including foreign sales.

These established exporters also showed their displeasure in June when Telefilm Canada temporarily lowered the eligibility criteria for export assistance programs to a requirement of holding the rights to three Canadian features.

At that time they complained that too many Canadian exporters in the foreign marketplace with minimum product would fragment the market and leave the impression of a weak Canadian inventory of questionable films.

However, Telefilm has also established an entry level fund for exporters with 10 hours of television product or three features and an undertaking to meet higher criteria within a limited period of time.