Bad reception
Making sense of Canada's pay-TV mess

by Lucie Hall

The Festival of Festivals' Trade Forum, held September 12-14 in Toronto, provided excellent opportunity for Canada's pay operators, regulators and independent producers to comment on the many obstacles that still must be overcome if this country is to establish a strong and viable independent production community. The perspective of many producers has not changed since March 18, 1982, when the Canadian Radio-television and Telecommunications Commission (CRTC) handed down its decision to license a competitive model for pay-television against the virtually unanimous advice of the industry. Commenting on that decision, CRTC Commissioner Jean-Pierre Mongeau said at the Trade Forum, "We could have adopted something more on the lines of a monopoly when it came to licensing pay-TV but we decided instead to gamble on a competitive model. We adopted the fantastic free-enterprise approach that we hear about all the time and are told we should get into. And that's precisely what we did !"

Many observers found it ironic that the CRTC should gamble with "the fantastic free-enterprise approach" once they had done everything in their power to cripple it. Had it been left up to the free-enterprisers, pay-TV would have been launched in this country over a decade ago. Instead, it was the CRTC's infinite wisdom to delay the arrival of pay-TV until the home video cassette recorder industry had really flourished, and only then hand it over to free-enterprise. What lunacy ! How Canadian !

Since the CRTC decision, the universe has unfolded as predicted. First, we saw the bankruptcy of C Channel. Next, First Choice Canadian Communications, the national English-French network, announced that it expects to loose a staggering $21.5 million in its first year of operation. Now analysts are predicting that unless First Choice's cash-flow situation is not improved significantly by Christmas, it also will be virtually bankrupt. To avoid this, First Choice is presently seeking an estimated $25 million from the investment market through public share offering. As well, it is proposing that the CRTC permit cable companies to offer ESPN, the American all-sports service, to pay-TV subscribers, a move the company hopes will provide the much-needed boost in subscriber levels.

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First Choice also faces intense competition from the regional pay services. With the licencing of Aim Satellite Broadcasting Corp. in B.C., and the extension of Superchannel Alberta's coverage into Manitoba, Saskatchewan and the Northwest Territories, Superchannel and its allies – Aim, Star Channel in the Maritimes and Montreal's French-language Television de l'Est du Canada – form a powerful coast-to-coast network of about 170,000 subscribers. The combined buying power of this parallel network poses a serious threat to First Choice's bid to quadruple its numbers of subscribers to one million by 1985.

So now First Choice and Superchannel and its allies are pitched in a mighty marketing battle and while this is necessary and inevitable, the production industry has virtually been put on hold until the whole situation resolves itself. Pat Ferns, president of Primedia and past-president of the Canadian Film and Television Association, said while addressing the Trade Forum that, "Had the CRTC licenced a single entertainment channel and we had the subscriber levels we presently have, we would find that the pay-TV companies would now be in the black and we would have seen a much larger investment in Canadian programming than they've made to date !"

But beyond the critical issue of whether or not pay-TV is viable in Canada at the present time, there also remains the unresolved problem of whether or not producers can earn sufficient fees in Canada to justify a domestic industry. It is the strongly held belief of most of the producers who attended the Trade Forum, that their survival hinges on the emergence of an orderly marketplace in Canada. "Orderly marketplace" is a phrase coined by CITY-TV's Moses Znaimer referring to a program being marketed first to pay; second, to free or conventional television networks and last, to the syndicated market. This orderly method of marketing programs permits the producer to secure the maximum amount of funds available in this small, fragmented marketplace for such high-ticket items as features, made-for-TV movies and mini-series – that is, product suitable for both pay- and free-TV. Yet while there have been some rare examples of cooperation between the free broadcasters and pay, the attitude of the CBC to this orderly market has been "hard-nosed and head in the sand," according to Pat Ferns. Peter Herrndorf, vice-president of CBC's English Network restated the CBC's position at the Trade Forum. "I have never accepted, to put it mildly, Moses Znaimer's notion of an orderly market. As an alternative, I proposed 'rotating windows' and that simply means that if we do projects with pay, we flip-flop windows. In other words, on one project we get first window and on the next project pay gets first window." Pat Ferns countered in frustration : "How can you expect pay to program something second if it's already been shown first on free-TV ? It's crazy ! What the fight should be about is how much more pay should spend for the privilege of having first window. And, in times of poverty, how much the CBC can really save by dealing in second windows ! ! If CBC is now starving for funds then it should start playing ball with pay-TV. It has an absolutely vital part to play in our future !"

As expected, First Choice has consistently refused to negotiate with CBC on the rotating window policy. Phyllis Switzer, senior vice-president at First Choice, explained that if 50% of their airtime is eventually going to be new Canadian content programming and if they are to survive, then the subscribers must feel that they are getting their money's worth. Reruns from conventional TV just won't do. It's a matter of survival and nothing else. "Ironically," interjected First Choice president Don MacPherson, "we have first window with Radio-Canada."

Superchannel, though it finds this rotating window policy is enormously frustrating, has nonetheless decided to go ahead and play ball with CBC. Steven Harris, president of Superchannel Ontario explained : "It was after an awful lot of thought and discussion about our long-term objectives in pay. We had to use our own ingenuity and balance our marketing constraints with the amount of money we have at the bank. That's why we've ventured into this area unlike our competitors, First Choice, and we do it very gently and carefully so that we don't make our existing subscribers frustrated."

There is no question that in terms of the orderly marketplace, the CBC policy of rotating windows is untenable, unacceptable and outrageous. Yet, in the minds of this country's independent producers, it is difficult to distinguish between the worse of two evils. The first evil : the decision by First Choice *not* to play ball with CBC. The second evil : the decision by Superchannel to *go ahead anyway* and play ball with CBC. Each alternative has unfortunate consequences for the independent producers. In the best of all possible worlds, Superchannel and First Choice would link arms in a common front on this issue and quickly bring CBC to its knees. In terms of practical reality, however, this is an unlikely scenario. For one thing, Superchannel's greatest foe is First Choice, not CBC. So the likelihood of the pay services linking arms, even for so mutually beneficial and worthwhile a cause as maintaining the principle of the orderly market, is remote indeed.

So where does this leave the producer ? "As usual", Pat Ferns said, "the producer must continue to scramble for scarce funds, often deferring his fees in order to complete financing. But you can't build an industry on producers deferring their fees !"

But what is the root of this chaos in the marketplace ? Again Ferns provides the analysis. "CBC has continually been confusing its role between that of a producer and that of a publisher. To cooperate in an orderly marketplace means that the CBC's traditionally held position as the country's pre-eminent producer of television product would be usurped versus its supposed role as the country's foremost exhibitor/publisher of television product." And so it appears that the CBC is not about to step aside, not even for quality broadcasting, if it means giving up their traditional power. As the saying goes, 'No one gives up power voluntarily.'

Then, in the spring of this year, the

government dropped yet another bombshell on the beleagured pay-television industry. The minister of Communications announced that the Canadian Film Development Corporation (CFDC) would administer a $35 million Broadcast Fund, as of July 1, that would rise to $60 million by the year 1987-88, so that the free or conventional broadcasters could generate over $1 billion worth of television programming with the independent producers. The fund was set up in theory not so much to assist the independent producers as to help broadcasters who will face increasing competition from soon-to-be-licensed tiered services on cable. To qualify for this fund, an independent producer must submit to the CFDC a letter from a conventional broadcaster stating an intention of playing the show (either drama, variety, or kid's programming) during prime-time. Upon approval, the independent producer would then receive roughly one-third of the show's budget from the CFDC. Edward Prévost, chairman of the CFDC, said of the fund at the Trade Forum, that "This represents more dollars than have ever been given to production than even the infamous income tax shelter. Now if this fund can't help to develop production then we might as well throw in the towel for good. Because if this doesn't work, I doubt that we'll ever see any other important, substantive, significant government initiative in our time."

Despite the government's good intentions, there are however a number of things about the Broadcast Fund that infuriate the pay-television industry. Jon Slan, vice-president of Superchannel Ontario, is one of the fund's most articulate opponents. "I'm more than a little surprised that this legislation has been drafted because as you know, we, the pay operators, have precious little to do with it. The conventional broadcaster is a *must* participant in the fund and we, the pay operators, a *may* participant. Our participation in the fund will be at the total discretion of the free broadcasters. It's the free broadcasters who are always going to be in control of the window and who are going to be the ultimate arbiters of the creation decisions. So this leads one to question why the CFDC omitted the pay-TV industry in the decision-making process of the Broadcast Fund. As further insult they chose to get a good deal of the money for the fund by levying a tax on the cable industry and secondarily on the pay-TV industry. Looking at the numbers, this means that we, the pay-TV operators, will contribute roughly $8 million-a-year towards the broadcast fund. What this means is that the pay operators, who already have the most stringent Canadian content requirements in Canadian broadcast history, are also taking $8 million out of their revenues and donating it to broadcasters. It's kind of like asking the Pentagon to donate to the Kremlin! I'd like to remind the people at the CFDC and elsewhere in government that we, the pay operators, that we too are in the television business."

Although independent producers see the fund as a step in the right direction, there are elements within the fund that cause some concern. For one thing, the Broadcast Fund has an onerous payback scheme that places the CFDC ahead of the private investor when it comes time to recoup money. Second, the fund does much to reinforce the CBC's already disruptive and uncooperative position within the industry by making its strength, relative to the rest of the TV-broadcast industry, disporportionately larger, thus making the eventual establishment of an orderly marketplace even more difficult.

Pat Ferns, commenting on the situation, said, "The fund must remember the context in which it is operating. The need for a process of industry-building and the reestablishing of investor confidence is a vital part of that industry building. And so the fund shouldn't act totally like a Canadian bank, and you can't say anything worse about a bank than that. Further, I would think that it would be progressive thinking if the independent producers could start with the assumption that the first third of any financing they need would come from the fund. Then if you're doing a Canadian project we must look for the balance of the funding coming from licence fees in Canada, which probably means both pay-and conventional-TV. And those two groups have got to get their acts together!"

The last but certainly not the least area of concern shared by both pay-TV operators and independent producers alike, focuses on the proposed new regulations regarding the definition of Canadian content. Pat Ferns gave a rousing condemnation of the proposed new changes at the Trade Forum (see p. 6) where his impassioned speech was met by prolonged and resounding applause. He had obviously touched a raw nerve within the industry. He spoke for both pay operators and independents alike when he described his intense frustration at trying to remain viable in today's enormously regulated television environment. What seems to be the basic issue hasn't changed in decades and that is, "Can the television industry in Canada make money and address the concerns of Ottawa at the same time?." In reference to this, Peter Pearson, director of the Broadcast Fund, said "I'm not sure we have the answers at this time. I'm not even sure we have pieces of the answer. But, the further we get into it, the more I realize that we only have a chance as long as the independent producers think there's a way to put the pieces together."

At this time the pieces don't seem to fit – not as long as the government is trying to promote film and television production as part of a cultural strategy versus an industrial strategy. There's a basic dilemma facing the industry and that is, what is best for the industry in a financial sense is not always considered best for the country in a cultural sense. We've got to decide which is more important: The economic/industrial viability of our media or their cultural viability. If the government is serious about endorsing the cultural aspects of the media industry, then they should support independent producers, broadcasters and pay operators with 110-120% of the funds that they need to operate. They should not, however, expect private enterprise and private initiative to subsidize a government-constructed and regulated cultural mandate. If, on the other hand, government does not wish to support the industry in this way, then it should tamper as little as possible with the mechanics of private enterprise. If anything, in fact, the government should offer a little more carrot and a little less stick.

But if the current government policies persist, one thing is certain: We will continue to have neither a culturally viable nor an economically viable television industry in this country. ●

C Channel autopsy

An interview with Edgar Cowan

Attending the Trade Forum but not invited to speak was Edgar Cowan, former president and chief executive officer of the now defunct C Channel. C Channel declared bankruptcy in late June after five months on the air. During that time it lost a staggering $11 million and managed to attract only 27,000 viewers.

It was strange under these circumstances that Cowan was not invited to participate in a single pay-television panel discussion during the entire three-day Trade Forum. His exclusion seemed more than just an oversight. In a world of dizzying overnight failures and successes, Cowan was no longer deemed relevant by the forum organizers. I thought this unfortunate and asked him for an interview. He seemed relieved to at last have the opportunity to talk and to share a few of his insights into what went wrong. Today, as the whole pay-television industry is ailing, Cowan strongly feels the need to see the situation rationalized and, above all, to have some sense made out of it.

Lucie Hall

"I guess in hindsight it is easy for people to say "This is what went wrong or that is what went wrong.' The fact of the matter is that it was an accumulation of a whole bunch of things. I don't think, for instance, that we should have launched simultaneously with the other pay services. We also should have gone 24 hours-a-day right from the very beginning. And C Channel was probably the wrong name because people had the perception that stood for big 'C' Culture when that was far from it in terms of the total package.

"We were undercapitalized by at least 100%. We should have had twice the amount of money we had. First Choice was spending about $500,000 a week on television commercials for eight weeks. That $500,000 was about a third of our total budget. We just got swamped. I knew that they were going to spend money but I had no idea that it was going to be like that.

"We had problems internally. There was a split on the board between the good guys who were in for the long haul and who understood what we were doing, and a bunch of people on the investor side who wanted a quick in-and-out. Unlike us, First Choice's investors are made up of a bunch of institutions and institutions can be more reasonable. They understand the long haul. Our problem was that we had a private placement on the market at the wrong time and it failed because it was overpriced, because some of the inside people at C Channel wanted a quick turnaround on the price of their shares. It all got terribly messy and so all these things internally were happening while externally the CRTC was driving us nuts with changes. And they knew it. We had talked about it in our application. And they screwed us up on that.

"We got screwed on the January previews. Those previews were a cornerstone of our marketing plan because we didn't have the money that everybody else did to spend on advertising. Those previews were absolutely vital to everything that we were doing. When they got yanked at the last minute, it just took the wind right out of our sails.

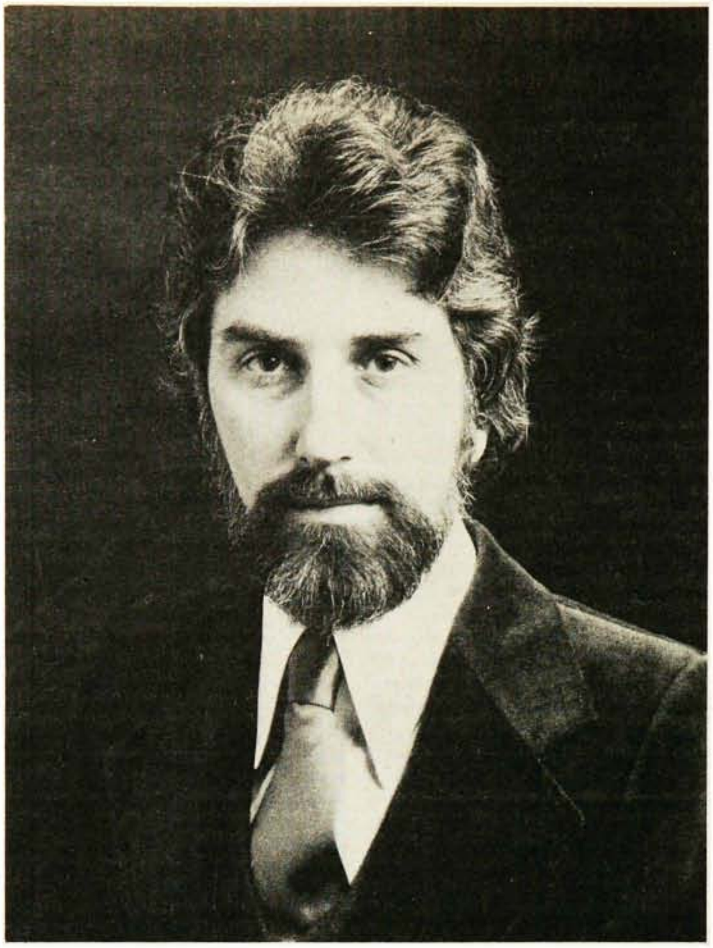
"We overspent on independent production. Instead of spending 20% of revenues, we spent about 200%. If we had known that we would have had such a slow start at the beginning, I probably wouldn't have spent so much. But in a sense we had to, because the conditions of license were so stringent. For instance, the other pay operators could go to the shelf for unreleased motion pictures. They could also go back to the motion-picture catalogues. We had nothing. We had no Canadian content to pull out of the cupboard to get started. We had to create it. Sure, we had 10% less Canadian content requirements than the other pay-TV services but that was not nearly enough. I mean, it was a real problem and we hadn't identified how serious a problem it would turn out to be until we started scheduling and looked at all those conditions of license.

"And then we started getting into trouble with the TELSAT rates. We never knew what those goddamned rates were going to be. And the ballooning happened and the rates went through the sky. That really affected our bottom line.

"Then the CRTC called for the other provincial licenses, then they called for the specialty services. It confused the hell out of everybody and it certainly confused the financial market. It was hard to explain what they were doing and why they were getting in the way of this fledgling industry.

Not only was the Commission doing that, but here also was the government coming out with the Broadcast Fund right in the middle of the launch and this left things right up in the air because it excluded pay-TV from initiating projects.

"I have to tell you : Francis Fox did us in. At the very time that we were in trouble and I had located some money, he started and for two weeks solid, he made statements about how the government was not prepared to help the pay licensees. Now, I hadn't asked for anything, but when the government tells me that they are not prepared to set up structures or agencies to insure that a license they have granted is going to be successful, it had the effect of scaring the hell out of our investors. They said they didn't know where pay was going and they didn't know what kinds of regulations the government was going to throw at pay. Just look at the things that were going on in the four months we were on the air. It was unbelievable ! So the investors just couldn't see it. It would take far too much money for the amount of possible return.



"My next point is that the environment in which we launched was absolutely terrible. Because we launched simultaneously with the others, pay-television was all three of us, not one or two. For us to try and work our way out of that, to try and isolate ourselves out from the pack was impossible. So when the whole sex and violence and the Playboy issue came up, that was the straw that broke the camel's back. We were bundled along just like everybody else. Consumers just weren't making the distinction. So pay-TV was perceived in the consumers' minds as dirt and a lot of them didn't want it in their homes.

"What I'm trying to say is that an accumulation of things went wrong. It wasn't one single thing. It's only when you put them all together that you say, 'Oh my God ! What's going on here ?'

"One final thing. The people that did come to pay were the already super-heavy watchers of television. Well, the C Channel consumer is not going to be in the heavy-watcher category. We hardly got at our customer. And a large part of that responsibility rests with the cable people who didn't understand what C Channel was. They weren't ready at launch. They didn't know how to sell pay. The biggest systems were selling top-down : three first, then two, then one. So the C Channel subscribers mostly came in the triple and double sales. Well, those aren't going to be C Channel people basically. Mind you, we didn't experience that much churn after two or three months. But we never had the opportunity to get the fundamental C Channel customer. We didn't have the time or the money to get across the message that this was really a terrific idea and a great channel, but is going to require a slight life-style change. It's going to mean watching a bit more television in your home. I think that they are still making that same mistake today. Pay-television just doesn't talk about that. People have got to understand that watching pay-television is not like watching ordinary television. It isn't : pay-television involves a commitment.

"And some of the cable operators were just terrible. When we had our survivathon which we did somersaults to get, half the cable systems in the country were on answering service that weekend telling people to call back next week to place an order. Cable TV in Montreal didn't even have an answering service. They had nothing. Well, what are you going to do ? So our demise was an accumulation of things that we did, that the CRTC did, and what all those other external sources did.

"As far as First Choice and Superchannel go, I wish them all the luck in the world but I'm sure that they are feeling the effects of what was probably the wrong licensing decision. There probably should only have been one of them : one of them and one of us. It would have made our lives much different, much easier. If there wasn't competition between First Choice and Superchannel and there was only one of us, then we could have sorted out the motion-picture package so that the consumer would have gotten two completely differentiated program services. The services now still have a hard time being differentiated and so they are splitting up the market. Viability is going to take much longer for both of them to achieve... if ever.

"I have my doubts that they will ever be viable. I can tell you that if First Choice don't double their figures by Christmas, I think they will be in serious difficulty. I think that we are going to see this fall just how long it is going to take. If it takes too long, my own belief is it's possible both of them won't hold on. If those subscriber numbers don't improve significantly then it is possible they'll both would go under and then where would we be ?

"The viability of pay in Canada has tremendous ramifications for the entire production industry. But I have serious doubts about the terms under which the present systems are licensed. For one, the Canadian content requirements on all these pay services is much too high. I'm just completing a paper on these Canadian content requirements for both pay- and free-TV and I think that we have to start all over again.

"If we are setting out to have Canadians watch Canadian content, especially in drama or kid's material, then it is terribly important that we start being sensible about how we are going to do that in the face of incredible competition from the American networks. Furthermore, if they start letting in American tiered pay services, we have got to realize that the independent producers have been telling the truth. I know they are telling the truth : We haven't got enough money. We've got the people and the ideas, but not the money. We just don't have enough money per hour to put into programs.

"We are being regulated wrongly. If you go back to the Broadcast Act it doesn't say anything about percentage of air-time being Canadian content. The Act sets up principles. These principles can be adhered to in many ways. The legislators have chosen to regulate percentage of time on the air. It hasn't worked. For example, they legislated that C Channel should take 50% of the funds and spend it to create 30% of the content on the air. First Choice has to produce 40% on the air. But what if I only had to produce 5% on the air with 50% of the funds ? Wow ! That 5% would be fantastic ! !

"These days, now that I am no longer with C Channel, all kinds of people are hammering me with scripts. I'm not sure that I want to produce them. Right now I'm more interested in seeing this pay-television mess rationalized. I'd like some sense to be made out of it. The present situation has got to be a terrible frustration to producers who want to create quality programs that Canadians will watch. It's simple. Producers want to create them. The government wants to encourage them. So why can't we ? Because nobody's prepared to talk about the untalkable. We never talk about the sacrosanct system of Canadian content that was set up years ago, and we never talk about how we've got to scrap it and start all over."