

LEGAL EYE

by Michael Bergman

In his *Cinema Canada* piece on the recent *Convergence II* conference, Michael Dorland writes about the panel on Copyright and Technology which this writer moderated. I must respectfully disagree with Mr. Dorland on two points concerning his comments on that particular panel. It is with some surprise that I learned that I was speaking for the Canadian Government given that I have not only no connection with the Canadian Government but have frequently disagreed with its cultural and particularly motion picture policies as many of my earlier writings would demonstrate. Of more interest though is Mr. Dorland's notion that Canadian Law is an extension of public policy whereas American Law is an extension of individual or natural rights. As a blanket statement Mr. Dorland's remarks would surely spark considerable controversy among the Canadian legal community. Surely the plethora of Provincial, Federal and Constitutional Charters of Rights which presently exist in this country are sufficient evidence of the degree to which individual liberties are held sacred, not to mention that the basic legal structure in Canada is grounded on British legal notions of the rights of a subject against the Crown and fair play. Nevertheless, there is distinct public sense, although its parameters defy definition, that Canadians are more compromising, submissive to authority, content and expectant of government intervention. Whether this sense is caused by population, economics, climate or insecurity, this writer feels that not only too much has been made of this notion of the Canadian way (an expression which might denote the perjorative) but that not every region of Canada displays this characteristic. Be that as it may, the real issue on the *Convergence II* Copyright and Technology panel was the application on an international basis of the public policy of nations in the copyright domaine.

In this respect and although none of the participants on that panel represented any government, all tended to reflect the notion that their respective countries should in the International Copyright Law arena reflect a public policy which tends to defend their country's domestic Copyright Law policies. In fact, one of the principal difficulties of International Copyright Law is the establishment of common international norms which func-

tionally link the various national copyright laws even if homogeneity cannot be obtained.

This process is influenced by power politics and the politics of power, by fundamentally different notions of culture and how nations view themselves. Western Europe consists of old countries with long-established cultures confident enough to enter into European economic communities with a common Parliament - a process which the Europeans do not view as compromising their national sovereignty. They view free movement within a larger protected and protective sphere as non-opposing to their national identity. American public policy in International Copyright seems to be grounded in the ethic of American individual rights. In this context American public policy is designed to advance and protect those rights in the international sphere and consequently tends to be colored with the notion that all other systems which do not acknowledge these individual (more often than not commercial) rights are imperfect or unsatisfactory. This conception of public policy is to a great extent complemented by two practical and legitimate elements. For whatever reason, Americans tend to view culture as entertainment and entertainment as industry. Active dynamic culture has an economic value, it should be exploited. In this context legal impediments to this exploitation must be diminished or nullified. Since most countries worth their salt believe their national cultures are at least as good as anybody else's, this attitude is understandable. On the other hand American public policy is also influenced by the fact that its cultural and entertainment industries have an extensive infrastructure and are recognized as an integral and vital part of the American economy. The defence of these interests through public policy is also legitimate from the American perspective.

In comparison to the Europeans and the Americans, Canadian public policy in the international copyright and cultural and entertainment fields appears negligible. This is not to say that Canada does not have a policy on International Copyright Law. The problem is that Canadian public policy on International Copyright Law reflects the more stable and settled areas of print and related media. In motion pictures and television Canadian public policy is a question

mark. Two reasons may be submitted for this deficiency. Firstly, the Canadian film and television industry has yet to be regarded as an export industry. Although most Canadian feature films are designed to be acceptable to the American market, this is not so much export as an unstated and perhaps unrecognized attempt at integration with the American film industry. The primary emphasis of Canadian public policy in the film and television industries is to make their products available for domestic use. Consequently, all of the so-called international problems which concern the Europeans, Americans and other film and television exporting nations are either superficially recognized or unexperienced in Canada. Perhaps the most problematic area of formulation of Canadian public policy which applies to International Copyright Law, and the film and television industries in particular, is the general absence of Canadian public concern about these industries and the film industry in particular. Although Canadian film and television are well represented by a variety of special interest groups, these groups generally appeal to a narrow audience of the various Ministers of Culture or Communications in this country. No broader public relations effort has been made to make the Canadian public aware that a quite substantial domestic film and television industry now exists that can compete with non-Canadian products.

American and European negotiators can talk to each other about their respective cultural industries, public policies and their international implications because they are each coming from well-defined positions and understand each other's point of view. American and Canadian negotiators discussing the same subject matter are talking at, and not to each other, as Canadians without a well-defined public policy in this area have no precise stance. It is for this reason (among others) that the Canadian/American Free Trade Talks seem to be going so poorly, and the Americans continue to insist, more or less, that cultural industries be on the table for discussion.

The extent to which domestic legal systems are concurrent with domestic public policy can be debated at length by jurists and other interested persons. There can be little doubt though that on an international level the rules of the game established between nations - and how, if at all, their respective domestic legal systems interface - is very much a matter of public policy. In a

cont. on p. 46

ONTARIO
ARTS
COUNCIL

The Ontario Arts Council offers grants to professional artists who are residents of Ontario, working in the following disciplines:

SCREENWRITING

to assist with the development of feature-length dramatic screenplays.
Deadline: February 1

FILM

towards the production costs of documentary, dramatic, animated or experimental films.
Deadlines: April 1, November 1

VIDEO

to assist with the production of original video art.
Deadlines: February 1, August 15

Please note: all applications must be supported by examples of recent work.

For further information and application forms, contact:

Film, Photography and Video Office
ONTARIO ARTS COUNCIL
151 Bloor Street West, Suite 500
Toronto, Ontario M5S 1T6 (416) 961-1660

YOU SHOULD
PUT US IN YOUR
NEXT PICTURE

You have highly specialized insurance needs and we have the know-how to creatively adapt insurance for the media, communications and entertainment industries...

We will prepare realistic estimates for your budgets and work to get you the best rates and coverage available.

Phone or write Arthur Winkler and ask him to produce an insurance package specially designed for your protection.

Arthur Winkler, CLU

Arthur Winkler Insurance Broker Ltd.
A Division of the



HULL
INSURANCE
GROUP OF
COMPANIES

Royal Bank Plaza, South Tower
28th Floor, P.O. Box 126
Toronto, Ontario M5J 2J3
(416) 865-0131
Telex - 06-23901

Arcand and Berman vie for Oscars

MONTREAL – The winner of numerous awards in 1986, *Le Déclin de l'empire américain*, directed by Denys Arcand, has been nominated in the Best Foreign Film category by the Academy of Motion Picture Arts and Sciences in Hollywood.

Le Déclin is one of five foreign films selected from features entered by 32 nations.

Co-produced by the NFB and Corporation Image M et M Ltée, *Le Déclin* has become the largest grossing film ever made in Quebec.

Awards to date include, the International Film Critics' Award at the Cannes Film Festival, Best Foreign Film (New York Film Critics) and Best Canadian Film Award at the Toronto Festival of Festivals.

TORONTO – An Academy award nomination for *Artie Shaw: Time is All You've Got* was an extraordinary surprise, says Brigitte Berman, the Toronto filmmaker who made the documentary.

"When they called me I was shocked. I just wouldn't believe it and I kept saying 'come on'."

In fact Berman said she be-

came so tired of the psychological ups and downs of the film awards circuit that she wasn't even going to enter her documentary for nomination.

"It just gets in the way of your work sometimes."

But luckily her distributor and Don Haig, the associate producer, urged Berman to enter the film.

That's one reason Berman is so thrilled about the nomination of the film, about clarinet player and big band leader Artie Shaw, in the best feature documentary category.

When Berman reached Artie Shaw, who was in hospital, he had already heard the good news about the film. Berman said Shaw was surprised and really pleased.

"I think the film has a lot to say and Artie has a lot to say and that's why he's so happy."

The 114-minute documentary was in the making 2.5 years and was produced on a budget of \$225,000 with support from the Canada Council, the Ontario Arts Council and a private investor.

Berman said Telefilm Canada helped ensure the documentary made it to film festivals around the world and thereby made it eligible for the Academy Awards.

Legal Eye

cont. from p. 43

bizarre way the public policy of all nations, concerning their cultural and entertainment industries, have some remarkably common points. They are all designed to permit their domestic industries to grow and expand in an environment elastic enough to permit this. The problems arise because the expansion and growth of national cultural and entertainment industries is perceived as being at the expense of the growth of other nations' cultural industries or economic interests. In the international context the individual rights of the various participants in the cultural industries take precedence only to the extent that they are concurrent with this growth process, otherwise, however cherished – and rightly or wrongly – they appear secondary.

Michael N. Bergman,

Barrister & Solicitor, Member of the Bars of Quebec, Ontario and Alberta with offices in Montreal and Toronto.

Talks on-going about merger

TORONTO – Talks about merging the Canadian Film and Television Association (CFTA) and the Association of Canadian Film and Television Producers (ACFTP) are under-

way. While representatives of both groups acknowledge the discussions, there is disagreement about the nature of the bargaining.

Sam Jephcott, executive director of the CFTA, said he thinks the move is essential. He said a secret committee of three members from both groups and a chairman have a mandate to discuss the issue.

But Peter Mortimer, executive vice-president of the ACFTP, said the discussion of a possible merger is part of ongoing talks between the groups.

"Some form of integration is one of the ongoing things on that agenda," Mortimer told *Cinema Canada*. "There is nothing spectacular going on at all."

Mortimer said no marriage is about to be announced, although he added the two groups have decided to start some dating.

After three years in his part-

time paid post at the CFTA, Jephcott said he will be stepping down in May. Jephcott intends to stand for re-election in May as a voluntary board member of the CFTA.

He said there are several benefits from joining the two groups including reduced office costs and, most importantly, a unified voice for producers.

The ACFTP broke away from the CFTA about three years ago after organizational and policy differences developed. The ACFTP has up to 40 members (production companies and financiers), while the CFTA is a much broader group that includes producers.

Despite the split both spokesman said the two groups are very close on many issues.

"We are not at war. There are very few areas in which we have a disagreement," said Jephcott.

He said while the merger talks are not a high priority compared to some of the policy issues and film industry concerns being discussed by the groups, the discussions are still crucial to creating a stronger industry voice.

PICTURE VEHICLES

Wholesale Purchase and Rentals

- Complete "on set" mechanical and welding service for 1st and 2nd units.
- s.p.f.x. rig's built to spec's
- plastics, fiberglass, custom paint and graphics
- Rental of the two largest wind machines in Canada.
- Just completed a 65 vehicle, 4 helicopter shoot on budget.

Call Tom Lane at
(514) 453-8314

Serving Quebec and
Eastern Canada

SHOOTING IN QUEBEC?

Un film, un syndicat.
Du premier assistant-réalisateur
à l'assistant de production,
des techniciens professionnels
de calibre international,
innovateurs et assurant
la plus haute qualité technique.
L'administration au maximum,
la rentabilisation au maximum.
Tourner au Québec avec le STCQ
fait revivre l'enthousiasme
au cinéma.

One film, one union.
From the first assistant-director
to the production assistant,
professional and innovative
technicians of international
calibre geared for high
quality cinematography.
Minimum administration,
Maximum picture value.
Shooting in Québec
with the STCQ brings out
the spirit in moviemaking.

The only union
in Québec representing
all freelance
movie technicians.



Syndicat des Techniciennes
et Techniciens du Cinéma
3449, rue Saint-Denis, Montréal, Québec H2X 3L1
Téléphone: (514) 288-4365