The carrot and the stick

A review of Canadian broadcasting policy

BY KEITH ACHESON AND CHRISTOPHER MAULE

A foreigner visiting Ottawa in the hot summer of 1988 observes Canadians in bookstores and libraries buying and borrowing books and choosing which ones to read and when to read them. The same is true for newspapers and magazines where extensive choice and little government control over content exist. Turning to the electronic media, the tourist finds a complex set of regulations which determine who can broadcast radio and television signals and what messages the signals can contain. When asked, the natives of all political stripes explain with one voice that the differential treatment "protects Canadian culture." Unanimity and coherence then disappear as the natives address questions about what culture is and how it can be protected. In particular, when asked why the print and electronic media are treated differently by the government, the confused citizens begin to disperse and defensively suggest that the inquisitive tourist read something official.

Taking the advice to heart, the visitor purchases and reads the recently released Broadcasting Committee Report (House of Commons Standing Committee on Communications and Culture, *A Broadcasting Policy for Canada* (June 1988)). Unfortunately, instead of answers to those questions the visiting reader is presented with 143 recommendations extending the protective regulations. The premise of the *Report* is that what we have been doing in broadcasting was right then, is right now, and will be right tomorrow. All that we need to do is to adapt the process to new technologies and keep pressing for heavier dosages. Rather than distill meaning from such assertions as:

> Attention should be given to the possibility of limiting broadcast owners to a certain share of market, but whatever guidelines are used, they must take into account the distinct needs of the French-language and English-language markets. (Recommendation 133)

The tourist may be excused for moving on to the next country on her itinerary. For those of us who do not have a continuation ticket to Tahiti, the visitor's questions merit attention as a base for appraising the *Report* and the recently introduced legislation on broadcasting.

Some background observations

In the beginning of broadcasting, spectrum was scarce and no one's property. The government became involved, to lay claim to some of the spectrum as Canadian property for the purposes of broadcasting, to allocate the Canadian spectrum among broadcasters, and to regulate it so as to avoid problems of interference. Scarcity and trespass or interference problems are not unique to the spectrum, and by themselves do little to explain the idiosyncratic governance structure that evolved. With land, which has both attributes, we also contested with the Americans concerning which country owned what. However, once the boundaries were determined, we chose to allocate land by defining property rights and using the price system.

Unlike land, the spectrum is a conduit for the transmission of information with some distinctive characteristics. One distinctive feature of broadcasting in this early period was that the signal was common property and could be picked up by anyone owning a set. For the commercial broadcaster this meant that any value created for listeners or viewers could only be recouped by advertising. In contrast, magazine publishers can augment advertising revenue by charging a reader for a single copy of the magazine or for a subscription to a sequence of copies, or even rely exclusively on the latter source of income. Another distinguishing feature of broadcasting was the increasing cost of expanding channel capacity as compared to the relative ease of expanding the variety and number of publications.

These two distinguishing features had a marked effect on the diversity of programming that commercial broadcasters found profitable to deliver as compared to the information which publishers printed. The exclusive reliance of commercial broadcasting on advertising revenue meant that programmes for audiences which were of no interest to advertisers, such as children's shows or criticisms of corporate culture, would not be broadcast. In print, there is no lack of children's books or polemics, for or against almost any position, provided by the commercial press. In our graduate school days, *The Wealth of Nations* and *Das Kapital* were both assigned readings, and both were available in excellent and inexpensive editions from the *Modern Library* series. These classics generated revenue and a profit to their publisher from the fee charged for them and not from advertising. The limited coverage of commercial broadcasting resulting from the exclusive dependence on advertising is a significant economic reason for having a CBC to augment a private broadcasting system, while the contrasting situation in print explains the absence of an equivalent institution in publishing.

The relative scarcity of the spectrum also influenced the ability of commercial broadcasting to provide diversity in the market of interest to advertisers. If 81 per cent of a market is interested in mysteries and 19 per cent in birdwatching, and there are only four equally adept commercial stations, all will deliver mysteries and get 20 per cent of the total market. There will be duplication and no servicing of the minority audience. However, if scarcity is less and five stations can broadcast, the new entrant will choose to service the birdwatching contingent rather than obtain one fifth of the mystery market. Although duplication still exists, more segments of the overall market will be serviced by broadcasters as the number of channels is increased. In print, publishing can be expanded so specialized journals and magazines abound. Historically, the increasing cost of expanding broadcasting capacity provides a possible economic rationale for regulating content in private broadcasting.

To the extent that the governance structure for broadcasting reflects these economic concerns, it should evolve as technological change alters the significance of the two factors. Indeed, both problems have been substantially affected by recent developments. On the pricing side, the advent of cable and the ability to scramble signals economically have made possible subscription charges and fees for service charges, i.e. all the pricing options that were and are open to print publishers are now available to programme distributors. Developments in multiplexing and the advent of coaxial cable, fibre optics, and satellite transmission have also dramatically reduced the cost of expanding channel capacity.

Instead of buying into radio broadcasting packages being developed for other markets, Canada chose the more expensive option of developing its own programming. As new broadcasting media have developed, the expense of taking this path has risen. Canada has increased its capacity to produce sophisticated programming significantly but demand is expanding even faster; other countries have had similar experiences. This international situation creates the potential of mutually reducing the burden of rising costs through exchange or joint productions of programming among these countries. Canadian consumers and producers will both benefit enormously if the potential of the new technologies as well as the economies of participating in international joint ventures and trade are realised.


SECRET
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THE HOUSE OF COMMONS OF CANADA

BILL C-

An Act respecting broadcasting and to amend certain Acts in relation thereto and in relation to radiocommunication

, 1988

First reading.

The above considerations suggest redirecting Canadian policy by recognising that there are a number of programming markets and tailoring policy to their characteristics. The market segments range from that for a relatively homogeneous mass product sold internationally, through productions that have value only for a Canadian or a regional audience, to creative low-budget exploratory works that release the creativity of emerging artists and technicians. Our participation in a world market for mass programming with high production values can only prove beneficial to listeners and viewers. Canadian producers of mass programming would generate only a relatively small amount of their revenue from the Canadian sale of their programming but gain the mass of their revenue from foreign sales. Programming of value only to those in Canada, nationally or regionally, would be provided by commercial broadcasters where advertising and subscription revenues are sufficient. Programmes for which the revenue inadequately reflects their value to Canadians would be produced, either in-house or through

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contracting, and delivered by the CBC. In addition, a forum for experimental works, where new talent can display its creativity and skills should be subsidised in a manner analogous to the subsidisation of technology and innovation in the industrial sector. Content regulation based on citizenship would be phased out.

What would be the cultural impact of taking this policy direction? This is a difficult question to address since there is little agreement on what generates an appropriate culture. Some observations can nevertheless be made. Creative and innovative works would be encouraged in each of the different markets. For experienced producers, the expanded demand from a wide variety of commercial and government broadcasting concerns would provide outlets and financing for their projects. For those without a reputation, the alternative channel is a forum for developing one. Without content restrictions, Canadian viewers would be determining what to watch. Many might fear that Canadian production would disappear in this open environment. We believe that it would thrive. If it did not and Canadians at large voted to support having a larger creative and skilled broadcasting and film production sector, the appropriate instrument is a production subsidy and not content control.

Having briefly outlined these, perhaps quixotic, views of the appropriate direction of future broadcasting policy, we contrast them with what is and where we seem to be actually going. A complete listing of current Canadian radio and television policies and regulations would require book-length treatment. A sense of them can be derived by examining Exhibit 1, drawn from the *Report*. This is the Committee's fourth report dealing with broadcasting; the previous ones contained over 100 recommendations.

Our purpose is to comment selectively on the Committee's recommendations, some of which are consistent with the directions that we believe policy should move, but a number of which are not, and on their relationship to the new legislation. We support the proposed new alternative channel initiative which was recommended by the Committee and is part of the new legislation, as well as content policies addressing slander, libel and the manipulation of children. However, constructive debate will be further advanced by concentrating on areas of disagreement. Our analysis takes an economic approach, which we recognize is only one of many legitimate perspectives and often rests uncomfortably with those having cultural credentials. Nevertheless, it can provide important insights.

A Distillation of the Committee's Views

The Report advocates the following:

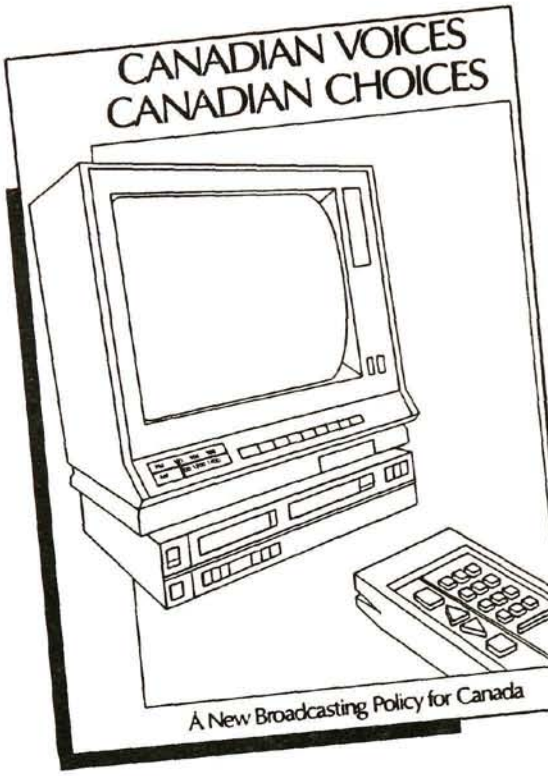
1. That the premise of section 3b of the 1968 Broadcasting Act should be supported, namely that "the system should be effectively owned and controlled by Canadians so as to safeguard, enrich, and strengthen the cultural, political, social and economic fabric of Canada".

2. That by further adding to and revising the CRTC's regulations, and by revising the mandate and funding arrangements for the CBC, Telefilm Canada and the National Film Board, the objectives implied in section 3b can be achieved.

3. That Canadian content can be defined and implemented through regulations stemming from legislation. That Canadians will watch and listen to Canadian content in sufficient numbers so that it is commercially attractive to Canadian private broadcasters who are funded by advertising.

4. That the Canadian market is too small to support unassisted Canadian-made films, programmes and sound recordings.

5. That Canada is invaded by audio and video signals from the U.S. making it difficult for Canadian productions to compete and survive domestically.



We will comment briefly on each of the six points.

1. Section 3b of the 1968 Broadcasting Act assumes, first, that Canadian ownership and control can be easily defined and certified, second, that the nationality of ownership is a significant determinant of behaviour, and third, that the different behaviour of a Canadian firm contributes significantly to the development of Canadian culture. Commercial firms respond principally to profit opportunities, opportunities that are unlikely to alter substantially with changes in the nationality of ownership. Casual support for this position is provided by the strong preference of privately-owned Canadian broadcasters and cable companies to show foreign, mostly U.S., programmes, a preference which is clearly documented by the *Report*.

The relationship implied by Section 3b is valid in the case of the publicly owned CBC where government funding can be directed to Canadian productions, providing the CBC is not asked to compete for advertising revenues and act like a commercial broadcaster. The CBC should be funded to achieve its mandate and not have to act like a commercial broadcaster so as to cross-subsidize its cultural activities. To ease the funding burden on the general taxpayer, the CBC could rely on specialized subscription services for delivering some of its programming.

2. Requiring Canadian ownership of broadcasting stations and cable operators is one strand of the traditional approach. When this is found to be inadequate, Canadian content regulations are written and combined on the supply side with government funding from Telefilm Canada, government film production through the NFB and special tax incentives for private investors in Canadian films. With each of these measures, more Canadian content is produced and transmitted, but viewers and listeners may choose other options such as watching and listening to foreign productions on Canadian or foreign channels or turning to their record players, tape decks and VCRs. Even though regulation may push more Canadian programming through Canadian-owned channels, with the available technology consumers can and do exercise their choice and watch mainly foreign programmes.

The combination of evolving technology and policy initiatives that try to make private broadcasters more like the CBC and the CBC more like private broadcasters has made it almost impossible for the CRTC to fulfil its mandate. The agency has sought to broaden its mandate to include as broadcasting all forms of delivery mechanisms, although even it has difficulty in arguing for the inclusion of VCRs. The Standing Committee supports a wide definition of broadcasting, recognising that this is the only way for the federal government to claim jurisdiction over these activities. The only assessment of whether fighting the war on a continually expanding front is warranted is based on a body count of the enemy, foreign production, reported in terms of the percentage of Canadian programming aired. If consumer preferences are ignored completely, the result may be 100 per cent Canadian-produced shows, diluted in quality by being spread over a burgeoning set of signals, watched by a handful of the faithful and accompanied by a rapidly expanding videocassette market. Any new policy should at least review the previous record and seriously discuss alternatives other than increased regulation.

3. One set of cultural regulations attempts to certify films, television programmes and sound recordings that have certain attributes as Canadian, in much the same way that inspectors grade meat as A, B, and unfit for human consumption. Three government bodies provide certification: the department of Communications, in order for investment to qualify for special capital cost allowances; the CRTC, for Canadian content to be broadcast on television; and Telefilm Canada, for government funding of productions that take place under official coproduction treaties with other countries, as well as for coventures and twinning arrangements financed by the agency. Although the requirements of each agency appear to be similar, there is considerable latitude for discretion, especially in the case of twinning arrangements where two productions are involved, for example one in Canada and one in the U.K. where both will qualify for national treatment in both countries even though one production is almost entirely Canadian and the other British. Commenting on this arrangement, the Caplan-Sauvageau Report stated that "a great deal of programming today qualifies technically as Canadian without there being much distinctly Canadian about it, and the criteria seemed designed to permit it." (P. 114).

Canadian producers are seeking to broaden the market for their projects by increasingly turning to coproductions and coventures with foreign partners, where the content must be acceptable to both partners' markets and preferably, from the investor's point of view, to third markets as well. Successful commercial productions then become those that penetrate international markets, and these may or may not reflect Canadian content. Selective bending of

Canadian content rules has been necessary to realise these commercial opportunities.

4. There is a longstanding view in Canada that in many industries, including the cultural ones, the market is too small to sustain economic production. Plainly this is not the case for many Swiss companies such as Nestle, Ciba-Geigy and Hoffman LaRoche, or numerous Swedish, Danish and Dutch firms. Nor is it the case for Canadian firms such as Northern Telecom, Alcan, Moore Corporation, Maclean Hunter, Rogers Communications and the Canadian banks. When domestic markets constrain expansion, firms find ways to penetrate foreign markets by way of trade, investment, and technology transfer. When the U.S. was faced with reduced export markets as a result of Canadian and European tariffs its firms established operations behind the foreign tariff, walls. Today Japanese firms are investing in the U.S. for similar reasons.

It is too facile to argue that the limited growth of some Canadian firms has been due to the disadvantages of a small domestic market. What remains to be discovered is why certain firms, such as Northern Telecom, found ways to overcome the disadvantages and grow, while others remained inward looking and smaller. In the cultural industries no large Canadian-owned international player has emerged, although Cineplex-Odeon and Astral Bellevue-Pathé may be on the verge.

The Canadian market is small, especially when linguistic distinctions are taken into account, and a Canadian producer of quality programming must look abroad for sales or take very large helpings from the public trough. Critics then claim that if a production is made for the international market it will not be truly Canadian. That view seems too stark. The head of the Swedish Film Institute has addressed the issue of the relation of national culture and international success and pointed out some of its complexities:

> Cinema today should know no frontiers but must at the same time have a national or even local flavour..... Perhaps it is a paradox to say that films should be national yet international, personal yet universal. The truth is that what we call art, stretches beyond the borders of country and continent...

5. The invasion of Canada by foreign audio and video signals is well documented in many reports. Undoubtedly this creates strong competition for Canadian productions, but it should not lead to the conclusion that there is no room for domestic producers. The Canadian industry has been growing rapidly. The combination of new financial and institutional arrangements promises further growth of these firms and their survival in international markets.

The New Broadcasting Policy

The new policy (Exhibit 2) provides for $250 million of government funding in addition to the $200 million announced in connection with the film distribution policy. It also instructs the CRTC regarding new and amended regulatory procedures. The thrust is consistent with many of the Standing Committee's Recommendations proposing a central role for the CBC, emphasising the need for more Canadian programming and supporting the efficacy of regulation to make the market conform to the government's objectives. Past failures are ignored. The content provisions are buttressed by an ingenious scheme to tax broadcasters and then provide incentives for additional Canadian content in the form of licensing fee rebates.

Support of the CBC will ensure the provision of a Canadian option for viewers and listeners, but requiring it to continue to raise some revenue from advertising makes it serve two masters, one public and one private. Forcing something defined as Canadian content through the private broadcasters will remain, in our opinion, as counterproductive in the future as it has been in the past. Existing producers are expanding their horizons by entering the international market. What the status of this programming will be under the content rules will become an increasingly important issue. In effect it may be almost impossible to implement existing Canadian content policies in the emerging international market.

Summary

Different broadcasting programmes have different markets, and policy should reflect that. The international market – as compared to the domestic and experimental markets for films, television programmes, and sound recordings – is becoming relatively more important, and its imperatives are being imperfectly reflected in policy. On the one hand, consumers are enjoying their ability to access a wider range of choices, while, on the other hand, producers are recognising the commercial potential that lies in the global portion of the market. Any revisions to the Broadcasting Act should recognise these developments and not be conditioned by a dated approach.

One further reason to be concerned about policies that involve increased regulations and subsidies is that these may become discussed in the current GATT negotiations as they focus on trade-in-services. In the bilateral trade agreement, it is generally believed that cultural industries have been excluded. Some argue that according to the "notwithstanding" clause, this is in fact not the case. That debate seems academic. Cultural issues can always get on the table in a hurry when one country takes action which the other considers provocative. In the GATT, systematic multilateral negotiation affecting all the cultural industries is likely to occur, and a code for conflict resolution developed. Canada has a significant interest in such a code. ●

Exhibit 1
Selected Regulations and Policies Affecting Television and Radio

A. Television.

1. The CRTC licenses television stations, cable operators, the balance between the public and private sectors, the number of specialty services on cable and determines the extent of independent stations, affiliates of networks, and networks.

2. The CRTC decides what services must be carried and may be carried on cable; the means of protecting Canadian broadcasters who have purchased the rights to foreign programmes from cable operators who deliver the same programmes (rules for simultaneous substitution); the extent and nature of non-programming services; the delivery of pay-TV and specialty services; and the pricing of signals.

3. Determination of what constitutes Canadian content in programming is made by the CRTC using a point system similar to that used by the department of Communications to classify content for purposes of qualifying for the special Capital Cost Allowance given to private investors. Telefilm Canada also defines Canadian content for coproductions undertaken under Canada's official coproduction treaties.

4. Determination of how much Canadian content must be broadcast and at what times is made by the CRTC, as is determination of the amount and type of advertising allowed, including the development of codes for advertising to children and for sex-role portrayal in television.

5. The CRTC evaluates the performance of broadcast and cable operators against their conditions of licence, rules on licence renewals, and has separate regulations for French and English stations.

B. Radio

1. The CRTC licenses AM and FM radio stations with conditions of license tailored to individual licensees.

2. FM stations are required to conform to certain format requirements, musical categories and advertising limits. Formats include:
- "foreground" – time spent to document and discuss an issue, as opposed to continuous programming of music.
- "gramophone" – record-spinning.
- "rolling" – gramophone plus a few introductory words for each record and occasional announcements.
- "mosaic" – any other programming which is more than "gramophone" or "rolling".

3. FM stations that broadcast popular music are licensed on the basis of the type of music. The CRTC classifies music as popular, softer rock, harder popular and rock, adult-oriented rock, country, classical, jazz, and ethical music. Programming formats include easy listening (mostly instrumental), middle-of the-road (including vocal), and up-tempo or adult contemporary music.

4. Canadian content requirements vary by programming format and by AM and FM signal delivery.

5. A record qualifies as Canadian if it meets two of the four MAPL criteria:
M = music composed by a Canadian.
A = music or lyrics performed principally by a Canadian artist.
P = live performance recorded wholly in Canada and broadcast live in Canada.
L = lyrics written by a Canadian.

Exhibit 2
Principal Measures Introduced in Canada's New Broadcasting Policy and Legislation – June 23, 1988

1. Increased funding for the CBC to assist it meeting its goal of 95 per cent Canadian content on prime-time English television, and to increase French-language productions for Radio-Canada.

2. Increased funding for Telefilm's Broadcast Programme Development Fund.

3. Improved television and radio services to isolated communities; satellite distribution for aboriginal programming; and a national broadcast reading service for the visually impaired.

4. Increased powers given to the CRTC to enforce conditions of licence, plus the development of a performance incentive for broadcasters to use Canadian programming.

5. The CRTC can receive policy direction from the Cabinet.

6. Funding for the start-up and operation of a national Alternative Programming Service to include contributions from Canadian regional arts and entertainment programming, Canadian documentaries, NFB movies and documentaries, the best of television from around the world, classic television from the past, French-language productions subtitled in English, original drama productions reflecting Canada's multicultural mosaic and regional diversity.

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