Nordicity Group Ltd.
Le Groupe Nordicité ltée

Green Paper:

The Future of Television in Canada

Nordicity Group Ltd.

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About Nordicity Group Ltd.

Nordicity Group Ltd. (www.nordicity.com) is the pre-eminent, independent, Canadian consulting firm specializing in policy regulatory and economic analysis; and business strategy, feasibility analysis, financial forecasting, and market assessment for clients in the communications and cultural sectors.

We are leaders in assessment, analysis, and evaluation of policy, programs, and regulation for government agencies. We also provide our deep understanding of policy and regulatory analysis to our private sector communications and media clients, and associations.

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Preface – Framing the Debate

This green paper is a companion document for the Town Hall discussion of the future of Canadian television and Canadian television programming.

The green paper argues that Canada's future in television will be determined by its ability to seize opportunities and address challenges presented by technological developments, foreign markets, and by its own domestic strategies and policies. This paper dissects the technology challenge, takes stock of the sector's position in the international production scene, and then articulates policy choices for addressing its financing gap and competitive challenges. In green paper tradition, there are no recommendations. Instead, we present fact-based logic that should underpin an informed debate on key issues and realistic solutions.

The Cutting Edge of Digital

For the last few years, the soothsayers have been heralding 'the end of television as we know it'. Yes, we accept that "on-demand" television is threatening the linear model – crudely through time-shifting, and more directly through PVRs, DVDs, VOD, and IP-based streaming and downloading options. But we argue that the end of linear television is hardly nigh – technology will indeed have an impact and present challenges to the industry, but such changes do not signal the death knell for the medium. To this end we set forth several propositions as a set-up for a debate on the impact of technology and the implications for the television and programming sector:

- ***On-demand television will not destroy linear TV, but broadcasters will need to adjust.*** While consumers will get ultimate control of when and how they watch, the linear model will still remain – to break the 'hits' as well as to provide the lean-back big-screen experience which will never lose appeal. Broadcasters will need to adapt, but the impact is incremental and thus gives them time to adjust – by creative use of the Internet, as well as acquiring Internet properties that assemble large broadband audiences.

- ***The Internet will <u>not</u> dominate high data rate television programming distribution.*** The Internet is ultimately an expensive way to distribute and access HD and other television programming that would tax its capacity. Television distribution by satellite, cable, fixed wireless, and wireline (through IPTV) is quite efficient, and will remain the dominant distribution system for TV programming. However, there will be the "new television" of video content that will circulate increasingly via the Internet.

- ***As broadcasters and independent producers are both challenged by new technology, they need new terms of trade.*** Broadcasters face the paradox of competing vigorously in the mature markets of conventional advertising, while trying to gain entry into new platforms which lack proven business models. Equally, producers struggle with limited funding available for TV productions, while also trying to scrape together funds to experiment with new platforms as well as produce in the more expensive HD format. The key issue is how to develop, monetize and share new platform rights – both sides want ownership and striking the middle-ground where business models are in flux is high art. Until mutually beneficial terms of trade are established, neither side will maximize its benefit from the digital future. As well, new media entrepreneurs could walk in with new business models and grab a chunk of the new business.

Rising from an Export Funk

While Canada's ability (or failure) to harness the potential of new technologies will be a key driver of the shape of Canadian television in the future, so is Canada's ability to compete in the world television market. Co-production agreements, pre-sales, and finished sales all serve to increase financing available to producers. In addition, exposure to foreign creative, business, and production techniques and practices can benefit Canadian producers and television broadcasters – especially if they want to take advantage of new digital platforms. Thus, there is a new rationale and indeed urgency to encourage more Canadian involvement in the global media business, as it is one key to making the transition to the emerging business models for content.

The U.K. TV Distributors' Association found that Canada was in third place in terms of the total number of hours of programming sales to the foreign broadcasters, following the U.S. at first and the U.K. Not bad, we might say – except we weren't a close third. With U.S. sales at 70% of total hours, U.K. at 10%, Canada was only at 3.7%. And Canada's position isn't improving – treaty co-production for both feature films and television production is down to one-quarter of where it stood five years ago, partly because of major film and tax policy changes in the U.K. The export value of Canadian production has also dropped by about one-half from the peak reached in 1999/00. Indeed, the rise of domestic production sectors in other parts of the world to meet viewers' growing appetite for indigenous programming, coupled with the adoption of production incentives geared to domestic activity has dampened world trade in television. Nevertheless, the lack of a strong foreign sales and distribution culture and infrastructure hinders Canadian success, especially as markets improve and new ones develop.

Because of this decline in foreign financing, Canadian producers see less money coming into the system, and rely more on public funding, which in turn causes them to continue tailoring productions to fit the Cancon point system without an international focus. While foreign financing and markets are not the only focus for producers and broadcasters, can we become much more effective in going after the new markets as they are breaking?

The U.K. has. Even though the U.K.'s situation differs – primarily because of the ability of its broadcasters (public and private) to pay higher license fees for programming – we can learn a great deal from their experience. In 2005, the U.K. reported that the total revenue from the exploitation of TV programs internationally reached £974 million in 2004 – up from £921 million in 2003. Why did this growth occur?

New terms of trade between broadcasters and producers were struck, whereby negotiations for the ancillary rights were separate and subject to the regulator, Ofcom. Therefore, the chances of independent producers retaining IP rights were bolstered, which in turn began to attract financing from the British financial markets. U.K producers can now focus on and exploit international markets. The outcome is a cadre of international savvy producers who keep the international markets top-of-mind when developing content across various formats and genres.

These are not the only causes of success. The U.K.'s significant spend on high-quality domestic productions inevitably leads to revenues gained from being able to export such productions. The question in Canada is whether it is better to invest in high quality content aimed at the Canadian market and leverage that quality for foreign financing and foreign sales. Or should the productions not be specifically targeted at Canadian-only audiences? Canada's international recognition in children's (particularly animation), documentary, and some fiction could only be improved by domestic strategies and policies designed to strengthen the domestic market. At the same time, do we need to sacrifice some of our cultural objectives in some cases to gain access to foreign markets?

Progressive Choices in Policy

While new technology and international markets are areas of concern, it is no surprise that the challenge of the domestic funding situation remains top-of-mind for the sector. There has been little growth in funding. Canadian conventional television broadcasters and pay/specialty-TV broadcasters have increased their acquisition of Canadian programming from independent producers – but only in line with their own growth. However, the number of channels depending on CTF and other public support has mushroomed with the advent of digital.

Public financial support for television programming has been relatively stagnant – as evidenced by flat federal contributions to the CTF, and the decline even in non-inflation adjusted funding for the CBC. There has been a significant rise in contributions from broadcasting distribution undertakings (mainly cable and DTH), but not enough to finance the oversubscription for CTF financing by broadcasters with producer partners.

So, what is to be done? Policy development is a messy business – it is not so simple to develop a coherent process integrating all policy tools. Nevertheless, there is yet to emerge a coherent television broadcasting and production strategy that integrates the domestic with the international markets and incorporates the advent of digital technology.

This green paper assumes that the direction of policy would be to stimulate Canada's achievements internationally and across new technologies. Four major alternatives are postulated for debate to close the financing gap and improve the support structure for television and TV production.

1. *Extract more from advertising revenues and/or subscribers, via tougher Cancon regulations and/or higher per sub payments from Broadcasting Distribution Undertakings (BDUs).*

   There are many ways of implementing such initiatives, e.g. re-instituting Canadian programming expenditure requirements for conventional broadcasters; establishing a fee-for-carriage regime; increasing the percentage of BDU revenues directed to the CTF. However, these approaches become a long, protracted struggle as it is viewed as a zero-sum game – broadcasters, BDUs or independent production companies win or lose depending on regulatory decisions and policies. It is expected that a review of television policy will be undertaken in any event by the CRTC, but it is unclear whether it will address the key issue of how to encourage investment in Canadian programming that travels and is integrated with the new platforms.

2. *Go for the big "ask" from the federal government for a major increase in support funding directed toward priority areas.*

   Broadcasting and production stakeholders are able to work collectively on "saving" a program, such as the effective campaigns regarding the $100 million federal allocation to the CTF's budget. Perhaps they could collaborate to develop an integrated strategy and ask for financing from the federal government, although it is unclear who would lead such an initiative. Given the Conservative agenda on five priorities that do not include Canadian television, this approach would need to be a medium-term one, say 18 months to two years. As well, the approach would need to fit the government agenda, and perhaps appeal a little more to an economic, innovation, and trade agenda.

3. *Instigate specific measures in industry financing and export support as part of an adjustment strategy for this mature sector*.

The TV and programming sector could be considered a mature industry that needs adjustment support largely drawing on existing mechanisms. While such an approach may not be "grand design", the advantage of "tweaking" is that the total value of such improvements could reach $100 million + per year without requiring new Parliamentary appropriations. The list below represents a start at an integrated set of measures that would facilitate the development of more competitive television programming.

- Support interim financing of television productions, which would reduce the financial burden on independent producers;
- Strengthen the Canadian capacity in market intelligence of new platform business models, changes in foreign country production incentives and other policies, and trends in the relative growth of programming market segments;
- Improve financing mechanisms to support foreign sales, such as gap financing and foreign receivables insurance. The effect would be to grow the available markets for financing of production;
- Take steps to enhance treaty and non-treaty co-production opportunities for television production – by focussing efforts on fewer markets, negotiating changes in treaties that could improve Canadian prospects, and in limited cases negotiating new treaties;
- Address recoupment policies with Telefilm's equity investments in production to reward new market and platform development investment. This process has started, but needs focus to carry it through to further stages;
- Develop and/or revitalize support for training, mentorship, and skills development for those experienced in traditional production processes to become equally adept in digital applications, and create more opportunities to involve visible minority Canadians in new content creation production;

- Explore a sliding scale approach to the production tax credit to create bonus credits for production that earns greater revenues.

Each of these items would require further study, but they illustrate that you can move ahead on specific measures that do not require major policy change. They would also tend to shift incentives toward multi-format and programming of universal appeal.

4. *Re-invigorate the institutional frameworks that support the television and programming sector.*

Much of the institutional apparatus that underpins the Canadian television and programming sector was developed decades ago. So, stakeholders might now want to apply new thinking on how best to serve and protect the sector in an era of rapid change, for example:

- Consider a Telecom Policy Review (TPR)-like examination of the convergence era from a broadcasting regulation perspective. Such a review could create a more nimble regulatory system to respond more quickly to technological and market changes;

- Revise the *Broadcasting Act* to clearly delineate the responsibilities of the regulator for setting the terms of trade between broadcasters and producers. The objective would be to encourage the development of meaningful IP in the hands of producers so that they can build the asset base of companies, yet provide more certain environment for broadcasters;

- Provide for regular mandate reviews of the CBC every 10 years, as a much more effective way to guide and govern the CBC than by straight Parliamentary appropriations and license renewal. CBC would gain more stability, and there would be a regular mechanism to determine any new directions as appropriate for the CBC;

Summarizing the different ways to debate the future of television and television policy

The framing of the debate over the future of television should start with a discussion of the impact technology is having on television and its content. Central to this debate is the question about how to develop appropriate terms of trade that facilitate the development of IP assets and encourage broadcasters to invest in new content applications. Another broad subject area is the extent to which Canadian content producers should shift toward the international markets as a matter of survival, although they would possibly lose some Canadian distinctiveness.

As for the policy debate itself, it can take different tacks as described above. First, it could revolve around regulatory policy, but that entails the advocacy of positions by entrenched interests who come at common issues from different perspectives. Inevitably, there will be a forum for this kind of debate in the forthcoming policy and regulatory reviews, especially whatever is conducted by the CRTC.

Second, the major stakeholders could develop a significant spending proposal for the federal government, in view of the relatively flat spending over the last five years. It would need to be strategically driven, take account of the timeframe when the government would be in a receptive position, and fit within the overall philosophy of the new government. Any chance of success, however, would depend on a strategic application of additional funds, not just beefing up the budgets of existing programs.

Third, the policy agenda could be shaped by a new language to deal with the fact that the television industry is a relatively mature sector that is facing structural change. Like many other sectors of the economy (and like all countries except the U.S. in film and TV production), government intervention will always be required in some form. Fortunately, some of the adjustment tools are readily available, mainly oriented toward improving the producer's balance sheet, more financing from foreign markets, and encouragement to strengthen the knowledge and skills base of production companies. The debate could be around the creative tweaking of existing mechanisms, again toward where the sector is going, not where it has been.

Fourth, there is room for debating more fundamental changes in the institutional frameworks that govern the broadcasting sector. The very structure of regulation could be examined in a fundamental way because of rapid technological change – as was the case for telecommunications regulation. Or, legislation could be used to give stability to independent producers as well as the CBC, but provide for mechanisms that foster institutional change and adaptation.

Whatever the approach, it would seem that a more outward looking and innovation oriented approach would better fit the new digital environment. The result may be a shift in what we have regarded as core cultural policy, but that is why the debate is so crucial.

1. Introduction

This green paper is intended to facilitate the Town Hall discussion of the future of Canadian television and Canadian television programming. As befits a world television festival, the paper adopts a more international perspective on the discussion of the future of Canadian television. This orientation is appropriate in any case, because of the need for producers and broadcasters to broaden their base of risk in investment and subsequent revenue sources in face of a rapidly evolving marketplace.

This green paper also fully acknowledges that technology is driving television programming distribution and exhibition more into distribution systems and platforms that are unregulated. To grow in the long term, it would seem imperative for Canadian television broadcasters and Canadian programming producers to succeed on the assumption that regulatory protection will diminish. Therefore, one of the key issues in the debate is how Canadian programming can become more competitive in appealing to and in reaching both domestic and foreign audiences through emerging distribution systems and platforms.

In Canada, as in most countries outside the U. S., public financial support will always be necessary to achieve cultural objectives. Historically, financial assistance has marched alongside broadcasting regulation as the twin support to ensure that broadcasters exhibit Canadian programming in all important genres. With regulation eroding as a mechanism for protecting the shelf-space for Canadian content, will public financial support grow as some form of compensating offset? The answer is probably “no”, as public support will always be finite. Therefore, Canadian content needs to be compelling enough to succeed in the multi-platform universe. Public policy support could be re-oriented toward helping with this transition. As regulation artfully facilitated the transition of Canadian television into a multi-channel universe, so should it help make the next transition even if has fewer tools to do so in the digital environment.

In this green paper we begin by reviewing the possible impact of the digital revolution on broadcasting and programming. We then provide an overview of Canadian programming in the international scene, including trends in co-production, foreign financing and successes of other countries in foreign sales. Finally, we outline some of the constraints to financing in Canada and posit four basic options for resolving these constraints and perhaps re-inventing the support mechanisms.

In green-paper tradition there are no recommendations in this paper. However, we attempt to articulate basic alternatives and challenge the stakeholders in the television and programming sector to work collaboratively, and bring realistic solutions to government regulators and policy makers. We also challenge them to develop new strategies to become more competitive in the international market in a digital era.

2. The Cutting Edge of Digital

Any discussion of the future of television must take into account the inexorable advance of digital technology and the amazingly diverse and constantly evolving use of the Internet.

Some would say that the new broadband world with multiple distribution paths, multiple platforms and high-capacity digital represent the death knell of the Canadian television industry – in a way reminiscent of the fear 15 years ago in Canada of the US DBS "death star" that threatened Canadian broadcasting sovereignty. Some would argue that we have reached the "tipping point" where television and linear channels will commence a rapid decline in face of the brave new broadband world. Among the evidence that is cited is the teenage and young-adult market who use iPods rather than listen to radio, who read newspapers (if at all) electronically, and whose appointment television is restricted to the *Daily Show*, *The OC*, and reality TV. Their social networks are being abetted and informed through mobile communications and Internet assembly.

The situation is more complicated than that, however. In fact, radio is being supplemented by iPods and newspapers by their on-line equivalents. Television is being viewed more on an "on-demand" basis – crudely through time shifting (i.e. the airing of the same networks but from different time zones), and more directly through PVRs, DVDs, VOD, and the emerging streaming and downloading options. Of course, the growth of on-demand systems can be very unsettling to traditional television and their programming suppliers. But the end of television is hardly nigh. It is important to differentiate what digital advances will do and what they won't do in terms of the impact on television broadcasting.

On-demand television will challenge but not destroy TV as we know it.

- Television will be consumed more frequently in an "on-demand" way as articulated by IBM (*The End of TV as we know it*[1]). In fact, Canadian DTH operators discovered the consumer enthusiasm for

[1] IBM Institute for Business Value, *The end of TV as we know it: A future industry perspective, March 27, 2006.*

time shifting (as the "poor man's PVR") and seized it as a differentiator versus cable. Canadian cable operators responded by offering time shifting as a free inducement to encourage their subscribers to migrate to digital. As the on-demand technologies grow in popularity, they represent important new revenue opportunities for television programming.

- Some television programs themselves are undergoing some morphing into "mobisodes" for new mobile formats, such as cell phones and other personal devices. However, there are limitations in display format, memory of handsets and battery life, and in the bandwidth of the networks themselves. Even after the implementation of 3G devices the share of viewing for currently produced television programming is not expected to be too high. As there will be short items eventually created for the small screen format that will be quite popular, they do constitute a new programming opportunity, especially for certain genres and applications. Still, while there are several emerging applications that do not originate from television, they will not replace the in-home television programming experience.

- Television will move from multi-window to multi-multi-window. Through summer re-runs, syndication, and the growth of independent off-air stations, television has always been multi-window. Pay and specialty-TV channels added more window opportunities, and now, there is…VOD, DVD, and PVR….all giving consumers more control over when they will watch television programming. Yes, television networks will have to cope with technologies that make it easier to strip out or fast forward through commercials, but there are various strategies that can be deployed. The impact will be gradual, giving broadcasters the time to adjust.

The Internet will <u>not</u> dominate television programming distribution.

- Television will move from the single platform of the TV set to the multi-platform world that includes Internet streaming and programming downloading. There are millions of streams being delivered now and the downloading of television programming is growing. However, as Professor Eli Noam recently pointed out at this year's Law Society of Upper Canada's Communications conference, the Internet is ultimately an expensive way to distribute and access television programming.[2] He estimated that if 1% of European households ordered a program, say "*Desperate Housewives,*" it would use up all the backbone capacity that was installed in the heyday of broadband backbone builds in the 1990s.

- Television distribution by satellite, cable, and fixed wireless is quite efficient, and will remain the dominant distribution system for television programming.[3] It will be challenged by networks configured around IPTV, which are being installed by telephone companies to utilize their network architecture – the individual retrieval of programming (or a channel) over the existing phone infrastructure.[4] The point is that television programming will be mainly distributed by licensed cable, DTH, and IPTV distributors, and not via the free-form Internet.

The Internet will draw some energy away from television, which will learn to live in harmony with it.

- The Internet will largely complement rather than replace television, although it will attract a growing share of advertising. The Internet enables communities to interact and delve into the TV content in new ways. In the future, television will become "Internet-vision", whereby the whole entertainment, information, or learning experience is an integrated concept. This future may be destructive for programmers who stubbornly stick to television as a one dimensional medium, but it represents more opportunity to be creative in the use of television and the Internet.

- The Internet communities, as the recent Economist special report on new media points out[5], are also diverting time and advertising away from television, and so the major media companies are paying premium prices for these new beachfront properties. Therein lays the ad erosion that broadcasters rightly fear. However, while Internet advertising is growing at strong double digits, there is still some drag in the shift of advertising from traditional media to the Internet. The Internet still cannot charge the same as television can on a per-user/viewer basis, just as there is still a premium accorded to conventional television over the more narrowly focused specialty-TV services. Nevertheless, major advertisers are becoming increasingly familiar with a medium whose accountability exceeds that of television, which means that linear television will need to adapt to it.

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[2] *"New Developments in Communications Law and Policy"*, Apr. 28-29, 2006. The panel was entitled: "*Broadcasting over Broadband – New Challenges and New Opportunities.*"

[3] The Internet is not as efficient, although compression, peer-to-peer file sharing, and other technologies will keep moving the yardsticks. Professor Noam figures the cost of distribution of television programming as 4 times that of coaxial cable or satellite. It is currently supportable while there remains the hangover of the late nineties bandwidth glut, but its economics are not as favourable as the existing cable and satellite infrastructure.

[4] IPTV offers several advantages, such as the possible configuration of a major and some minor (i.e. via smaller windows) TV programs or viewing angles on the same TV screen. However, the chief disadvantage is relatively less capacity; IPTV operators will need to configure for a maximum limited throughput – they are thinking of 25 megabits/second as the maximum amount of traffic allocated to each residential unit. Such a limitation will constrain service possibilities, for example when different home sets are tuned to different HD programs. At any given time, cable and DTH operators are pushing down far more content for the household to access than is possible in IPTV configured networks.

[5] The Economist, "Survey: New Media," *The Economist*, April 20, 2006 (London, U.K., The Economist Newspaper Limited, 2006).

Broadcasters are squeezed between the familiarity of the traditional business model and the unknown kingdom of new media.

- There is no question that traditional television broadcasting will be challenged. Already, TV is responding to the erosion of advertising through product placement. The growing shift to product placement presents a major challenge for Canadian broadcasters relying on U.S. shows. However, some Canadian broadcasters have responded by using in-program, super-imposing technologies to substitute ads and even insert products. Still, these measures may not be a complete substitute for the 30-second slot – perhaps Canadian broadcasters will be better able to exploit the benefits of product placement on Canadian programming and thereby improve the economics of Canadian programming. The gradual implementation of IPTV (in the long run for cable/DTH as well) will provide new opportunities to fine tune commercials so that viewers are exposed to advertising that is relevant to them.

- Broadcasters are starting to package Internet with television advertising, and they are using their websites to increase the "stickiness" of their television channels. All major broadcasting groups in Canada have new digital platform initiatives, as they try to take advantage of the content that they own – whether news, info, sports, or niche programming areas. However, they are public companies that need to deliver regular financial results. While they need to launch initiatives that will keep them at the front of the broadcasting business in the new digital environment, they are constrained from investing too much in new media applications whose payback is either uncertain or long term.

- Broadcasters face the paradox of competing vigorously in the mature markets of conventional advertising for many years to come – while at the same time trying to gain entry into the "new television" of new platforms. Many of these platforms lack proven business models – the on-line properties that are successful seem quite foreign to the broadcasting business.

Independent program producers have to scrape up investment to participate in the new content formats.

- Independent producers face the uncertain world of multiple windows, interactivity and multiple platforms. They are already familiar with multiple revenue streams – from merchandising, foreign markets, DVD, and multiple broadcasting windows.[6] They face broadcasters who will try to discount

[6] The new technologies are already changing TV economics, as the American networks are finding out. A series like "*24*" is financed in a major way by its successful DVD sales, since it cannot recoup the production cost from U.S. and foreign licensing fees alone. In

license fees because of these other revenue sources, or they will try to negotiate to retain some of these rights for themselves.

- The next, more difficult phases for producers are web-streaming, downloading, mobi-casting, and VOD. This phase is no longer an incremental play – i.e. merely new windows to negotiate – it is a more fundamental shift to the integration of interactive elements and creation of content that fits new formats. Not all traditional producers will be able to adapt, and many are not really qualified to launch into new media applications. The market is dividing producers into those who are new media savvy and those who are wedded to traditional television programming.

Broadcasters and independent producers have to learn how to share the risks and rewards of new media applications.

- One of the biggest issues for broadcasters and producers at present is the sharing of non-broadcasting rights between broadcasters and producers. Broadcasters are perceived to be aggressive in retaining as many rights as possible, even though they do not necessarily make the investment to exploit these rights. Or, broadcasters are perceived as wanting to pay lower licence fees because the producer may be able to make up the difference in exploiting these rights. At the same time, some broadcasters think that producers want to be paid upfront for revenues that may or may not occur in the future, and not share in the upfront investment. In either case, neither party wants to give up something that may become valuable sometime in the future.

- This debate affects the financing of Canadian television production through the Canadian Television Fund (CTF). Setting the value of the licence fee for airing the programming is affected by the perceived value of the non-broadcasting rights. At this point, we understand that there is some agreement at the CTF on three different interim models – one for the CBC, one for English-language private television and one for French-language broadcasting. However, this is an interim phase, and more clarity is needed as to what business models are evolving and what economic value can be attributed to certain kinds of applications and platforms.

- Negotiations of this kind are occurring everywhere, so this lack of accord does not represent any kind Canadian inability to conclude business arrangements. In fact, if these issues can be resolved through the auspices of the CTF, there can be a real competitive advantage for Canadian rights

Canada a series like "*Trailer Park Boys*" has generated impressive DVD sales, which could ultimately enter into the financing equation for new seasons.

holders. They are part of a basket of terms-of-trade issues that other countries have elevated the resolution to the regulator.[7] While this approach may become a solution for Canada, there is an opportunity to sort it out within the CTF institutional framework.

- New platforms, new formats, and even new windows often require upfront investment without an established revenue flow afterwards. With increasing pressure to produce better bottom lines, broadcasters cannot afford to invest, nor can producers already facing pressure on licence fees and the demand to produce in HD. However, neither party can afford <u>not</u> to invest in new applications and new markets.[8] For Canadian broadcasters and producers, the question is how to stimulate R&D, spark innovation, and plan for multi-platform and Internet integration from the get-go. And how can they succeed in establishing a revenue flow that can be financed.

In sum, digital media will not result in the end of TV as we know it, despite IBM's catchy title. As any communications major knows, no new media has obliterated the previously dominant traditional media. It just forced the traditional media to adapt – look at newspapers, radio, and conventional television (which survived the deployment of the "500 channel universe"). Yes, programming will be watched or consumed in many places, and some of it will be delivered outside the current distribution system, but it will still be in our grandchildren's households in future decades.

The challenge will be for broadcasters and producers – and creators as represented by their guilds – to become more creative and approach the rights exploitation opportunities on a pragmatic basis without fear of sacrificing long term positioning. If they fail to do so, the option is for funding agencies to establish specific guidelines to ensure compliance among fund users, or for the regulator to set terms of trade. The role of government is not to protect the current structure and existing way of doing things. Rather, it is to facilitate a move by the industry into a more robust positioning for the new digital environment – and to back off when the marketplace can work best.

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[7] In the U.K., the broadcasting and communications regulator Ofcom has recognized the importance of resolving such terms of trade in order to drive innovation and ensure that the U.K. is not left behind in the digital revolution, and has stepped in to work with broadcasters and independent producers to broker a deal both sides can agree. While no agreement has yet been achieved, at the time of writing, the intervention of the regulator will likely bring both sides closer to a deal than if they were left to their own devices.

(continued from previous page) For Hollywood majors with major broadcaster affiliates, the downloading of television programs as part of the integrated release plan is possible to arrange. However, where there is third-party involvement in the supply of programming (e.g. NBC owned "*House*", which is licensed to the Fox network for broadcasting), the lack of an established business model to share the rights from the proceeds currently blocks their exploitation.

[8] In his remarks to the Canadian Media Director's Council on March 28, 2006 (*Riding the Changing Wave*), Pierre-Karl Péladeau, CEO of Quebecor Inc. described in some detail his company's efforts to exploit all media, as being necessary to future commercial success. He used news as an example, maintaining that success means using all channels, going beyond a single outlet, and providing "news snacks" for people.

3. Rising from an Export Funk

By definition Canadian television broadcasters and program producers are resourceful, creative, and for the most part entrepreneurial. These are the very qualities that will be tested in the new broadband universe. Broadcasters and some producers also operate on a north-south basis – English-language TV broadcasters buy Hollywood programming and a large component of the production sector earns good wages in the servicing of U.S. production located in Canada.

Canadian producers and distributors are also veterans of MIPCOM and NATPE programming bazaars among others where they seek to find international buyers of their programs. Some are also very active in undertaking co-productions or other joint-venture projects with producers from other countries, both inside and outside official co-production treaties. These producers may also engage in such co-productions in feature films as well as the different genres of television production.

Co-producing with foreign partners is a way to finance a project from more than the Canadian market. Productions can be sold to other markets after the fact, but more foreign financing is available if there is a co-production or a solid pre-sale commitment from an important market. Foreign financing has long been a part of the complex equation for financing a segment of Canadian programming. Because of market fragmentation due to the proliferation of new specialty channels – and in view of the impending multiplicity of platforms – broadcasters and producers will need to spread project risk and revenue sources over more markets.

There is more to international trade in programming than securing additional financing. Exposure to foreign creative, business, and production techniques and practices can benefit Canadian producers and television broadcasters. It would stand to reason that such exposure would be even more important in face of the new digital broadband revolution. Many of the new business models stemming from the new applications will be developed abroad, so exposure will facilitate subsequent adoption and stimulate innovation in Canada. Thus, there is a new rationale and indeed urgency to encourage more Canadian involvement in the global media business, as it is one key to making the transition to the emerging business models for content.

In truth, the production sector is one of Canada's service sectors which does operate on a global basis. In an analysis of the television schedules of several countries, the U.K. TV Distributors' Association found that Canada was in third place in terms of the total number of hours of programming sales to the foreign broadcasters measured[9] Comparatively, the U.S. dominated the number of hours with a 70.6% market share, followed by the U.K. at 10%, then Canada at 3.7% (followed by France at 3.5%, Germany at 2.5%, and Australia at 2.1%). Not bad, but a closer review of Canadian activity over the last few years shows some disturbing trends.

In a report by Nordicity for Telefilm Canada on the competitiveness of Canadian production[10], it concluded that Canada's position was eroding because of several inter-related factors, namely:

- the loss of the foreign markets for "B" drama programming due to the rise of domestic production sectors in other parts of the world to meet their own viewers' growing appetite for indigenous programming[11];
- the consolidation of the broadcasting/production sector into large global entities without Canadian participation, thus reducing the demand for programming from non-affiliated suppliers like Canadian production companies and broadcasters;
- the trend toward the use of the labour-expenditure approach to production tax incentives in many countries – and the demise of the use of the limited partnership investment vehicles, particularly in the U.K. for television production which favoured co-productions with Canada;
- the lack of a strong foreign sales and distribution component for Canadian programming, and the limited role played by Canadian broadcasters in brokering international co-productions or promoting Canadian programming[12].

[9] Television Research Partnership, *Rights of Passage: British Television in the Global Market*, commissioned by the British Television Distributors' Association, September 2004. As Canada does not collect comparative data, we cannot identify the revenues these hours bring into Canada, nor determine a genre breakdown.

[10] Nordicity Group Ltd., *Canada's Competitiveness in Treaty Co-production*, report prepared for Telefilm Canada, May 1, 2004.

[11] It is possible that the success of the CTF, which requires all productions to contain 10 points on the content calculations, has led to more programming that is less able to travel. Producers interviewed for the summative evaluation of the CTF had some anecdotes that indicated anomalies can occur in the application of these principles that harm international sales potential.

[12] There are exceptions among broadcasters if they have interests in the programming, e.g. Corus produces animation programming for kids and is actively involved in its distribution to other markets. As well, there are some interesting new partnerships developing between producers and broadcasters, e.g. VTVI, a joint venture of Vision TV (an S-Vox company) and Ellis Entertainment for the international distribution of programming commissioned by Vision TV or 3rd party programming of a similar nature.

Since the completion of that analysis the co-production track record of Canadian producers has deteriorated. Year-over-year figures show a decline of productions completed under the official treaty co-production treaties and of the foreign component of Canadian programming financing.

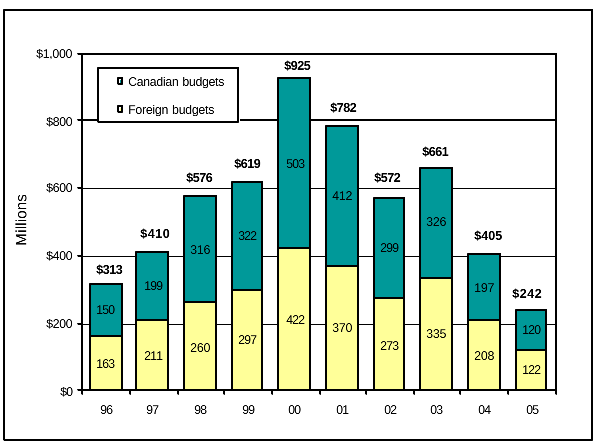
Decline in treaty co-productions in television programming

In 2005, Canada's volume of international treaty co-production for both feature films and television production fell to $242 million. International treaty co-production is now one-quarter of where it stood only five years ago, as shown below in Exhibit 1.

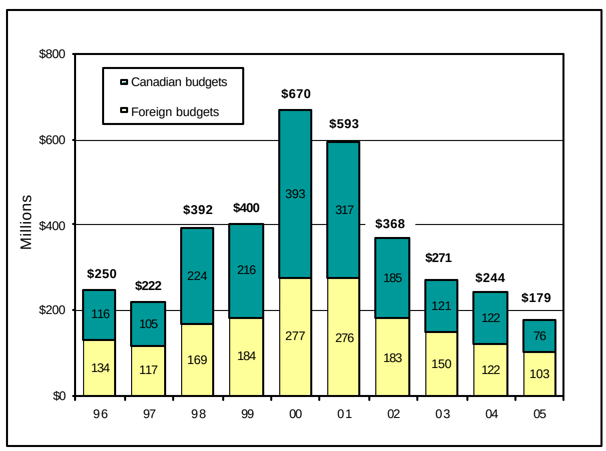
In fact, most of the co-production activity lies in TV production not in feature films. Therefore, the decline in the overall figures is mirrored by the decline for co-production in TV programming. Canada's international treaty co-production of TV programs was $179 million in 2005 – about one-quarter of the level of activity a mere five years ago. (see Exhibit 1 below).

Exhibit 1 Total volume of Canadian international treaty co-production

All formats (television + feature film)



Television production only



Source: Telefilm Canada

As shown in Table 1 below, there was a decline from 55 television projects in 2004 to 39 television projects in 2005. Moreover, the decline was broad-based, although significantly France stayed about the same level as the number 1 co-production partner for Canada in television projects. In 2005, Canada was co-producing with fewer partners and less with long-established partners than in 2004. The drop has been most steep with the traditional number 2 partner, the U.K., but it would be misleading to blame it all on the decline with the U.K. In 2004, television co-production with the U.K. was down by nearly one-half, from $53 million to $29 million – but that is "only" $24 million. A decline in co-production activity with the U.K. was expected, as a result of the changes in co-production policy in the UK, but also because of the U.K. policy decision a couple of years earlier to remove the "sale and lease-back" tax incentives for television programming.

Table 1 Canadian international treaty co-production by partner country, television production only

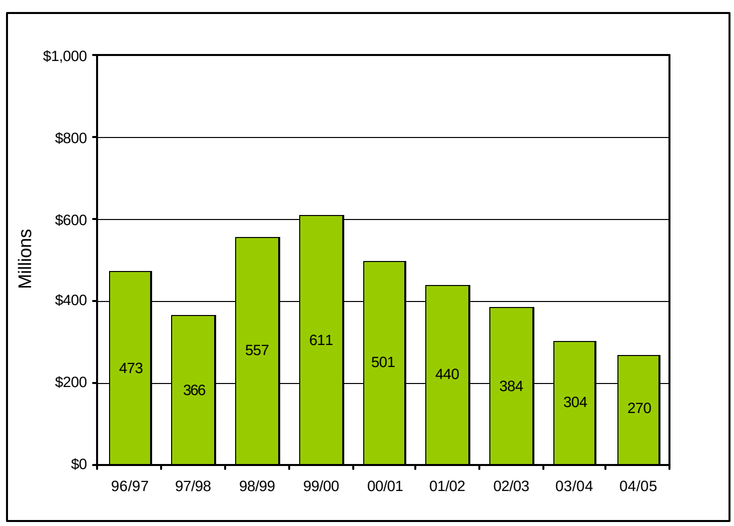
	2005		2004	
Country	**Number of projects**	**Total volume ($)**	**Number of projects**	**Total volume ($)**
Bipartite				
France	20	92,133,873	27	99,168,865
United Kingdom	12	29,945,350	14	53,047,561
South Africa	1	18,200,000	2	30,665,077
Australia	2	13,906,018	3	10,218,055
New Zealand	1	12,743,409	--	--
Luxemburg	2	9,542,000	--	--
Germany	1	2,448,009	2	11,372,354
Ireland	--	--	4	15,760,738
Philippines	--	--	2	16,542,400
Finland	--	--	1	628,333
Tripartite				
Germany, South Korea	--	--	1	4,500,000
France, Iceland	--	--	1	1,087,898
Iceland, France	--	--	1	1,109,600
Grand Total	39	178,918,659	55	237,403,383

Source: Telefilm Canada

Decline in export value of Canadian Television Production

Another measure of Canada's competitiveness in international television production is the export value of Canadian production.[13] It is based on foreign financing for Canadian production, so it includes the pre-sale demand for Canadian programming from international buyers, and thus reflects the after-market value of Canadian programming. Export value captures demand from the U.S. and other

Exhibit 2 Export value of Canadian television production



Source: CFTPA, *Profile 2006*

[13] Export value is an indicator developed by the Cana
trends in international demand for Canadian programm

countries where Canada does not have co-production treaties.

International demand for Canadian television programming has dropped by about one-half from the peak reached in 1999/00, as shown in Figure 3. In 2004/05, the export value of Canadian television programming was estimated to be $270 million. The total volume of Canadian television programming in that year was $1,685 million,[14] so, foreign demand accounted for about 16% of total financing of Canadian television production. In 1999/00, the export of Canadian television production was $611 million, representing 33% of total production financing.

U.K. as a demonstration of greater international success

The downward decline is an overall trend in television programming, but the year-by-year slump among Canadian producers contrasts sharply with some other countries. One example is the U.K., where evidence indicates that the value of television exports has been on the rise. In 2005, the U.K. reported that the total revenue from the exploitation of TV programs internationally reached £974 million in 2004 – up from £921 million in 2003.[15] Growth in U.K. exports emanates from several segments – in DVD/video revenue, in formats as well as finished programs, and all genres including factual, drama and sport. The *Rights of Passage* report noted impressive gains in the sale of formats (e.g. *Who Wants to Be a Millionaire, What Not to Wear),* for example, where the U.K.'s market share in hours was a whopping 45% of the total international trade in the sale of formats.

There are several reasons for the U.K.'s increased foreign success. An important structural change occurred in the U.K. related to the ancillary rights of programming. The *Communications Act* in 2003 established a new terms of trade between broadcasters and producers, whereby negotiation for the ancillary rights were separate and subject to the regulator, Ofcom. As well, the BBC moved its target of independent production from 25% up to 50%, thus expanding the market for independent producers.[16] These changes expanded the U.K. market and bolster the chances of independent producers retaining IP rights, which appear to be attracting financing from the British financial markets.

[14] CFTPA, *Profile 2006,* p. 14.

[15] Other countries in Europe face a completely different situation. France's exports, for instance, are in a situation of stagnation since 2000. In an interview with Nordicity Group Ltd., M. Hervé Michel, Responsible for France Télévisions Distribution and Vice-President of TV France International, confirmed that in the last years the volume of international audiovisual exchange is in a downward track. In his view, one of the reasons explaining this situation might be the fact that producers and broadcasters produce for the national market and are less interested in the "exportability" of their products. Nevertheless, France's animation exports are doing well, showing that this downward tendency in audio-visual exports touches some genres more than others.

[16] In addition to the indie quota of 25%, the BBC has introduced a Window of Creative Competition of 25% which can be 'won' by either independent producers or the BBC's in-house production capacity

As a result of these activities, the U.K. has developed a cadre of international savvy producers, and has grown its exports in television programming in various formats and genres. About 10 major producers in the U.K. have strategically focused on securing greater penetration of the international market and the industry has developed a foreign sales culture. The television production industry in the U.K. has improved its international intelligence gathering, developed performance indicators, and attracted private financing. Thus, while there still are numerous smaller production companies that survive from domestic to domestic production, the larger production companies have changed the culture of production in the U.K[17].

Obviously, there are important differences between the U.K. and Canadian market. The amount of licence fee as a percentage of the production cost is much higher in the U.K., and the total volume of funds spent on original programming is increasing in the U.K. While pay/specialty expenditure commitments are rising in Canada, they are still only able to pay a small percentage of the total production cost as a licence fee. However, there are no barriers to taking some of the kinds of initiatives that have been undertaken in the U.K., so it is a useful demonstration of what can be done to create a more international sales culture.

Overall, an increase in high-quality domestic productions will inevitably lead to an increase in revenues gained from being able to export such productions. The more Canada invests in domestically produced content, not specifically targeted at Canadian-only audiences, the greater chance Canada has at increasing revenues in this area.

Informal evidence suggests that few Canadians are involved in the rapidly developing media markets like China, India, and even South Africa. Though Canada has a strong South Asian and Chinese ethnic component among in its population, very few Canadians are present in these new markets.[18] Though on-air presence of visible minorities is increasing in Canada, evidence suggests that visible minority Canadians are under-represented in the creative positions in Canadian programming, especially drama.[19]

[17] However, there are reports from this year's MIP-TV in Cannes that the new tax incentive structure in Britain may handicap the development of the production sector.

[18] An exception is Chocolate Moose Media Inc. which is quite active in undertaking co-productions with emerging countries like India and South Africa (though some other production companies are active in South Africa). Without easy access to financing from CTF and other sources, this company has managed to cobble together a variety of international financing to make non-treaty co-productions – not always qualifying as Canadian but with a significant Canadian involvement.

[19] EKOS Research Associates Inc., Paul Audley & Associates Ltd., Delvinia Interactive Inc. and Humewood Communications Corporation, *Frame Work: Employment in Canadian Screen-Based Media - A National Profile,* a report commissioned by Women in Film and Television, June 12, 2004.

Lessons from other international markets

A review of other countries and regions confirms a refocusing of television programming along domestic lines. American-produced television programs are no longer prominent on television screens outside of North America. Locally produced programs are now the most popular worldwide with viewers -- domestic programming accounts for 74% of the programs in the top ten programs in countries around the world.[20]

From an export perspective between 1996/97 and 2003, there was a contraction in the number of foreign hours in a number of countries examined by the *Rights of Passage* report, from a 34% share to 28% of total hours.[21]

Overall production levels of drama television programming in European Union countries held fairly constant over the last five years, although there were some movement within different countries. Countries like the U.K., Germany, etc. produced some 1,500 hours of drama programming.[22] Germany, U.K. and Italy have been relatively on the upswing, while France and Spain have declined to some extent. Private television has increased its proportional share of the commissioning of drama projects vs. public television.

According to the European Audiovisual Observatory, in European-Union countries public funding that is available for television production projects increased by some 30% between 1998 and 2002. This increase is mainly due to the growth in sub-national funds within countries as regions try to obtain their piece of the global production market. Though there are numerous funds supporting intra-EU co-production, they represent less than 10% of total public funding for production in Europe – so intra-EU co-productions have not yet become the force that some had expected.

Yet with the advent of more digital channels, and in anticipation of new platforms, the demand for programming has signs of increasing.

- U.K. export sales are rising as previously noted.

[20] In a study of 18 Western countries plus Canada conducted by Nordicity for Canadian Heritage in 2003 but using 2001 data, it found that in all cases except Canada, indigenous programming dominated the top-rated programming. This result was a marked contrast to a comparison with data 5 years prior to that time, which showed a much higher foreign component among the top programs. Recent evidence available on a proprietary basis only indicates that the high popularity of indigenous programming has not changed.

[21] Television Research Partnership, *Rights of Passage: British Television in the Global Market*, commissioned by the British Television Distributors' Association, September 2004.

[22] In comparison, Canada produces some 1125-1150 hours per year (471 hours within CTF and 666 hours of CAVCO-certified but outside of CTF in 2005).

- The number of hours of programming required because of the specialty-TV services keeps growing rapidly – although the prices paid for such programming is quite low.[23]

- There remains a brisk trade in Latin America the form of telenovelas, although largely within Latin American countries. Powerful television broadcaster like Televisa in Mexico and TV Globo in Brazil dominate the market and produce these telenovelas for export.

- Though behind Canada in terms of share of market, the Australians are branding their programming through an international channel. While the concept of "channel" will be de-emphasized in the future, it is a way to help brand a country's content that may be increasingly necessary where branded product will help drive viewership.

While the trend has been down, Canadians are also active in the international market for some types of production – children's (live action and mainly animation), documentary, and some fiction programming. Telefilm's recoupment of investment for CTF-financed production is one measure of commercial success (typically drawn from international markets). Telefilm Canada's annual reports suggest that the level of recoupment for past CTF projects has remained steady for the past several years. [24]

Table 2 Telefilm Canada recoveries on investments in Canadian Television Fund projects (millions of dollars)

	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05
Recoveries on CTF Investment	11.5	13.8	10.9	11.5	10.6	11.5

Source: Telefilm Canada annual reports

Going after the international market

Canada does have many advantages, and Canadian producers are generally well regarded in terms of production management and quality. We have an excellent service sector, and genre specific reputation in children's programming (particularly animation) and documentary programming. Though they do not always understand how they work, foreign producers recognize that we have important financial incentives. We have a stronger dollar – which doesn't help service production, but does increase the value of the Canadian market that producers can bring to the table in a co-production or co-venture. We have some very good institutional development resources, such as in the revamped "immersions" sponsored by Telefilm Canada as

[23] In the aforementioned interview with M. Michel, op. cit., it was noted that it now takes a sales team of 10 people handling many contracts to equal the volume of sales that a few years ago just 3 people would be required because the market was so concentrated.
[24] This information is based on total recoveries from CTF project – recoupment of loans and equity investments. See Telefilm Canada annual reports, various years.

well as provincial agencies. The Banff World Television Festival also organizes on an even larger scale pitching sessions as well as one-on-ones which put Canadian producers in direct contact with domestic and international broadcasters. We have a major ethnic population, and a greater participation in the production industry on their part would help exploit new opportunities in the emerging markets of China and South Asia among other places.[25]

A more pronounced export/co-production focus will not solve all financing problems for Canadian television production. In fact, it is only a partial answer, since only a portion of Canadian programming can be conceived in a way that would respond to audiences in foreign as well as Canadian markets. However, it is a logical direction since the broader business of content distribution will be increasingly on-demand and even outside the television infrastructure – thus less controllable by the CRTC or outside its purview altogether.

There is also a synergy to be gained between the international market the exploitation of rights for multi-platform opportunities. Many of these new format/new media opportunities are borderless, and depend on developing ways to reach special audiences globally. Not all innovation occurs in Canada, so more focus on the export market and international financing will give Canadians more exposure to new interactive and multi-format concepts. The British forecast about 10-12% of producer revenue derived from interactive television and mobile content by 2010, from a base of total revenues of about £1.2 million at that time. Canada should embark on a similar journey that intersects entrepreneurship in foreign markets and new applications.

Because of the overwhelming U.S. media and content presence in English speaking Canada, Canadian policy has always tried to ensure that essentially American shows made by Canadians would not receive any incentives beyond appropriate tax credits. The terms "international", "competitive", and "export" are always suspect at being code for American clone television. So, we realize emphasis on the international market may introduce these concerns. It could be argued, however, that unless we use the international leverage, we will not be able to produce as good production for the domestic market. It may be time to re-consider these notions and ask why not aim for a greater market share of world trade in television programming.

[25] Look at the progression in film production in Deepa Mehta's *Earth*, *Fire,* and *Water*. The first two were not qualified as Canadian, but the last one was and has been the most successful in box office results in Canada.

4. Progressive Choices in Policy

Policy development is a messy business. It is never an entirely coherent process that integrates all the policy tools, especially for a complicated sector like television broadcasting and program production. There have been many analyses and studies of film and television production in Canada over the last few years, but there are others still underway, namely:

- The Department of Canadian Heritage has evaluated Canada's treaty co-production policy, and has carried out industry consultations on a new policy. While a policy statement is in the making, it is unclear when it will be finalized and released;

- The Canadian Television Fund (CTF) has made the transition to a single board, streamlined administration through the outsourcing of its operations to Telefilm Canada, and implemented the broadcaster envelope system. Despite these substantial steps, Canadian Heritage has follow-up to do following the official evaluation of the CTF, including internal approval of new contribution agreement; as well, the government has not confirmed its budget on a long-term basis;

- Provincial governments have individually raised the tax credit incentives to compete with each other as well as compensate for international competition and the higher Canadian dollar. While CAVCO has made many improvements, the launch of a summative evaluation of the federal tax credit is still required prior to any major change in policy;

- Over the last few years, the CRTC has set in place various frameworks for the transition to the digital world, including the distribution of digital specialty-TV services, the transition of over-the-air television stations to digital, the licensing and distribution of HDTV, the regulation of mobile wireless services, and the digital migration regulations for pay and specialty-TV services. Yet there remain issues such as the forthcoming review of television regulations and other policy decisions, such as whether it might be more effective to establish a deadline for the completion of the transition to HD for Canadian broadcasters;

- The regulation of television broadcasting will be subject to a major policy hearing by the CRTC and/or Canadian Heritage, and the Minister has expressed her desire to conduct some form of mandate review for the CBC. These processes will precede license renewal hearings of the main over-the-air television networks.

- The new Canadian Heritage Committee of the House of Commons has once again referred the Lincoln Committee report for a government response (it will be the third time), as well as to the Feature Film report of the Standing Committee;

- The Department is considering a response to the Telecom Review Panel (TRP), with respect to foreign ownership and perhaps to respond to the TRP's call for a comprehensive review of Canada's broadcasting policy and regulatory framework.[26]

This brief summary of some of the major policy processes shows that at any given time there is always some state of flux in the tools available to the government to achieve its cultural and communications objectives. Canada has been quite remarkable over the years for developing a range of support mechanisms for Canadian broadcasters and producers. However, there has yet to emerge a coherent television broadcasting and production strategy, one that integrates the domestic with the international markets and takes account of the restructuring of content delivery as a result of new digital technology and platforms.

Current state of domestic television programming

Spending on Canadian programming by Canadian broadcasters has risen in correlation with the revenues of Canadian broadcasters. Recent figures for the 2005 broadcast year (ending August 31, 2005) show that Canadian conventional television broadcasters spent $188 million on Canadian programming (made by independent producers and affiliated production companies). Canadian pay/specialty-TV services, by comparison, spent $309 million.

Overall, Canadian conventional broadcasters' expenditures on Canadian programming (acquired from independent producers and affiliated production companies) grew since 2000 at a real annual average rate of 2.9%, after adjusting for inflation. Pay/specialty-TV services' spending on the acquisition of rights to Canadian programming increased at a real average annual growth rate of 8.1%, after adjusting for inflation.

The faster growth rate of pay/specialty-TV services is due mainly to the faster growth rates of that sector. Private conventional broadcasters' revenues (advertising only) have grown at an annual average of 0.4% (adjusted for inflation). Pay/specialty-TV services have experienced total revenue growth of 9.8% per annum (adjusted for inflation).

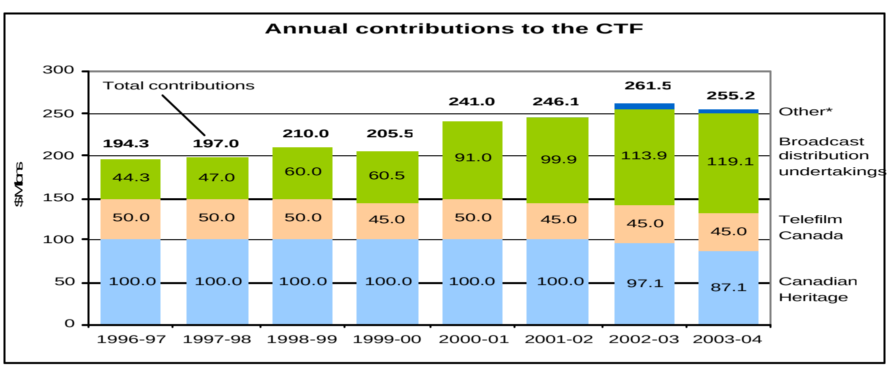
26 "*Telecommunications Policy Review Panel*, Final Report 2006, Executive Summary, P. 14

The total demand in hours of programming has risen most rapidly in the pay/specialty-TV sector, obviously in function of the licensing and start-up of new specialty-TV services. Tuning to Canadian programming for the four priority genres – variety, drama, children's, and documentary – has more or less maintained its audience share in the last five years. However, the amount of available hours to Canadian viewers has mushroomed about 50% during that period, due to the new channels and to some extent the time shifting of existing channels for digital cable and DTH subscribers.[27]

In light of the above developments, one could argue that the annual public investment through the CTF (allocations from Canadian Heritage and from BDUs) has been quite successful in stimulating Canadian television programming that Canadians want to watch.[28] The evolution toward the broadcaster envelope system -- and the importance of audience tuning plays in determining the size of the envelopes – represents progress toward the development of performing Canadian programming. In fact, the current CTF budget is over-subscribed as the Canadian broadcasting demand and available financing exceeds the amount of programming that the CTF can support. This outcome means that broadcasters would be willing to trigger more projects, with the rest of the financing being in place.

While demand has been increasing, the public financial support from the federal government for television programming has been relatively stagnant (aside from production tax credits which rise and fall proportional to the amount of eligible production undertaken).

- The federal contribution to the CTF has not increased over the last five years, although the proceeds from Broadcasting Distribution Undertakings (BDUs, i.e. cable and DTH operators for the most part) have risen as their revenues have grown. In 1996/97, the BDUs' contribution accounted for 23% of CTF revenues. By 2003/04, BDUs were contributing 47% of CTF funds, shown as follows:



[27] Department of Canadian Heritage, *Summative Evaluation of the Canadian Television Fund Program*, p. 34. This evaluation was conducted by Nordicity Group Ltd. in collaboration with Canadian Heritage.

- While the provincial tax credit levels have increased, the federal tax credit has only been adjusted for location production (in 2003);

- The CBC's funds actually declined in current dollars (so, more so in inflation adjusted dollars) from a peak of $1,171 billion in 1995/96 to $1,066 billion in 2004/05.[29]

Canada's regulatory support mechanisms have been an exceedingly important component of the demand for Canadian programming, including: Canadian content requirements and Canadian programming expenditure commitments, distribution regulations for BDUs, significant benefits payments for Canadian programming, the licensing of new Canadian services, and the protection of specialty-TV licensees from competition in their genre.

More recently, the CRTC has implemented new drama incentives to stimulate conventional broadcasters to commission and exhibit Canadian drama programming. In direct support of broadcasters, the CRTC's long standing requirement regarding simultaneous substitution greatly increases the audience for Canadian conventional TV broadcasters.

However, there is ongoing erosion of these regulatory mechanisms in a number of respects. For example, the digital migration policy will lead to less protection of the wholesale rates and packaging positioning for specialty-TV services. By 2010, basically specialty-TV services will be on their own to negotiate terms with BDUs – although subject to CRTC regulated dispute resolution processes – without the level of tiering and linkage stipulations that many enjoyed at start-up.

Since the financial support for Canadian programming is basically flat, and the purview of regulation is on the wane (albeit over time) what are the options for financing Canadian television? We have devised four broad options in meeting the financing gap, and indeed preparing Canadian television to succeed in the digital environment. We outline these options below and comment briefly on their viability or effectiveness:

1. *Extract more from advertising revenues and/or subscribers, via tougher Cancon regulations and/or higher per sub payments from BDUs (and their customers).*

[28] This conclusion was also in line with that reported in the CTF evaluation, op. cit.

[29] See CBC Annual Reports; and Statistics Canada (CPI, Catalogue 62-001-XPB, table 4) for parliamentary appropriations for all operating and capital expenditures and working capital.

There are many ways of implementing such initiatives, including the following: re-instituting Canadian programming expenditure requirements for conventional television broadcasters; establishing a fee-for-carriage regime; increasing the percentage of BDU revenues directed to the CTF.

One problem with any of these approaches is a long, protracted struggle because it is viewed as a zero-sum game – broadcasters or BDUs or independent production companies win or lose depending on regulatory policies.[30] In any case, all these issues will be debated in the upcoming review of TV regulations. However, even though such a review of television policy will be undertaken by the CRTC, it is unclear whether it will address the key issue of how to encourage investment in Canadian programming that travels and is integrated with the new platforms.

2. *Go for the big "ask" from the federal government for a major increase in support funding directed toward priority areas.*

In this broad option all stakeholders would agree on a new formula and make the case for another $x00 million allocated to the broadcasting/production sector vs. competing government priorities. This approach is similar to the broad all stakeholder collaboration for lobbying the continuation of the $100 million budget for contribution to the CTF. However, it would need to be justified on the leverage effect it would have on broadcasting and Canadian content.

Given the focused Conservative agenda on five priorities that do not include Canadian television or Canadian programming on television, this approach would need to be positioned as part of the next round of public policy commitments. The case would need to be very well made, and address the question as to the appropriate role of the federal government. As well, the approach would need to fit the government agenda, and perhaps appeal a little more to an economic, innovation, and trade agenda. For example, the direction of new funding would be toward facilitating the transition to the digital world, e.g. capital investment for HD conversion, innovative new media programming and platform investments, and training and development infrastructure for gearing the workforce to new skills.

3. *Instigate specific measures in industry financing and export support as part of an adjustment strategy for this mature sector.*

The TV and programming sector could be considered a mature industry that needs adjustment support largely drawing on existing mechanisms. While such an approach may not be "grand design",

[30] One avenue that could be explored is to take a leaf out of the music industry experience, and explore extracting payments from ISPs for their role in the distribution (including peer-to-peer transfer) of video files. Since cable and phone company BDUs are some of the largest ISPs, however, such a measure would certainly not be popular among the distribution element of TV broadcasting.

the advantage of "tweaking" is that the total value of such improvements could reach $100 million + per year without requiring new Parliamentary appropriations.[31] The opportunities for increasing the financing available for production lie in improved international financing and sales and creating a more solid financial base for Canadian producers. Improved financing helps broadcasters, too, in that it may relieve some of the constant pressure from producers to pay higher license fees for programming. The list below represents a start at an integrated set of measures that would facilitate the development of more competitive television programming.

- Develop new mechanisms for interim financing, so that there is less financial burden on producers who typically are expected to rely on tax credits as part of the project financial structure;

- Develop a private "gap financing" capability for television production and television sales capability – this measure would be a way to monetize new foreign markets and thus help finance a production;

- Expand the federal commitment of insuring foreign receivables arising from pre-sale commitments by foreign distributors and broadcasters (via the Export Development Corporation - EDC) – this measure is complementary to gap financing but EDC terms can coax more committed financing directly from foreign sources;

- Strengthen the Canadian capacity in market intelligence of new platform business models, changes in foreign country production incentives and other policies, and trends in the relative growth of programming market segments;

- Take steps to enhance treaty and non-treaty co-production opportunities for television production – by focussing efforts on fewer markets, negotiating changes in treaties that could improve Canadian prospects (with full consultation with the creator stakeholders), and in limited cases negotiating new treaties;

- Revise CAVCO copyright requirements to be more amenable to some foreign financing mechanisms; where appropriate protection of the producer's rights can be achieved without copyright ownership stipulations;

[31] Derived from Nordicity Group Ltd., *Study on Completion Guarantees and Financing Tools in the Audio-Visual Industry*, prepared for Department of Canadian Heritage, April 27, 2005

- Revise recoupment policies with respect to Telefilm's equity investments in Canadian production so that new market and platform development investment is rewarded – some revisions were made for future English language projects but other useful reform suggestions remain to be resolved;[32]
- Develop and/or revitalize support for training, mentorship, and skills development for those experienced in traditional production processes to become equally adept in digital applications, and create more opportunities to involve visible minority Canadians who are currently under-represented among scriptwriters, directors, producers, and to some extent actors;
- Explore a sliding scale approach to the production tax credit to create bonus credits for production that earns greater revenues;
- Explore widening the scope of the R&D tax credit regime to include innovations in production processes, formats, and interactive applications.

Each of these items would require further study, but they illustrate that you can move ahead on specific measures that do not require major policy change. They would also tend to shift incentives toward multi-format and programming of universal appeal.

4. *Re-invigorate the institutional frameworks that support the television and programming sector.*

Much of the institutional apparatus that underpins the policy tool kit for Canadian television has been developed decades ago. Although it could take years to change, there is some merit in initiating a debate on the shape of the changes that may be necessary to serve and protect the sector in an era of rapid change. While the basic policy tool kit remains the same,[33] the time may be right to re-examine how it should be applied. Some of the thinking around this subject is as follows:

- Consider a Telecom Policy Review (TPR)-like examination of the convergence era from a broadcasting regulation perspective; such a review could lead to the creation of a more nimble regulatory system to respond more quickly to technological and market changes;
- Revise the *Broadcasting Act* to clearly delineate the responsibilities of the regulator for setting the terms of trade between broadcasters and producers. While the *Broadcasting Act* specifies that

[32] Nordicity completed a report on this subject in the fall of 2005 sponsored by the Canadian Television Fund, Telefilm Canada, and Canadian Heritage. Options were presented to reduce the administrative burden on producers to meet reporting requirements, as well as to restructure the Telefilm equity investments to avoid or reduce the "grind" in the calculation of tax credits.

producers are part of the Canadian broadcasting system, it does not establish the CRTC as the agent to encourage the development of meaningful IP in the hands of producers so that they can build the asset base of companies, and provide a more certain environment for broadcasters;

- Provide for regular mandate reviews of the CBC every 10 years, as a much more effective way to guide and govern the CBC than by straight Parliamentary appropriations and license renewal. CBC would gain more stability, and there would be a regular mechanism to determine any new directions as appropriate for the CBC;

A great deal more discussion would need to occur to properly set up the debate of institutional change, and the above list identifies only some of the opportunities. However, these changes ultimately affect the financing of the production, distribution, and exhibition of Canadian programming. In that context, while short to medium term opportunities are being addressed, a new Parliament and government may want to initiate a more fundamental revisit of the legislative underpinnings of the tool kit.

Summarizing the different ways to debate the future of television and television policy

The framing of the debate over the future of television should start with a discussion of the impact technology is having on television and its content. Central to this debate is the question about how to develop appropriate terms of trade that facilitate the development of IP assets and encourage broadcasters to invest in new content applications. Another broad subject area is the extent to which Canadian content producers should shift toward the international markets as a matter of survival, although they would possibly lose some Canadian distinctiveness.

As for the policy debate itself, it can take different tacks as described above. First, it could revolve around regulatory policy, but that entails the advocacy of positions by entrenched interests who come at common issues from different perspectives. Inevitably, there will be a forum for this kind of debate in the forthcoming policy and regulatory reviews, especially whatever is conducted by the CRTC.

Second, the major stakeholders could develop a significant spending proposal for the federal government, in view of the relatively flat spending over the last five years. It would need to be strategically driven, take account of the timeframe when the government would be in a receptive position, and fit within

[33] See Blockbusters and trade wars: popular culture in a globalized world, Peter S. Grant & Chris Wood. Douglas and McInytre, Vancouver, Toronto 2004.

the overall philosophy of the new government. Any chance of success, however, would depend on a strategic application of additional funds, not just beefing up the budgets of existing programs.

Third, the policy agenda could be shaped by a new language to deal with the fact that the television is a relatively mature sector that is facing structural change. Like many other sectors of the economy (and like all countries except the U.S. in film and TV production), government intervention will always be required in some form. Fortunately, some of the adjustment tools are readily available, mainly oriented toward improving the producer's balance sheet, more financing from foreign markets, and encouragement to strengthen the knowledge and skills base of production companies. The debate could be around the creative tweaking of existing mechanisms, again toward where the sector is going, not where it has been.

Fourth, there is room for debating more fundamental changes in the institutional frameworks that govern the broadcasting sector. The very structure of regulation could be examined in a fundamental way because of rapid technological change – as was the case for telecommunications regulation. Or, legislation could be used to give stability to independent producers as well as the CBC, but provide for mechanisms that foster institutional change and adaptation.

Whatever the approach, it would seem that a more outward looking and innovation oriented approach would better fit the new digital environment. The result may be a shift in what we have regarded as core cultural policy, but that is why the debate is so crucial.