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Communiqué

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Target cultural subsidies better, relax foreign investment rules, ensure "shelf space" for Canadian cultural products, recommends C.D. Howe Institute study

Canadian cultural policies need to be more focused in light of changes affecting the global economy, argues a *C.D. Howe Institute Commentary* released today. To that effect, the study recommends that cultural subsidies be better targeted to products that will help bring Canadian culture and information to a Canadian audience, that "shelf space" be reserved for programs with high Canadian content in the multichannel universe, and that foreign investment rules in the cultural industries be relaxed for investors who can make a positive contribution to Canada's cultural development.

The study, *A Matter of Choice: Toward a More Creative Canadian Policy on Culture*, was written by Daniel Schwanen, a Senior Policy Analyst at the C.D. Howe Institute.

The recent rejection by a World Trade Organization (WTO) panel of certain Canadian measures to support its magazine industry has prompted public soul-searching about the instruments used to promote Canadian culture. Schwanen argues that other pressures — notably rapid technological change, budget constraints, and Canadians' growing international cultural presence — also make a policy review desirable in this area.

Schwanen suggests several reasons governments should intervene to support Canadian cultural endeavors, the most important of which is the need for Canadians to share experiences with, and information about, other Canadians. He argues, however, that direct public intervention in the cultural sector must be accompanied by steps to ensure a well-functioning private market for Canadian cultural goods and services. These steps should include ensuring that creators share fairly in the benefits of the dissemination of their work, through the passage of pending copyright legislation, suitably amended to protect the competitive position of distributors and the public interest in the dissemination of cultural works.

Schwanen also argues that Investment Canada and, ultimately, the Bureau of Competition Policy have a continuing role to play in ensuring that foreign distributors of cultural products do not use their market positions gained as a result of economies of scale or vertical integration to shut Canadian products out of the market.

Schwanen reviews the key tools of Canada's current cultural policy apparatus: Canadian-content regulations, foreign investment restrictions, and subsidies.

On content regulations, he argues that, while it will always be difficult to define precisely what counts as "Canadian" — to be eligible for subsidies and tax credits, to fulfill broadcasters' content requirements, or to determine eligible vehicles for tax deductions of advertising expenses — current definitions focus too much on the country of ownership of the production company or on giving credit for noncreative expenditures in Canada. Instead, Schwanen says, definitions of "Canadian" should be made more meaningful in cultural terms.

With rapid changes in communications technology heralding the arrival of the "500-channel universe" and virtually limitless access to global information sources through the Internet, Schwanen suggests that Canada ensure "shelf space" is provided for broadcast signals that carry consistently high Canadian content. This, he argues, would make more sense than attempts to maintain a set ratio of Canadian content on an increasingly large number of channels. In his view, private broadcasters, including a privatized CBC, would compete to offer Canadian products for this shelf space, for which public subsidies likely would have to be provided.

On foreign investment restrictions, Schwanen rejects the assumption underlying Canadian cultural policy that there is an automatic link between the country of ownership of the distributor of a cultural product and the national content of the product. Apart from its dubious theoretical basis, he finds many instances where this assumption is contradicted by the facts. As a result, in a number of sectors, notably film distribution and book retailing, he recommends that Canada accept the entry of foreign competitors that could actually increase the promotion of Canadian products to Canadian and foreign audiences.

Finally, on subsidies, Schwanen believes that the WTO panel, while striking down specific measures that it felt discriminate between "like goods," did not imply that Canadian and US cultural products were to be considered "like goods" in a general sense. This, in Schwanen's view, leaves the door open for Canada to adopt a wide range of measures to support the production and dissemination of domestic cultural content. Nevertheless, he says, it is important, in the wake of the WTO ruling, that Canada attempt to clarify in an international agreement the extent to which subsidies and tax incentives can be used to promote domestic cultural products, and that it use such an agreement to ensure the provision of adequate shelf space for domestic cultural products across a range of media.

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A Matter of Choice: Toward a More Creative Canadian Policy on Culture, C.D. Howe Institute Commentary 91, by Daniel Schwanen (C.D. Howe Institute, Toronto, April 1997). 36 pp.; $6.00 (prepaid, plus postage & handling and GST — please contact the Institute for details). ISBN 0-88806-412-8.

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Communiqué

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Ciblez mieux les subventions culturelles, assouplissez les règles sur l'investissement étranger et réservez une place aux produits culturels canadiens, recommande une étude de l'Institut C.D. Howe

À la lumière des changements qui influent sur l'économie mondiale, les politiques culturelles du Canada se doivent d'être mieux axées, soutient un *Commentaire de l'Institut C.D. Howe* publié aujourd'hui. Dans ce but, l'étude recommande que les subventions culturelles soient mieux ciblées sur des produits qui permettront d'offrir des activités culturelles et des informations canadiennes à un auditoire canadien, que l'on réserve un « espace d'étagère » aux programmes riches en contenu canadien dans l'univers multi-canaux, et que l'on assouplisse les règles qui régissent l'investissement étranger dans l'industrie culturelle pour les investisseurs qui apportent une contribution positive à l'épanouissement culturel du Canada.

L'étude, intitulée *A Matter of Choice: Toward a More Creative Canadian Policy on Culture (Une question de choix : En faveur d'une politique culturelle canadienne plus créative)*, est rédigée par Daniel Schwanen, analyste de politique principal à l'Institut C.D. Howe.

Le récent rejet par un comité de l'Organisation mondiale du commerce (OMC) de certaines mesures canadiennes visant à appuyer l'industrie des magazines a incité un examen de conscience général sur les véhicules de promotion de la culture canadienne. M. Schwanen soutient que d'autres facteurs — dont les rapides changements technologiques, les restrictions budgétaires et la présence croissante des Canadiens sur la scène culturelle internationale — créent également le besoin de passer en revue la politique dans ce domaine.

M. Schwanen soulève plusieurs raisons pour lesquels les gouvernements devraient intervenir et appuyer les tentatives culturelles canadiennes; la plus importante découle du besoin des Canadiens de partager avec leurs compatriotes des expériences et de l'information communes. Toutefois, il soutient que toute intervention publique directe dans le secteur culturel doit s'assortir de mesures qui veilleront à un marché privé performant pour les produits et services culturels canadiens. Parmi ces mesures, il faudrait que les créateurs reçoivent une part équitable des profits de la diffusion de leurs œuvres, et que l'on promulgue la loi sur les droits d'auteur, laquelle devrait être suffisamment modifiée pour protéger la position concurrentielle des distributeurs et le bien public dans la diffusion des œuvres culturelles.

Il affirme également qu'Investissement Canada et en fin de compte, le Bureau de la politique de concurrence doivent poursuivre leur rôle qui consiste à veiller à ce que les distributeurs étrangers de produits culturels ne profitent pas de la position qu'ils ont acquise sur les marchés grâce aux économies d'échelle ou à l'intégration verticale pour en exclure les produits canadiens.

M. Schwanen passe en revue les principaux outils du dispositif de la politique culturelle actuelle au Canada, soit les règlements relatifs au contenu canadien, les restrictions portant sur l'investissement étranger et les subventions.

Pour ce qui est des règlements sur le contenu, bien qu'il sera toujours difficile de définir exactement ce qui est « canadien » — qu'il s'agisse d'admissibilité aux subventions et aux crédits d'impôt, de répondre aux exigences de contenu des radiodiffuseurs, ou d'établir des méthodes admissibles pour les déductions fiscales des frais de publicité — les définitions actuelles sont trop centrées sur le pays d'appartenance de la société de production, ou sur l'octroi de crédit pour des dépenses non créatives au Canada. M. Schwanen indique que la définition de ce qui est « canadien » devrait plutôt être dotée d'une meilleure signification en termes culturels.

Étant donné les changements rapides que subit la technologie des communications, lesquelles ouvrent la voie à « l'univers des 500 canaux » et à un accès pratiquement illimité aux sources d'information mondiale par le biais de l'Internet, M. Schwanen recommande que le Canada veille à ce que l'on réserve un « espace d'étagère » aux signaux de radiodiffussion à haute teneur canadienne constante. Cette mesure aurait plus de sens que les tentatives visant à conserver un ratio établi de contenu canadien sur un nombre toujours croissant de chaînes. Selon lui, les stations privées, dont une Société Radio-Canada privatisée, se feraient concurrence pour cet « espace d'étalage », qui devra probablement être financé en partie par des subventions publiques.

Dans le cadre des restrictions sur l'investissement étranger, M. Schwanen réfute l'hypothèse fondamentale de la culture politique canadienne selon laquelle il existe un lien automatique entre le pays d'appartenance du distributeur d'un produit culturel et le contenu national de ce produit. Mis à part son fondement théorique plutôt douteux, il cite plusieurs exemples où les faits contredisent cette hypothèse. Il recommande donc pour plusieurs secteurs, dont celui de la distribution de films et de la vente au détail des livres, que le Canada autorise l'entrée de concurrents étrangers qui pourraient en fait favoriser la promotion de produits canadiens auprès d'auditoires canadiens et étrangers.

Finalement, dans le domaine des subventions, M. Schwanen estime que la décision du Comité de l'OMC, tout en annulant des mesures déterminées qui selon lui créaient une discrimination entre des « produits similaires », n'a pas pour autant signifié que les produits culturels canadiens et américains devaient être considérés comme des « produits similaires » dans un sens général. Selon M. Schwanen, ceci entrouvre une porte permettant aux Canadiens d'adopter une vaste gamme de mesures qui appuieront la production et la diffusion du contenu culturel national. Quoi qu'il en soit, il importe selon lui, que dans le prolongement de la décision de l'OMC, le Canada s'efforce de clarifier dans le cadre d'une entente internationale, la mesure dans laquelle les subventions et les incitatifs fiscaux peuvent servir à la promotion des produits culturels nationaux, et qu'il profite de cette entente pour veiller à la disposition d'un espace d'étalage suffisant pour les produits culturels du pays sur un éventail de médias.

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A Matter of Choice:

Toward a More Creative Canadian Policy on Culture

by

Daniel Schwanen

Canada's cultural policies are coming under pressure from the trends toward trade and investment liberalization, technological change, budget constraints, and Canada's interests in accessing foreign markets for its own cultural exports.

In its recent decision striking down certain measures in support of Canada's magazine industry, a World Trade Organization panel emphasized that its ruling was not against measures supporting cultural industries in general. Nevertheless, the cumulation of events suggests that a new focus on the objectives of cultural policy is required.

The traditional policy objective of ensuring that Canadians have access to Canadian cultural output remains a valid reason for public intervention in this area. In addition, however, it is important to promote a well-functioning private market for culture, which for creators of cultural products implies strengthening their intellectual property rights and ensuring fair competition in accessing cultural distribution systems.

In light of these objectives, it is time to revise a number of policies put in place to foster Canadian culture. The definition of "Canadian content" used for tax, subsidy, or broadcasting content rules should be less focused on Canadian ownership and production expenditures *per se*, and more on Canadian creative output and Canadian interests. Investment restrictions in the cultural industries that have not demonstrably boosted Canadian cultural output should be overhauled. And the policy of requiring some level of Canadian content on all Canadian TV and radio stations should be replaced, over time, by one of providing "shelf space" for signals with high levels of Canadian content across a range of broadcasting technologies.

Main Findings of the Commentary

- Canadian policies to foster domestic cultural industries are under pressure from a number of fronts, including a recent World Trade Organization (WTO) panel ruling against certain measures to protect the Canadian magazine industry, as well as steps toward further trade liberalization, rapid technological changes, constraints on the public purse, and the growing export success of Canada's cultural products.
- These changes do not invalidate the reasons underlying Canada's support of its cultural sector — particularly the "public-good" aspect of encouraging Canadians to share their experiences with, and information about, other Canadians. But changes call for a renewed focus on the objectives of cultural policy.
- It is crucial for the development of Canada's cultural output that direct public intervention in the cultural sector be accompanied by steps to ensure a well-functioning private market for Canadian cultural goods and services.
- A well-functioning market for cultural products implies, in particular, ensuring that copyrights are respected, and that foreign-owned distributors of cultural products do not use their market position gained as a result of scale advantages or vertical integration to shut Canadian cultural products out of the market. In these areas, Investment Canada and, ultimately, the Bureau of Competition Policy have important roles to play.
- The definition of what is "Canadian" for subsidy, tax, or broadcasting purposes seems to give too much weight to Canadian ownership of the production company and to noncreative expenditures in Canada, and not enough to Canadian creative material or to material about Canada or Canadians. This balance should be altered so that the definition reflects as much as possible Canadian creations or Canadian interests.
- Given the imminence of the "500-channel universe" and wide access to global information sources through the Internet, maintaining "shelf space" for broadcast signals carrying consistently high Canadian content across a range of electronic media makes more sense than attempting to regulate a set ratio of Canadian content on an increasingly large number of channels.
- Private broadcasters, perhaps including a privatized Canadian Broadcasting Corporation, would compete to provide products with high Canadian content in this shelf space for the lowest subsidies from the public purse.
- The assumption that there is an automatic link between Canadian ownership of a firm distributing cultural products and the national content of the product being distributed is dubious in theory and often contradicted by the facts. Ownership restrictions in these sectors should thus be lifted, subject to Investment Canada's review of "net benefits" of these investments to Canada.
- The WTO ruling on magazines, while striking down measures that discriminate between a "like" domestic and foreign product, did not, in fact, imply that Canadian and US cultural products were to be considered "like goods" in general.
- While the door therefore remains open for a wide range of measures supporting the production and dissemination of Canadian cultural content, it is in Canada's interest to clarify through international negotiations the extent to which subsidies and tax incentives can be used to this effect.

Early this year, a World Trade Organization (WTO) dispute settlement panel ruled against Canada on a complaint by the United States about Canada's use of certain measures to protect its magazine industry. Specifically, the panel found that Canada's tariff on "split-run" editions of magazines (magazines with the same or similar editorial content as those published in one country or region but containing advertising aimed at another's market), lower commercial postal rates for Canadian magazines than for imported ones, and an excise tax on advertising in split-run editions were inconsistent with Canada's international obligations.

The WTO panel stated specifically that its ruling did not constitute a general challenge to policies aimed at protecting a country's cultural identity. Nevertheless, reactions to the decision in the Canadian media and government and in the United States have dwelled on its implications for a wide range of cultural policies. Indeed, a number of commentators have suggested that the magazine case would prompt similar challenges in other sectors. Canadian commentators and government officials are divided as to how to confront this situation, with some stating that the ruling is a sign that Canada's policies to protect its culture should be opened to general reappraisal, while others argue that Canada's cultural defenses should be bolstered.

The WTO decision on magazines, in fact, reflects just one of a series of disputes between Canada and the United States over the past few years on "cultural" issues. Other contentious issues have included:

- Canada's restrictions on US investment in book publishing and retailing;
- a decision by Canada's regulatory authorities to de-list a previously authorized US country-music TV channel in favor of a Canadian applicant;
- attempts by Canada to bolster domestic firms in the market for film distribution rights in Canada;
- an alleged lack of protection for US performers under Canada's proposed copyright legislation; and
- a long-standing Canadian policy of denying the tax deductibility of advertising expenses when the advertising is carried by foreign broadcast and print media and the advertising is directed primarily at Canadians.

Issues such as these indicate just some of the pressures coming to bear on Canadian cultural policies. The effects of rapid technological changes and budgetary constraints also loom large on existing and future policy choices.

Against that backdrop, in this Commentary I elaborate on some of the principal pressures for change in Canada's cultural environment, examine the reasons generally advanced for public intervention in the cultural sector, and review Canada's use of some key cultural policy instruments. I then go on to identify cases where these policies may have outlived their usefulness and others where current policies could be strengthened or made more effective. Finally, I describe how these proposed changes could affect the policy mix in each cultural industry.

In summary, I argue that Canada's cultural policy should focus more on the objective of improving Canadians' access to products of their own culture, while becoming more modern in its choice of policy instruments — by using technological and market forces rather than opposing them, and by devising rules that are fully consistent with Canada's international trade and investment interests. In more detail, I recommend:

- Introducing simpler but more meaningful guidelines for "Canadian content" for cultural endeavors that receive subsidies or protection against competitors.
- Providing direct subsidies and tax incentives to producers, distributors, and exhibitors of products with high Canadian content in such a way as to reward success in exposing the public to Canadian cultural output rather than increasing the

quantity of output or Canadian ownership of the medium.

- Given the proliferation of channels, gradually replacing current across-the-board Canadian-content requirements in TV and radio by ensuring minimum “shelf space” across available cable, satellite, and broadcast signals for channels carrying a high Canadian content.
- Allowing competition for this shelf space by private, profit, and nonprofit purveyors of cultural products, possibly including a privatized Canadian Broadcasting Corporation (CBC) television service, with subsidies available to bidders if a sufficient number of interested parties cannot profitably operate the space without public funds.
- Removing outdated restrictions on foreign investment across a range of media, including book retailing and film distribution, when the need to support Canadians’ exposure to their culture and their ability to choose Canadian cultural products is not demonstrably linked to Canadian ownership of cultural industries — subject to national security considerations and reciprocity with other countries.
- Maintaining Investment Canada’s scrutiny of investments in cultural industries, and ensuring fair competition for Canadian products, notably with respect to distribution channels.
- Ensuring full copyright protection for Canadian artists, by adopting the current copyright bill (Bill C-32), suitably amended to better reflect the practical circumstances of users and the social benefit of disseminating cultural products.
- Providing a stable, multiyear target for funding the total federal envelope for culture, including tax deductions, expressed as a share of federal expenditures or even of gross domestic product, a step that could greatly improve the transparency of cultural subsidies and allay concerns about the predictability of funding.

The Changing Environment for Cultural Products

Should Canada lose its appeal of the WTO panel ruling on the magazine case, Ottawa will have to decide within the next 18 months whether to change the offending policies, offer concessions of equivalent effect to the United States, or await that country’s retaliatory measures. Regardless of which option is chosen, however, pressures to modify cultural policies generally will likely increase for four main reasons: the continuing move toward freer global trade and investment; technological advances; budget constraints; and the need to bolster Canada’s international position in cultural industries. I briefly examine each in turn.

Freer Global Trade and Investment

One main source of pressure on policies to protect cultural industries comes from the trend toward freer global trade and investment. Canada’s economic interests in most sectors demand that it participate in this liberalization, because a rules-based economic system actually works in favor of medium-sized economic powers such as Canada by, inter alia, permitting the market access negotiated among larger powers to be extended to all, and by establishing a dispute settlement mechanism that is reasonably immune from considerations of relative economic size between the disputing parties. In fact, Canada worked hard to get the 1994 WTO deal under whose rules the magazine decision was taken, precisely because, unlike the system previously in place, losing parties to a dispute cannot block the adoption of dispute settlement panel reports.

These trade pressures will not go away. Indeed, as a matter of vital importance to its economic future, Canada eventually will participate in a more comprehensive global deal on trade in services than the existing one, as it already has on trade in goods. The narrow, technical nature of Canada’s defense of its magazine policies before the WTO may be construed as an admission that these and other policies protecting cultural industries are difficult to defend on principled grounds, even when the policy concerns cultural services rather than goods such as magazines.

On the investment front, too, an eventual global liberalizing agreement may contain a most-favored-nation clause that states that treatment accorded in Canada to the nationals of one country must be accorded to all. Of course, as with all such agreements, there will be exceptions and the grandfathering of some existing privileges. But Canada's recent rejection of Dutch-based Polygram's bid to distribute foreign independent films in this country — by denying a European investor what other interests are already allowed to do in Canada — seems to illustrate the lack of a principled basis of Canada's position in this area.

Technological Advances

Cultural policy is also coming under pressure from rapid technological innovations, as several observers have recently noted.[1] The magazine case at the WTO was, in fact, triggered by a specific technological advance: the US owner of Sports Illustrated magazine, Time Inc., was able to transmit pages of the magazine electronically by satellite from the United States to a printing plant in Canada, thus circumventing a prohibitive Canadian tariff in place since 1965 against the importation of split-run editions of periodicals.

Yet attempts to suppress or somehow control the spread of technology with a view to limiting its applications would only cause Canada to become an economic and cultural backwater in the long run.[2] Indeed, such attempts are unlikely to succeed as a practical matter. For example, Canadian delays in implementing a policy on direct-to-home (DTH) satellite broadcasting have simply led to increased penetration of the Canadian market by unauthorized US signals and to the piracy of those signals by Canadian viewers using black market satellite dishes.[3] Policing such activities is expensive, and often seems at odds with basic individual freedoms or, on a less fundamental scale, with other policy objectives such as free trade and the pursuit of export opportunities for Canada's own technologies.

The alternative, then, is openness to new technology, which, while it may increase the short-term penetration of foreign cultural products into a country, can just as effectively promote the spread of domestic content within a country. For example, the existence of a significant degree of Canadian content on the Internet, relative to Canada's economic size, is said to be directly related to previous deregulation in the telecommunications industry.

The Canadian public is quite aware of the constraints these changes impose on policies aimed at promoting Canadian culture. In a poll released a few days before the WTO panel decision, 46 percent of respondents said that the Canadian government should "pay more attention to protecting our cultural industries," while only 10 percent said they thought it should pay less attention. However, only 39 percent of respondents thought that continuing to protect culture in the new electronic age was even possible.[4] At the very least, it seems, cultural policy should be adapted to these new technological realities.

Budget Constraints

Another source of pressure on cultural policy is the need for the federal government to get its financial house in order. Under both the Mulroney Conservatives and the Chrétien Liberals, cultural programs have not escaped the effects of attempts to fight burgeoning deficits. And even though Canada's federal budget is expected finally to come into balance over the next few years, funding pressures on cultural industries are unlikely to ease. This is because attempts will likely be made to reduce the high outstanding public debt, and pressure may build for at least some reduction in those taxes that have the most perverse effect on economic growth, while competing demands, such as for health care or, indeed, for objectives equally relevant to Canadians' cultural future, such as improved literacy, will be made on any increased funds available from the public purse.

This is not to suggest that funding for culture should decrease further, only that it is naive to think that it will stop doing so, given the current fiscal environment, unless the objectives of the expenditure are made clear and the expenditure is measured against results from time to time. In my view, what is important is not first and foremost the amount of money spent on culture, but whether Canadians are getting the best value for it. If they are, then the appropriate funding is more likely to follow.

Canada's Position in the International Cultural Marketplace

A fourth significant source of pressure on cultural policy stems from Canada's need to solidify its growing presence in the international marketplace for cultural products. Canada's policies to protect its cultural industries are thus increasingly vulnerable to tit-for-tat retaliation by its trade and investment partners. The North American Free Trade Agreement (NAFTA) allows a blanket "exemption" for Canadian cultural policies, but it does not take away the right of other member countries to retaliate in kind or even to take measures of equivalent commercial effect against other Canadian sectors, if they feel that these policies impose a cost on their nationals. There may have been a time when such retaliation would have had a less direct impact on Canada's cultural sector than it would now, but there is plenty of evidence that Canadians are increasingly successful in the international cultural marketplace.

The country's revenues from cultural exports reached close to $3 billion in 1995, according to Statistics Canada, a whopping 83 percent increase in the space of five years. Regardless of the actual "Canadian content" of these cultural exports, clearly a lot of jobs and talent in this industry depend on the global market. For example, a third of Canadian film and video producers' royalties now stem from foreign sales, and Canadian songwriters and composers earn more royalties from international than from domestic airplay. Quite simply, ill-conceived policies to protect Canadian culture could hurt the Canadian cultural products industry.

On a more positive note, international rules in the area of trade and investment in "culture" are still in the process of being defined, notwithstanding the apparent US contention that rules governing trade in goods should apply to magazines, films, and other physical products whose value is chiefly determined by the cultural content they carry. A policy package that would serve the needs of Canadians, but that would be flexible enough to face the challenges posed by emerging technologies and freer trade and investment, could have a more universal appeal than policies limited to the Canadian market. Such a package would also position Canada to strongly influence the outcome of the discussions on this issue in the international arena.

Public Intervention in Culture: The Need to Focus

Canada needs to put its policymaking on culture on a less ad hoc, less crisis-driven footing. What is needed is a principled approach to policy in this sector, one general enough to underpin policy in a wide range of cultural sectors, but flexible enough to permit policies to be tailored to fit specific market structures and technology in each sector, consistent with the overall approach. Because of the various constraints Canada faces, however, a clearer idea is needed of the objectives that the policy should seek to achieve. With this in mind, this section provides an overview of the reasons generally advanced for public intervention in the cultural field, with a view to identifying the ones most relevant in the contemporary Canadian context.

Cultural Policy: An Ongoing Canadian Concern

With the growing number, importance, and complexity of forms of cultural expression, successive Canadian governments have struggled to define a cultural policy for the country. Throughout, the concerns have been, on the one hand, to enhance Canadians' exposure to products of their own culture in the face of the increasing availability of foreign, mainly US, cultural products and, on the other hand, to foster products with original Canadian cultural content.

Over the years, numerous commissions, panels, government officials, and other experts have examined specific challenges to Canadian culture. Typically, these challenges have come from technological advances and the increased penetration of foreign cultural products, particularly from the United States.

As early as 1929, the Royal Commission on Radio Broadcasting (Aird Commission), expressed concern that the growth of the new medium of radio would "mould the minds of the young people in the homes to ideals and opinions that are not Canadian."[5] It also hoped that, "[i]n a country of the vast geographical dimensions of Canada, broadcasting will undoubtedly become a great force in fostering a national spirit and interpreting national citizenship."[6] The commission went on to recommend the creation of a national broadcasting company along the lines of a public utility supported in part by public funds.

In 1951, the report of the Royal Commission on National Development in the Arts, Letters and Sciences (the landmark Massey Report) articulated a vision of cultural policy for a postwar, increasingly urban Canada facing the emergence of mass, professional, cultural media. It lauded Canadian newspapers and periodicals in particular as "probably the chief source of knowledge to Canadians of their country and of one another."[7]

In a similar vein, in 1957, the Royal Commission on Broadcasting (Fowler Commission) reported that, while "we could have cheaper radio and television service if Canadian stations became outlets of American networks," it would not be possible to have a country at all if this were so. It was therefore the legitimate role of government to "compensate for our disabilities of geography, sparse population and vast distances."[8]

Over the years, these and other reports spurred the creation of a number of key publicly funded Canadian cultural institutions, notably the CBC (1936) and the Canada Council for the Arts, Humanities and Social Sciences (1957), now the Canada Council for the Arts, which dispenses funds to creators, producers, and exhibitors of Canadian cultural output. As well, the 1966 White Paper on Broadcasting, the precursor to the 1968 Broadcasting Act, signaled an era of increasing use of content rules and fiscal measures designed to ensure a certain relative level of Canadian expression in key Canadian media. In radio and television, these rules are currently administered under the aegis of the Canadian Radio-television and Telecommunications Commission (CRTC), which awards licenses to operate broadcasting services.

More recent reports on cultural issues have not had the same propelling impact on policy. According to Tom Henighan, an advocate of continued support for Canadian culture:

> [T]he Federal Cultural Policy Review Committee of 1980–82 (Applebaum-Hébert) in retrospect looks like a timely but somewhat uncertain attempt to prune and shape the growth established after the first (Massey-inspired) cultivation of the Canadian "bush garden" alluded to by Northrop Frye. While several of the key recommendations in the Applebaum-Hébert report were acted upon, many of its critics suggested that it failed to chart a consistent path for the future. Also, some of the real pressures on our culture emerged clearly only after it had concluded its inquiry.[9]

Two other major reports devoted to the future of broadcasting policy generally and to that of the CBC more particularly, the 1986 Caplan-Sauvageau Report and the 1996 Juneau Report, recommended strengthening the CBC's sources of public or publicly mandated revenues, even as successive governments were weakening them in the face of severe fiscal restraints — surely indicative of the loss of a certain sense of direction. According to Henighan, this loss has occurred because

> we have reached the end of one era in our cultural development but have not yet found a way to the next. We may well have entered what might be called "the second phase" of our postwar cultural growth [the first, successful, one having been initiated by the Massey Report] without really acknowledging or taking on the challenges that derive from this fact.[10]

In short, Canada has long asserted that it is in the public interest to have access to, and to support, distinctly Canadian cultural products in order to provide a counterweight to the culture carried by commercially stronger, foreign — particularly US — cultural products and distribution channels. In practice, however, this policy is now beset by pressures for change and by an increasingly cloudy view on where the resources to support culture should be concentrated.

In this light, I review below the analytical basis for the claims underlying calls for government intervention in the cultural sector, with a view to suggesting where Canada's cultural policy objectives might be refocused. My own focus is on economic concepts, which tend to put cultural policy in a relative light, rather than on concepts such as "identity," which tend to hold cultural policy as an absolute need. Yet, as I hope will be clear, economic analysis is flexible enough to take in the importance of cultural elements that make up a sense of belonging to a community. And since, in practical public policy terms, cultural protection must be reflected in "hard" policies, such as cash subsidies, tax deductions, and protective regulations having an economic impact, and since many supporters of active cultural policies use economic arguments to bolster their case, an economic point of view should provide insights into the proper use of cultural policy instruments.

The Public Purpose of Cultural Policy

The aims and instruments of cultural policy depend in large part on whether Canadian culture can be considered a "public" good and on whether public intervention is required to correct features of the market that might lead to an underprovision of, or underexposure to, Canadian cultural output.

Culture as a Public Good

Public goods possess characteristics that make it difficult for the private sector to produce them profitably in quantities that the public would prefer to have, for two reasons.

First, any individual within the community can consume a public good without there being less of it available to everyone else. Second, in most cases, no one can be excluded from a public good's benefit; indeed, everyone benefits from it whether one pays for it or not. If contributions to the cost of such goods were left to individual choice, some people would be tempted not to make them, in the expectation that the good would be available regardless of their financial support. This, in turn, would lead to an underfunding and underprovision of public goods (the "free-rider" problem), which is why they are usually funded out of the public purse. Examples of such public goods include national defense, vaccination programs to combat epidemic diseases, crime prevention, and the justice system itself. Thus, if certain Canadian cultural products have the characteristics of a public good, they are probably underprovided, even by a fairly and efficiently functioning private market, and a case could be made for considering public policies to encourage the increased provision of these products.

The desirability of such public goods does not, in itself, automatically justify public intervention, however. Implementing any type of policy — and collecting the taxes to pay for it — is inherently costly, can make matters worse if the policy is badly implemented, and contains the risk that mechanisms instituted for public intervention will be captured by special interests seeking to use state funds and protective regulations to sustain them at the public's expense.

This being said, I review here some possible purposes of Canadian cultural activities that give them the characteristic of a public good.

Shared Experience and Information

In some cases, the public-good aspect of a cultural activity comes in the form of information about, and representations of, other Canadians and of what is of interest to them. The public good of concern to the community here, while not necessarily (and often not desirably) flowing from the state, is comprised of information with a Canadian content. Of course, non-Canadian information and representations could become the basis for a common understanding among Canadians, but only at the cost of a lessening of the functioning or the relevance of the Canadian community.

What is important in this context, therefore, is the ability to access products and services that transmit the cultural and informational signals individuals need to ensure their informed participation in the community and, ultimately, the community's continued survival (which one presumes is a goal held sufficiently strongly in common).

Specifically, Canadians' ability to be informed about other Canadians enhances everyone's ability to make the best possible decisions in both the public and the private spheres, given that Canadians live in a particular political community, separate in many ways from other countries. In that sense, information that incorporates certain assumptions and reflects institutions and situations that distinguish the Canadian community from others can be viewed as a public good.

In this respect, Nobel Prize winner Kenneth Arrow observes:

> If it is valuable for two people to meet without being able to communicate with each other during their trips, the meeting-place must be agreed on beforehand. It may not matter much where the meeting is to be. But a person who learned one meeting-place is not much use to an organization which has selected another.[11]

The relevant parallel is that, if a commonly agreed "trip" — belonging to a separate political entity called Canada — yields valuable results, but Canadians have trouble communicating with each other, then a commonly agreed-on meeting place is a valuable public good. Ensuring that there is such a meeting place in the form of channels of exchange between Canadians therefore becomes a valid goal of cultural policy. It is important to note, however, that the public-good aspect here is not that of enforced uniformity of views or forced preservation of the state, but the element that allows one to make informed public decisions as long as one is attached to a particular community.

"Merit Goods"

Another form of public good is the "merit" good — that is, a good that the public at large should be especially encouraged to consume, or an activity in which they should participate. The view here is that the public would not do so adequately at unsubsidized prices. Whether it be a national art gallery, the symphony, or the opera, the assumption is that the community should help preserve and display exemplars of a particularly rich cultural heritage.

Many analysts find it difficult to justify subsidies for such goods, however, arguing, in particular, that they are hard to reconcile with the usual assumption that individuals are informed enough to make their own choices, and that if they choose not to patronize a certain activity, then there is no reason the state should do it for them at their expense. Indeed, studies have shown that individuals who most enjoy subsidized "merit" goods are also those with above-average income, while many taxpayers will not exhibit much interest in them, regardless of price and accessibility.[12]

Merit goods can, however, fulfill a public purpose in other ways, perhaps akin to the benefits provided by insurance or a diverse ecosystem. One may never encounter a calamitous event or visit a rainforest but still regard the existence of collective mechanisms to ensure against one or preserve the other as important to one's well-being. Hence, one would want to participate in a collective (private or public) effort to pay for such mechanisms.

Another point worth noting is that much of the state's support for merit goods actually comes in the form of tax deductions afforded individuals who make the effort to maintain the good or activity through charitable contributions or contributions to a variety of artistic, political, or other endeavors. Clearly, such support encourages the direct involvement of individuals in their community and, in reflecting the tastes and preferences of at least some segment of the public, this support may encourage the building of "social capital" in ways direct intervention by the state does not.

National Security

Some people have argued that cultural activities have a public-good aspect based on considerations of national security. Apart from the obvious task of defending against physical aggression, nations often seek to intervene under the broad rubric of national security to prevent domestic control of certain activities, such as textiles, food production, broadcasting, and shipping, which are nonmilitary in nature but nevertheless considered critical to their survival, from falling below a critical level. Indeed, trade agreements usually and unambiguously exempt national security considerations from their obligations. The United States, for example, uses such considerations to restrict foreign ownership of radio stations, coastal shipping, and investment in some high-technology sectors.

The search for a Canadian policy on culture has sometimes been put in this context. For example, in 1961, the Royal Commission on Publications stated that "the communications of a nation are as vital to its life as its defences, and should receive at least as great a measure of national protection,"[13] a view echoed more recently by, for example, Kevin Dowler, who notes that "the presence or absence of culture...has a direct bearing on the security of the state."[14]

Clearly, however, there are limits to the use of this kind of reasoning in the current Canadian context. One is that such national security reasons historically have been invoked to justify coercive policies aimed at building the state itself, often against its own dissenting individuals or minorities. Another, more prosaic limit to the use of national security exemptions is that it opens the door to the same kind of criticism Canada appropriately levels at the United States regarding its abuse of such exemptions for protectionist purposes.

This leaves the argument advanced by the Royal Commission on Publications and more recently by Dowler and by Franklyn Griffiths[15] to the effect that akin to "national security" are a country's communications capacity and its ability to have an independent culture, and hence to make independent choices. In its practical implications, however, this argument can be subsumed under "shared experience and information" as a reason for intervention.

The Public Interest in a Functioning Private Market for Culture

Having made the case that culture is a public good meriting some degree of government intervention, I now turn to the "private" market for culture and what needs to be done to ensure its proper functioning.

It may seem paradoxical to say that the state should ensure the existence of a properly functioning private market for culture. This is because one often associates the market more with its free competition aspects than with its fair competition requirements (such as antitrust rules or rules against false advertising).

With respect to fairness, one should determine, before considering policies such as subsidies to spur output or to encourage consumption of Canadian cultural products, whether there are any systemic obstacles to mutually advantageous interaction among creators, distributors, and consumers of Canadian culture in conditions of their choice. If they exist, these impediments would result in both less output and less consumption of Canadian culture than a well-functioning competitive market would provide. The problem is all the more serious if culture performs some of the functions of a public good as defined above.

Market efficiency exists unambiguously only under certain assumptions. To the extent that any of them is violated, leading to what is called "market failure," should government intervene to correct or compensate for the causes of this failure? The question cannot be answered a priori; as in the case of public goods, it is incorrect to assume that, when such a "failure" occurs, intervention is necessarily superior to allowing markets to function freely. But a case can be made for intervention.

Those who say that a freely competitive market for cultural (or other) goods will produce an optimal outcome base their argument on at least three assumptions:

- There are no economies of scale significant enough that they result in markets with only a few large producers or just one ("oligopolies" or "natural monopolies"), or other forms of barriers to entry into the industry.
- Consumers and producers have all the information they need to decide on the best course available to them.
- All the effects of an activity on third parties are priced in the market (there are no externalities).

Below, I examine briefly how each assumption may apply to the market for cultural products in Canada.

Economies of Scale and Other Barriers to Entry

The production of cultural products often benefits from economies of scale, defined as a declining marginal cost per unit of the good or service produced. These occur because the initial production cost comes mostly in the form of intellectual content, without which the product could not be produced in the first place, and which can only be recouped, if at all, by its wide dissemination. Since many products carrying US cultural content and produced for that market benefit from economies of scale generated by the size of that market, products with Canadian content may have a cost disadvantage in the cultural marketplace simply because they attempt to cater to a smaller market.

Globerman points out, however, that this argument is incomplete because economies arise not only from size but also specialization.[16] Economies of scale might represent a barrier for Canadian firms that attempt to produce Hollywood-style films, but if one believes that Canadian films carry a product inherently different from that of Hollywood, then Canadians ought to find an advantage, or at least ought not to be disadvantaged, in specializing in the production of these particular films or other audiovisual products.

In any event, it is becoming less clear that large, blockbuster productions are inherently more profitable than more specialized fare. In book publishing and in the film industry, there is evidence that blockbuster products are accompanied by many failures,[17] and that there is much room for specialized fare. In addition, the explosion in new technologies makes it much easier to disseminate products tailored to specific audiences.

Thus, economies of scale in producing cultural products for the US market do not constitute a barrier to entry into the market for Canadian cultural output. Nevertheless, the per unit cost of the US product is often lower as a result. Canada has attempted to bolster Canadian cultural output by offsetting some of the cost advantages enjoyed by US and other foreign cultural products created for a larger market but distributed in Canada. It has done so directly through financial assistance to producers, as in the case of the film industry, or indirectly, either by regulating Canadian content or by encouraging purchasers of cultural products to buy Canadian rather than US products (through, for example, discouraging advertising in non-Canadian vehicles aimed at the Canadian market).

In the distribution of many cultural products, however, economies of scale can be so large that they lead naturally to situations in which a few firms operate at very low cost and barriers to entry are high as a result (magazine distribution in Canada, book distribution in the United States). Principles of fair competition certainly suggest that distribution channels should be opened on a competitive basis, and policy should aim at achieving this result.

Generally speaking, the economic welfare of both creators and consumers of culture depends on distributors that are independent, or that act as if they were. If a small number of the latter skew access to the distribution system, competition law must be brought fully to bear to eliminate problems such as "refusal to deal" and "abuse of dominant position," practices that are not allowed under well-established principles of competition law.[18] It should certainly be possible to address in this way concerns about access by Canadian products to the distribution channels of large foreign-owned distributors and retailers in, for example, the book industry, should these be allowed freely in Canada.

Perfect Information: Keeping Canada on the Agenda

A market is efficient if all the players have perfect information. But obtaining all the information necessary to make the best choice possible is far more difficult in markets with many highly individualized products than it is in commodities markets, such as wheat, steel, or even VCRs, where standards can easily be compared. In this respect, Kenneth Arrow writes:

> Each individual economic agent is assumed to start with the ability to receive some signals from the natural and social environments. This capacity is not, however, unlimited, and the scarcity of information-handling ability is an essential feature for the understanding of both individual and organizational behavior.[19]

In turn, he continues, these constraints have real-life consequences:

> Decisions are necessarily a function of information. Hence, if it is decided to collect no information relevant to a certain class of decisions, those decisions are non-agenda.[20]

In my view, keeping Canada on the agenda of potential buyers of cultural products should be a crucial objective of Canada's cultural policy. In part, this entails making sure that Canadian products have fair access to markets, as described above. Changing distribution technologies (for example, the Internet) may make it impossible to dictate the level of Canadian content, even if this were desirable, but government should still have a role to play in ensuring that Canadians can choose products from their own culture when they access various distribution channels.

A related question is that of ensuring accurate information about the "Canadian-ness" of Canadian cultural product. If products are allowed to advertise themselves as "Canadian" but carry little or no Canadian content, the impact on consumer welfare, and on the Canadian industry, could be the underprovision of Canadian-content material. As Litvak and Maule wrote concerning the earlier exemption of Reader's Digest and Time magazines from sections of Canadian tax legislation disallowing expenses on advertising aimed at Canadians but placed in non-Canadian magazines:

> The question to raise is not whether Canadians should be denied the opportunity of reading foreign publications, but whether a foreign publication, the editorial policy of which is formulated in another country in the context of its value system, should be allowed to print under a Canadian guise and be assisted in this pretense by Canadian legislation.[21]

In other words, the origin of cultural products is an important piece of information necessary for the well-functioning of the market for these products.

Externalities and Copyright

Benefits that accrue to one person as a result of another's actions, but for which the latter receives no economic reward, are known by economists as "positive externalities." Because the provider of a product that results in a positive externality is not properly compensated for it, the product takes on some of the characteristics of a public good, and the market naturally will tend to underprovide the product. In the cultural field, this situation often arises from a lack of established copyrights.

Modern technology has made it increasingly easy to reproduce endeavors such as films and music recordings, with the result that copyrights are now an essential component of a fair market for cultural products. In this respect, legislation such as that currently before Parliament to strengthen copyrights (Bill C-32) is of crucial importance in protecting the rights of the creators and distributors of Canadian cultural products within the Canadian market.

At the same time, the application of these rights must be balanced against the public benefits of disseminating creative works. This is particularly so if public funds helped finance the works in the first place, since the dissemination of culture is one of the objectives of public intervention in this area. As the European High Level Group reported recently:

> the ease with which digitised information can be transmitted, manipulated and adapted requires solutions protecting the content providers. But, at the same time, flexibility and efficiency in obtaining authorisation for the exploitation of works will be a prerequisite for a dynamic European multimedia industry.[22]

The protection of intellectual property rights can also become a contentious crossborder issue. For example, the CRTC can drop a US TV service from the list of authorized cable channels if a comparable Canadian service becomes available, at the request of the Canadian applicant. This policy recently led to one "de-listing" of a US country music channel, to the considerable annoyance of the provider. While the CRTC had the right to de-list the channel — and, in any event, the US service knew of the policy before beginning to operate in Canada — I question the consistency of Canada's position on the respect of intellectual property rights. The CRTC's ability to de-list well-established services should be limited in future.

Moreover, the United States is concerned that, under Bill C-32, its nationals will not be protected by Canadian copyrights to the same extent as Canadians are. As a supporter of the concept of "national treatment" as a basic tenet of free trade agreements, Canada should certainly be sympathetic to US concerns on this issue. On the other hand, the issue should be tied to that of respect of Canadian property and distribution rights in other sectors. In other words, if national treatment is to be the standard, then the United States should support measures meant to ensure compliance with existing Canadian property and distribution rights.

Culture and Economic Growth

Another rationale for public support of cultural activities lies in their potential impact on the emergence of new products and services. So far, the economic arguments I have discussed essentially concern the issue of how best to allocate existing resources within the market for cultural products. Economists have developed powerful analytical tools for dealing with such a problem, but they still understand only imperfectly the conditions for economic growth arising from the creation, accumulation, and dissemination of new ideas and processes.

Culture is fundamental to this process of growth, change, and experimentation. In his study of wealth and the demand for art in Italy between 1300 and 1600, Richard Goldthwaite explains the interaction between culture and economic growth thus:

> Perhaps, as is often said, there is no accounting for taste; but it is another matter when taste, whatever that taste may be, is extended to new kinds of objects....These objects incorporated values other than sheer wealth....These were social values through which people sought to say something about themselves and to communicate that to others.[23]

He adds that an often assumed dichotomy between "culture" and the process of economic growth may not be valid:

> The Italians' material world cannot be understood as just the embodiment of culture according to the dichotomous and static scheme of traditional anthropological analysis, which too often posits a culture "out there" apart from its material embodiment and ignores the dynamic and creative nature of changes in the things themselves.... For culture is, by its very nature, a process of emergence, development, and change in the search for, and the definition of, values; and consumption can be a vital part of this process.[24]

Goldthwaite describes a process that originated with the higher classes of society, who sponsored artists and encouraged artisans, and then spread more generally, with all its economic implications and demands for new types of goods and facilities.

Today, however, the financial backing for such a process of experimentation is often found in arm's-length state subsidies for cultural experimentation or in state fiscal support for private ventures supporting the arts. In fact, one could consider these subsidies on a par with incentives awarded to industry for research and development. Globerman argues, for example, that,

> since non-profit organizations raise no money on capital markets, the opportunity for society to diversify its "investments" in new artistic ventures is limited. Thus, the risk-pooling achieved by a central government granting agency such as the Canada Council can promote efficiency objectives.[25]

This argument for funding artistic endeavor is certainly relevant today, considering that many of Canada's more traditional products, such as furniture or clothing, increasingly embody design or other creative features that make them competitive despite lower labor costs in other countries.

Dead Ends: Baseless Grounds for Cultural Policy

To sharpen one's view of the aims of cultural policy, it is useful to identify reasons that are sometimes invoked for intervention and protectionism in the cultural sector but that ought not to form the basis of a sound cultural policy (although they may have a role to play in other policy contexts). Two that are often mentioned are cultural industries as job creators, and cultural industries as export generators.

Cultural Industries as Job Creators

By some accounts, since the 1970s, Canada has been moving away from a cultural policy rationale based on fundamental concepts of art and culture, with their unpredictable implications for economic activity and employment, and toward one geared to cultural "industries." One often-stated reason for the desirability of this trend is that the public will be more supportive of measures that help these industries grow if it can be shown that they create some visible "bang for the buck" — that is, if many jobs are created in return for the funds poured into them and for the protection they are afforded.

Indeed, it is probably easier to define a policy to protect cultural "industries" than one to promote Canadian "culture." And precise definitions of "industries" are often necessary when attempting to explain how a general framework will apply to specific endeavors, or for analytical purposes. For example, the clear definition of "cultural industry" in the Canada-US Free Trade Agreement, and reproduced in the NAFTA, has determined which specific activities are exempt from these agreements, and has effectively sheltered Canada's protectionist measures for these industries from

NAFTA challenges (to such an extent that the United States had to make its case in the WTO on the magazine issue). But, as Dowler notes, "[a]lthough a sector-by-sector analysis can be valuable...the genesis of the cultural policy apparatus and its logic cannot be derived in this manner."[26]

More fundamentally, those who favor protection for cultural "industries" because they "create jobs" seem to believe that such a policy will succeed here even though it has failed for other products or services. Of course, protectionism can sustain some jobs in any sector, but many others will be lost because, for example, state subsidies reduce taxpayers' disposable income, or because encouraging growth in a particular sector redirects resources, such as capital, that could have been better used elsewhere. Indeed, many of those who support the idea of a state-sponsored policy on culture concede this point. For example, political scientist Franklyn Griffiths defends the argument that cultural policies are essential to the ability of a sovereign people to make independent choices, but says "[t]hose who conceive of Canadian culture primarily in terms of cultural industries and employment potential will be asked [in his study] to think again."[27]

In short, given protectionism's poor historical record in promoting economic growth, there is no justification to use it for public intervention in the cultural industries.

Cultural Industries as Export Generators

As noted earlier, Canada's exports of cultural goods and services have increased at a remarkable rate in recent years, a development from which Canadians can derive satisfaction. But many of these products are tailored for international audiences, and export markets by themselves ought to be large enough to support Canadian cultural products that do not particularly speak to a Canadian audience. In other words, export promotion of cultural or any other products is a matter for trade or industrial policy. While the selling of cultural products abroad is to be welcomed, it should not be the basis of cultural policy per se, nor should it be the basis on which Canadian cultural products are subsidized or protected.

Supporting the Choice of a Canadian Culture

As we have seen, there are important public and private benefits in Canadians' having continued access to cultural products with significant Canadian content. This means that cultural policy should support the creation of such content where necessary, and improve the functioning of both public and private markets in such a way that Canadian cultural products remain on Canadians' "information agenda." Indeed, cultural policy should be judged to have failed if Canadian cultural production, taken as a whole, fails to find or sustain an audience.

Equally, cultural policy should be judged to have failed if it requires the increasing use of devices that limit the public's exposure to foreign cultural products, particularly in a world in which such measures are becoming increasingly costly or impractical.

As I mentioned earlier, Canada must be able to impose its stamp on future trade and investment negotiations that affect cultural industries. From this perspective, a policy based essentially on ensuring that individuals are presented with a substantial choice of cultural products representing their own culture or country would have a broad appeal outside Canada as well. Increased choice itself would not infringe on the right of producers in one country to access another's market, and on that basis there is no reason each country's domestic policy could not set local cultural-content criteria for financial support and minimum shelf space for its cultural products.

It would, for example, be in the long-term interest of the United States, Canada's largest trading partner and source of most of its foreign cultural influences, to support a policy of more choice rather than less. Even though such a policy might incidentally foster cultural products that compete with US products in local or even global markets, one could envisage the shelf-space concept, negotiated multilaterally, as ensuring some access to foreign culture in countries — such as in China, for example — where the local culture is relatively closed to other influences.[28]

A Critique of Key Cultural Policy Instruments

In the previous section, I outlined the reasons for having a cultural policy. The next step is to consider how the policy is to be implemented. To do so, however, one has to determine how best to support what is defined as "Canadian content." This section of the Commentary addresses this issue by taking a critical look at three key instruments now used to sustain Canada's cultural industries: Canadian-content rules, investment and ownership restrictions, and subsidies.

Canadian-Content Rules

One of the most important instruments of Canadian cultural policy is rules regarding Canadian content. These rules are used to determine the awarding of TV and radio licenses by the CRTC and of subsidies and tax credits — particularly to producers in the audiovisual sector. The rules also determine the legitimacy of deducting advertising expenses in magazines and on television.

A Brief Overview

With respect to television, Canadian licensees must meet Canadian-content quotas of 60 percent of the daily schedule and 50 percent of evening programming, while cable companies must offer a "preponderance" of channels carrying Canadian programming to their customers. Recordings broadcast by most radio stations must be 30 percent Canadian, although the percentage is lower for stations that specialize in, for example, classical or "ethnic" music.

A key operational question, of course, is what is to be defined as Canadian content for these purposes. With respect to audiovisual material, Canadian content is determined according to three criteria: producers must be Canadian citizens; a certain number of key creative people (for example, the director, the music composer) must be Canadian; and a certain percentage of both production and post-production costs must be paid to Canadians. A special set of rules applies to animated productions and international coproductions. In the latter case, some content originating in a third (non-US) country with which Canada has a coproduction agreement may count as Canadian content, while content originating as Canadian is reciprocally considered on a par with domestic output in the country with which the agreement was made.

With respect to the music industry, a recording obtains the status of Canadian content if two of the following four elements are determined to be Canadian: the artist, the composer, the lyricist, and the production house (where what matters is not Canadian ownership but that the recording is made in Canada).

Do the Rules Work?

Canadian-content regulations have come under criticism on a number of grounds. For critics of Canada's cultural policy apparatus, content rules as they apply to TV and radio licenses are unpalatable because they try to limit what people may see or listen to. Cultural nationalists, however, want to strengthen the rules — for example, to apply them to a broader range of media, including book stores and cinemas — or to exclude dubious Canadian content from the existing definitions.

No doubt it is difficult to define what is "Canadian" in terms of artistic or informational material, and that attempts to do so inevitably will involve a number of gray areas. Nevertheless, if the purpose of cultural policy is to encourage the development of a Canadian culture or to "interpret Canada to Canadians," then the definition of Canadian content should focus on Canadian artistic output or on informational content provided by Canadians or about Canada.

The fact that criteria such as the nationality of producers or postproduction expenditures also count toward the definition of "Canadian content" leads to what can only be termed severe anomalies. As Henighan points out,

> one might argue that...Nanook of the North, the famous documentary by the Irishman Robert Flaherty, is more authentically Canadian than shows bankrolled, written, and shot in Toronto or Vancouver (The X-Files, for example), which pretend that the setting is Indianapolis or Cleveland.[29]

Other examples exist of feature films made in Canada but mostly with a US audience in mind — complete with the changing of mailboxes and police uniforms to give them the look of a US locale — meeting Canadian-content rules. To repeat, qualifying as Canadian content makes these products, if produced by a Canadian-owned company, eligible for public subsidies and allows them to fill Canadian-content quotas on TV. Exceptions to Canadian-content rules can also be questioned on the same grounds — for example, the CRTC counts the televising of the Academy Awards as Canadian content, because of its "interest to Canadians."

A converse problem may occur when too many criteria of "Canadian-ness" have to be met before the product can be considered "Canadian." Here, instead of a lack of clear focus on products that would fulfill the mandate of cultural policy, there is the risk of missing opportunities to promote such products. Thus, as Henighan notes,

> a Canadian soloist and a fully Canadian orchestra recording a foreign piece in Los Angeles does not qualify, nor would they qualify if they recorded the same piece for a foreign label in Winnipeg![30]

Yet the exhibition of both these performances arguably would fulfill important cultural policy goals.

Regulating Content Levels: An Obsolete Concept?

One serious problem with rules regulating the level of Canadian content across different media is that, in their current form, they may become obsolete. This could well happen because technological advances (for example, DTH broadcasting, pay-radio, and the Internet) will make it increasingly costly to enforce the rules.

In reality, the broadcast media are becoming less "mass" and the product is becoming much more individualized. As a result, and possibly soon, it will no more be possible to require that a "preponderance" or even a given level of Canadian audio and video signals be received in Canadian homes than to require that there be a preponderance of Canadian books or recordings at home, except at an increasingly high and eventually prohibitive cost. Alternatively, of course, one could define "Canadian" in a way that simply involves putting that label on cultural and entertainment products that are indistinguishable from those of other countries.

Shelf Space for More Clearly Defined Canadian Content

A more meaningful solution would be to ensure shelf space for Canadian-content material across a range of broadcasting outlets, if necessary with the help of public subsidies. Since the aim of subsidies would be to ensure that Canadians continue to have a choice of Canadian content across a range of media, they should go to products that the public can more readily identify as Canadian.

As a result, the definition of Canadian content should shift away from the ownership of the producer of a cultural product or the location of production money spent on it, and toward factors that are more directly related to cultural output by Canadians or to Canadian information. These might be the interpreters of the work (news anchors, political debaters, hockey players); whether an audiovisual product is based on an original work by a Canadian creator (playwright, composer, author) who is a permanent resident of Canada at the time the product is shown; whether a performance is presented before a Canadian audience; or, with respect to nonfiction, whether the work displays a Canadian setting, reflects Canadians and their activities, or interprets Canadian history or world events involving Canadians.

With respect to channeling public (or publicly mandated) funds into audiovisual productions, the goal of these changes would be to focus more, if not exclusively, on the Canadian creative or interpretive work involved. With respect to TV and radio programs, however, the changes would aim to cast the net of "Canadian content" so as to include subjects of particular interest to Canadians. (I describe in more detail below how this concept could be applied in Canadian broadcasting.)

Investment and Ownership Restrictions

For nearly 40 years, a cherished assumption of Canadian cultural policy has been the need for restrictions on foreign investment in the cultural industries. This assumption is rooted in the view that Canadian media are more likely to make use of or promote Canadian cultural products. In 1961, for example, the report of the Royal Commission on Publications stated:

> Canadian tasks and problems cannot be approached understandingly or usefully by communications media owned or controlled in another country, even though that country be friendly. Only a truly Canadian printing press, one with the "feel" of Canada and directly responsible to Canada, can give us the critical analysis, the informed discourse and dialogue which are indispensable in a sovereign society.[31]

A Brief Overview

Restrictions on foreign ownership currently apply to varying degrees in film distribution, in book publishing, distribution, and retailing, in broadcasting, and, effectively, in the periodical and newspaper industries.

The result of investment restrictions, however, in the cultural area as in other sectors can be to deny Canadians access to original cultural material and to stifle competition in the delivery of cultural products from within Canada or from abroad. This seems to have happened in the recent denial of a request by Dutch-based Polygram to distribute (nonproprietary) foreign films in Canada, even though that company undertook to do better than its US counterpart to distribute Canadian films abroad. Since film distribution interests that existed before 1988 have been "grandfathered" under existing policy, the result of that decision has been to strengthen US culture in Canada at the expense of products from other countries, while doing little to enlarge the bit part that Canadian films have in their own market.[32]

Given the trend toward liberalization of investments in other sectors of the economy, the claims made on behalf of domestic ownership of cultural industries need to be examined more closely and updated in light of the policy objectives discussed above — in particular, that of promoting the communication of Canadian cultural output to Canadians themselves.

Do Ownership Restrictions Sustain Culture or Protect Business?

Do restrictions on foreign ownership in Canadian cultural industries work? That is, do they help sustain Canadian culture or merely serve to protect existing cultural businesses?

To some extent, posing the question in this way is unfair: distinguishing between culture and the business of culture can be somewhat artificial since many cultural products reach the public via private enterprises. Indeed, as we have seen, Canada has a large stake in ensuring that fair competition prevails in these industries. In the same vein, creators can and do also become entrepreneurs, and they naturally want more control over the commercial production or exhibition of their work and to be remunerated when their material is being used. This is as it should be.

Restrictions on foreign investment often assume that the main reason Canadian firms become involved in a for-profit cultural industry is to produce Canadian culture. In fact, firms facing similar circumstances usually can be expected to react similarly to a market situation regardless of their owner's nationality. In this respect, economist Ed Safarian notes, in a recent study of the impact of the presence of multinational enterprises (MNEs) on public policy, that

> It is difficult to see why the welfare effects for various interests are any less important simply because the source of the [investment] decision is a domestic firm, a domestic MNE or a foreign MNE.[33]

It is therefore important to distinguish between the ownership of the business and the delivery of Canadian cultural products, unless there are compelling reasons to think that only a Canadian firm will deliver on cultural policy objectives. On the face of it, however, there is no automatic connection between the cultural content embodied in a product and the ownership of the enterprise delivering or marketing the product. Here are some examples that support this point:

- Reportedly, the "Bookfinder" floor computers available to the general public in a number of Chapters bookstores use US software that does not list Canadian or British books if they do not have a US distributor. If authors are on the system, their US, rather than Canadian, distributor is listed. Chapters is looking at whether a Canadian system "would be feasible."[34]

- Crossborder investments can actually be useful in resolving trade disputes. A dispute (referred to earlier) broke out between Canada and the United States over the CRTC's removal of a US-based country music TV channel previously established in Canada from the list of authorized US signals, to the benefit of a newly established Canadian competitor. The dispute was resolved when the US party agreed to provide the name and supply the programming in return for 20 percent of the equity.

- Canadian broadcasters, publishers, or entertainment groups wishing to expand in the United States will be less concerned with maintaining a Canadian image or promoting exclusively Canadian products. Whatever the industry, the nature of the links with the owner's country of residence will change when the business expands beyond the country's borders. In other words, Canadian-owned enterprises of a global scale will have many concerns other than promoting Canadian culture per se.

- The arrangement between Disney and the Royal Canadian Mounted Police to market and enforce the RCMP's merchandise licensing rights, if somewhat overzealously applied in the eyes of some, means that a Canadian intellectual property will be better protected and managed in the future than it has been until now. Of course, the RCMP has the final say over how its image may be used commercially, and the funds from these activities accrue to a Canadian charity.

- One may think of movies such as Cinema Paradiso and Il Postino as Italian or Like Water for Chocolate as Mexican. Yet the company responsible for releasing these films is Disney-owned Miramax. Dutch-owned Polygram has released, to worldwide acclaim, such movies as *Priscilla Queen of the Desert* (Australian), *Fargo* (US), and *Four Weddings and a Funeral* (British).

- A fringe group called 50/50: Canadians for Canadian Culture and Entertainment (whose aims, it must be emphasized, Canadian publishers do not support) "occupied" a Coles book store in Fredericton, New Brunswick, to protest against "the low percentage of Canadian books stocked in Canadian bookstores,"[35] which it calculated as being 12.8 percent. Yet Coles is Canadian owned.

- In 1996, Canadian-owned McClelland and Stewart closed its college publishing division and sold its inventory and rights to Oxford University Press. Yet this move seems unlikely to result in diminished Canadian-content material in colleges and universities. Indeed, since content requirements for the education market are usually set by ministries, boards, and schools, foreign-owned publishers appear to carry products with very high Canadian content in order to serve this market.

- The 1968 Broadcasting Act explicitly recognized that restrictions on foreign ownership were not enough to ensure the broadcasting of Canadian content, which is why the CRTC enforces Canadian content in addition to ownership regulations. Yet many recent cable offerings spawned by CRTC rules do not appear to thrive on or specialize in novel Canadian programming.

The question is not whether Canadian ownership is sufficient to ensure the promotion of Canadian content, because so often it is not. Rather, is it necessary to reach a certain level of Canadian content across a range of key media? That is, would there automatically be less Canadian content if the rules governing foreign ownership of production and distribution channels were loosened? In most cases, I believe, the answer is a qualified no.

It is probably true that a Canadian-owned firm has a comparative advantage in fulfilling the objectives of cultural policy by producing Canadian products for a Canadian audience. This is because a Canadian owner of a business would likely be more open to, or even actively seek, Canadian content, whether in the cultural or other fields of endeavor. But it also gives the Canadian owner an advantage over the foreign company in vying for the market — or for the subsidies — for Canadian content, which would eliminate any justification for automatically limiting foreign investment in the domestic market. In general, if Canadian creators and producers of Canadian cultural products were assured of a fairly competitive market, continued access to shelf space, and, as I argue below, financial support for those producers or distributors (regardless of ownership) that truly specialize in Canadian content, then opening up the distribution of cultural products to foreign competition would seem far less problematic than it does now.

Fair Competition for Canadian Content

I have argued in favor of ending, as a general rule, foreign ownership restrictions in the cultural industries. There are, however, still good reasons to maintain Investment Canada's screening process for foreign investments or mergers of foreign owners in cultural industries. It may even be necessary to refer such investments and mergers to the Bureau of Competition Policy for advice as to whether they would specifically reduce opportunities to exhibit or produce Canadian cultural products in Canada or abroad.

In particular, foreign ownership gives rise to questions about whether a foreign-owned concern will deal fairly with and seek out Canadian suppliers in the normal course of its business in Canada. If there are doubts that it will not, then allowing a change of ownership without resolving this question could mean economic welfare losses for Canada. This question was resolved to Canada's satisfaction in the cases of Wal-Mart in the retail sector and Viacom in the cultural sector, to name two fairly recent examples.

This suggests a greater role for competition policy principles in the elaboration of cultural policy, particularly vis-à-vis the distribution system for cultural products, which, as we have seen, may be particularly vulnerable to exhibiting the characteristics of imperfect competition. For example, outlets for cultural products in Canada clearly should use distributors (for bookstores) or playlists (for radio stations) from which the full range of relevant Canadian titles is available.

In addition, from the point of view of cultural policy, foreign investment restrictions remain warranted in sectors, such as broadcasting or telecommunications, where Canadians themselves face restrictions in penetrating foreign markets, where problems concerning the extraterritorial application of foreign laws may arise, or when national security issues are at stake in their own right. Even then, however, there has been a definite trend toward relaxing these restrictions over time, as demonstrated recently at the WTO negotiations on telecommunications.

Overall, however, the policy implications regarding foreign investment are fairly clear: subsidies for products aimed at a Canadian audience and shelf space for such products should be open to foreign owners and producers if they can contribute to Canadian content and carry Canadian perspectives to Canadians and the rest of the world.

Subsidies and Tax Policies

Canadian governments provide financial support to cultural products and services in a number of ways, principally: direct subsidies to creators or to institutions and organizations that promote cultural output and exhibitions; mandated contributions by distributors of audiovisual products to production funds; and tax deductions or credits favoring producers, purchasers, or private financial supporters of Canadian cultural products.

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In fiscal year 1995/96, the federal government spent just over $1.6 billion on direct subsidies to culture, representing 1.3 percent of all federal program expenditures in that year, an amount and share of program expenditures virtually unchanged from 1992/93.[36] In turn, in 1992/93, the last fiscal year for which comprehensive national statistics are available, total federal expenditures on culture[37] represented 46 percent of expenditures by all levels of government in Canada on culture, down from 50 percent in 1989/90. Whereas the bulk of funding for libraries, arts education, and visual arts and crafts originates at the provincial or municipal levels, federal funding predominates in the literary arts (90 percent), broadcasting (88 percent), sound recording (78 percent), and film and video (76 percent).[38] By and large, these priorities seem consistent with the federal government's role of encouraging the production and transmission of cultural products that all Canadians can share.

Within the federal envelope, however, the relative weight of the various expenditures has shifted somewhat toward broadcasting in recent years. In particular, funding for the CBC represented 73 percent of all federal cultural expenditures in fiscal year 1995/96, compared with 67 percent in 1992/93. Direct support for the film and publishing industry (through contributions to the National Film Board, Telefilm Canada, and the Book Publishing Industry Development Program), funding for the Canada Council and the National Arts Centre, support for Radio-Canada International, and postal subsidies for magazines all declined in dollar terms as well as relative to total federal cultural expenditures over the same period.

Ottawa also mandates contributions to production funds, the cost of which is then passed on to consumers, at least in part. New CRTC rules show an increased commitment to this type of funding, and all companies involved in delivering broadcast signals will have to contribute 5 percent of their gross revenues to a production fund starting on January 1, 1998. It is estimated that these contributions eventually will generate $75 million yearly for producers of Canadian television programs.[39]

Support is also provided through tax deductions, notably for individual and corporate support to the arts. However, fiscal support via tax credits dropped when the principal measure, a 100 percent capital cost allowance for investments in Canadian film and video productions, was replaced in 1995 by a tax credit on "qualified" labor expenditures incurred in such a production, not to exceed 12 percent of the total cost of production.

Another important fiscal measure consists of Canada's denying the tax deductibility of advertising expenditures in print and broadcast media (through section 19 of the Income Tax Act, adopted in 1965), when this advertising is placed in non-Canadian-owned or non-Canadian-content media aimed at the Canadian market, as in the case of split-run "Canadian" editions of US magazines. In contrast to measures that support cultural production and distribution directly from the public purse or that are funded from broad-based obligations imposed on all providers of a certain type of cultural product (regardless of the product's origin), this measure is controversial because it appears to discriminate against US providers of cultural products in the competition for Canadian advertising. Although the United States considers the measure unfair, it has not yet challenged it under existing trade agreements.

Imports of new split-run magazines into Canada are, in any event, banned through a special tariff item, with existing split-run editions, such as that of Time magazine, having been grandfathered. Time, in fact, found a profitable advertising niche in Canada, even though it had to severely undercut its Canadian competitors in search of Canadian advertising because of the disallowance of the tax deduction for the advertiser. But in 1995, after Sports Illustrated, also owned by Time Warner, had tried to circumvent the tariff by beaming the magazine's content electronically over the border and printing it in Canada, Ottawa reacted by imposing an 80 percent excise tax on all advertising contained in split-run magazines (including some Canadian magazines, such as Harrowsmith, that were publishing US split-run editions).

It is these last two measures — and the preferential commercial tariff Canada Post accords domestic over foreign magazines — that the United States successfully challenged before the WTO panel. Canada's appeal of the report is under way at the time of writing, but whether or not it succeeds, the ruling holds serious implications for the types of subsidies and tax measures that are acceptable to Canada's largest trading partner.

I advocate that certain subsidies be better targeted toward cultural products with more specifically defined Canadian content and that Canada drop certain protectionist measures, such as investment restrictions, which would place a greater emphasis on subsidization and fiscal incentives among existing instruments of cultural policy. Accordingly, in the next few paragraphs, I review the international status of such measures in the wake of the WTO ruling.

Subsidies, Tax Incentives, and International Trade Rules

Economists have long recognized that subsidies are one of the least intrusive forms of government intervention in the economy. Even then, however, not all subsidies are acceptable under international trade rules. In particular, subsidies deemed to injure the domestic industry of another WTO member, or cause serious prejudice to another member's "like product," are defined as "actionable" by that member under the WTO Agreement on Subsidies and Countervailing Measures.

In addition, taxes, laws, and regulations within a country must be applied in such a way as to provide "national treatment" to imported products. This was clearly demonstrated by the WTO panel's decision, in which two key questions were addressed with respect to the 80 percent excise tax on split-run editions of magazines. The first was whether the tax was a measure concerning a service (advertising) or a good (magazines). The second concerned whether the tax treated a domestic good and a "like" domestic good in a different manner. These issues were important because, under Article III of the General Agreement on Tariffs and Trade (GATT), on trade in goods, internal taxes cannot be imposed in ways that discriminate between domestic or foreign goods that are deemed to be "like goods."

Canada lost its case on both counts. Leaving aside the rather technical question of why the panel found that the tax applied to a good and not a service, a more fundamental issue in relation to the purpose of cultural policy is why the panel found that Canada's excise tax applied differentially to "like" products.

The problem the panel had was that Canada had construed its tax measure in such a way that it also applied to advertising in the Canadian editions of Canadian magazines if these magazines produced a split-run edition for the US market, as was the case with Harrowsmith magazine. The panel pointed out that, if Harrowsmith had printed both its US and Canadian editions in the United States and shipped the Canadian edition into Canada, the latter would have been an imported split-run edition subject to the 80 percent excise tax. If, however, Harrowsmith had discontinued its US edition and repatriated printing to Canada, its Canadian edition would not have been subject to the excise tax. Yet the two Canadian editions — the imported one existing before and the domestic one coming after the discontinuation of the US edition — would have been very similar. In the words of the panel, they would have "common end uses, very similar physical properties, nature and qualities. It is most likely that the two volumes would have been designed for the same readership."[40] Thus, the panel ruled that, according to the very definition found in Canada's Excise Tax Act, "imported 'split-run' periodicals and domestic non 'split-run' periodicals can be extremely similar."[41] It is this consideration that led the panel to the view that the two types of periodicals should be taxed in the same way. As the panel took pains to explain, however, on the basis of earlier cases before the WTO,

> the definition of "like" products...should be construed narrowly, on a case-by-case basis, in light of such factors as the product's end uses in a given market, consumer's tastes and habits, and the product's properties, nature and quality....[O]ur mandate under the terms of reference of this Panel is not to discuss the likeness of periodicals in general.[42]

This and other wording of the panel's decision suggests that measures, including taxes, that promote magazines (and presumably other cultural products) with original Canadian content aimed at a Canadian readership were not at issue here.

But one should still be able to argue that cultural products made by Canadians fulfill a need in Canada that is not met by products made for the US market — that is, that they are not "like" products because they do not perform the same function, in the same way that bicycles and motorcycles are also not "like products" even though both are classified as transportation equipment. No one would object if a country facing, say, a severe pollution problem decided to subsidize or give preferential tax treatment to bicycles rather than to motorcycles, as long as this treatment was based on the inherent qualities of the two products, not on their country of production or ownership.

Applying this example to culture, if Time were to provide substantial content of Canadian interest in its Canadian edition, then it would also be accorded the same treatment regarding advertising that accrues to Canadian-owned magazines aimed at the same market, regardless of its US ownership or of where the magazine was printed. On that basis, it would remain quite possible to subsidize or give certain tax advantages to products with Canadian cultural content, particularly since the subsidized products would, by this definition, not be produced for export, would only add to consumers' choice in Canada, and, therefore, could hardly be considered to cause injury or prejudice to foreign producers.

It is also worth noting in this respect that the WTO explicitly confirmed that GATT Article III:8, which permits "subsidies that are awarded exclusively to domestic producers," allows subsidies, such as Canada Post's "funded" rate scheme, that directly help certain magazines produced by domestic publishers to reach their Canadian audience. (On the other hand, Canada Post's "commercial Canadian" rate scheme, which treats Canadian and imported magazines differently, made no sense to the panel because, as even Canada conceded, from Canada Post's point of view, these two types of magazines are "like goods.")

In this context, subsidies should be available to producers established in Canada, including foreign-owned ones, that specialize in the production of cultural products with high Canadian cultural content, and tax incentives should also be directed toward this purpose.

Subsidies: Too Many or Not Enough?

Regardless of their international eligibility, subsidies as a means to promote domestic cultural output have been criticized for two reasons.

On the one hand, many critics believe that there is too much subsidization — that subsidies, while clearly promoting more cultural output, do not necessarily promote higher-quality cultural products, or at any rate cultural products that Canadians want.[43] On the other hand, many supporters of subsidization shudder at the thought that, in an environment of budgetary restraint, subsidies might become the last line of defense in the event that regulatory control over, say, Canadian programming, or foreign investment restrictions, is relaxed.

Those who claim there is too much subsidization point to businesses in the cultural industries that argue they need subsidies because they are only marginally profitable. Indeed, it is one thing for a firm to use a subsidy to improve the efficiency of its operations or distribution system, to cover the cost of finding and developing new talent, or to cover the cost of activities identified at the outset as being socially desirable even if they will never be commercially viable. It is another if the subsidy simply encourages the firm to get into marginal activities or to increase its output of cultural products that will never find an audience. In other words, there is something wrong with a cultural policy that rewards marginality, as distinct from, say, experimentation or innovation.

Supporters of subsidies, including many successful and renowned Canadian artists and creators, argue that Canada Council grants or publicly funded institutions such as the CBC have provided the necessary startup support for their and others' careers.[44] And it is probably true that recent cutbacks in financial support make supporters nervous about the idea of replacing regulatory measures with subsidies, as it certainly appears easier to cut funding than to modify laws or regulatory measures.

As I have already argued in this Commentary, cultural subsidies can be justified on a number of grounds:

- they would ensure the delivery of an important public good;
- they would encourage Canadians to patronize "merit" cultural goods;
- Canadians might suffer a loss of vital information about themselves and their country without a certain amount of subsidized cultural or informational output; and
- the fostering of cultural creativity has always played a part in the growth of original ideas that are part of the process of economic growth.

Some of these reasons may have a speculative element to them, but critics of subsidies should not simply dismiss them out of hand.

Space does not permit me to address all the precise ways in which cultural subsidies are, in fact, allocated in Canada. As I have already implied, I doubt that cultural policy per se should or can address concerns other than supporting the creation of Canadian cultural and informational output generally and the exhibition and distribution of this output to other Canadians. Therefore, the promotion of exports, multiculturalism, particular ethnic groups or regions, or national unity is best left outside the scope of cultural policy and certainly should not govern the awarding of grants. Perhaps subsidies should focus instead on improving the way Canadian culture is disseminated — for example, by providing more generous support for tours by Canadian artists and by promoting their work through the Internet.

Subsidies and other forms of cultural support must also be transparent and subject to the political process, since claims for their effectiveness are made on the public's behalf. In this respect, a stable, multiyear target for funding the total federal envelope for culture, including tax deductions, expressed as a share of federal expenditures or even of GDP, could contribute greatly to improving the transparency of cultural subsidies and allaying concerns about the predictability of funding.

Needed: Subsidies that Focus on Canadian Culture and Information

To summarize the discussion on subsidies and fiscal incentives, I recommend that Canada's subsidy and tax regimes with respect to cultural products should focus more clearly on supporting products and services that promote the domestic sharing of cultural experiences and information and the creation of new Canadian cultural products, which, by definition, cannot be performed by products that do not contain material that is Canadian or about Canada. If the aim is to support the choice and availability of Canadian products, and not to block the entry of foreign products or to discriminate against their distribution once they have entered Canada, the subsidy should be acceptable internationally. Despite its devastating impact on some specific measures, the recent WTO decision on magazines appears to leave Canada and other countries with much leeway to develop such policies.

One can criticize the effectiveness of subsidies in promoting Canadian culture and encouraging an audience for it. But as long as Canadian culture is seen as performing a public function, or faces barriers in an imperfectly competitive market and is therefore likely to be underprovided by the market, subsidies will be necessary to support the creators, producers, and distributors of material with Canadian content. There are, however, ways to improve the transparency, accountability, and predictability of these subsidies.

Implications for Specific Cultural Industries

In this section of the Commentary, I look at specific cultural industries, providing, first, a short backgrounder, then an outline of directions for policy changes. My purpose is not to suggest that a uniform approach to these industries is desirable, but to see how policy in each sector could be made more compatible with the overall approach I propose with respect to Canadian content, subsidies, and ownership rules.

Book Publishing, Distribution, and Retailing

Historically, the Canadian-owned publishing industry has been hampered by low profit margins due to a relatively small domestic market and a flood of well-publicized foreign books, limited revenues from distribution rights and the sale of rights to mass market media, and inadequate capitalization.[45] In 1972, in response to these problems and after two significant Canadian publishers (Ryerson and Gage) had been sold to US interests and another (McClelland and Stewart) had threatened to close its doors, Ottawa began to assist the industry.[46] Over time, this aid has come to include both subsidies and restrictions on the activities of foreign-owned publishers.

The three most important federal subsidies in this area are the Book Publishing Development Program (BPDP), the Publications Distribution Assistance Program (PDAP), and Canada Council block and other grants.

The BPDP provides both operating subsidies to Canadian-owned publishers and project grants to help them improve the commercial viability of their management and marketing systems. Although it represents a form of industrial development assistance, eligibility for the BPDP requires firms to meet sales-based criteria that make the policy significant from the point of view of enhancing Canadians' access to cultural products. The size of the BPDP has declined sharply in recent years, and now amounts to $18 million annually. The

PDAP is a $5 million subsidy for distribution and marketing costs that replaced an earlier discounted postal rate. In addition to direct support for writers, portions of the Canada Council's Writing and Publications Programs are directed at publishers for the publication, promotion and translation of books.

Federal restrictions on foreign-owned publishers reached a peak in 1985 with the so-called Baie Comeau policy. This policy required foreign companies indirectly acquiring Canadian-based companies purchased as part of a global acquisition to divest 51 percent of the latter in favor of Canadian interests, and banned the direct establishment or acquisition of publishers by foreign companies. The policy was revised in 1992, and is now two-pronged: control must be in Canadian hands for foreign companies to establish operations in Canada, and the acquisition of an existing Canadian-controlled business by non-Canadian interests is not permitted unless the business is in financial trouble and there are no Canadian purchasers. Indirect acquisitions are now allowed, subject to negotiations with the acquisitor with respect to commitments to Canadian authors and the development of the Canadian industry.

The thinking behind these restrictions was that only Canadian publishers would promote the growth of Canadian literature and that, to do so profitably, their viability — often equated with size — had to be bolstered. In particular, under the Baie Comeau policy, the forced divestitures were meant to yield increased revenues from the distribution rights for foreign books, which would have allowed Canadian-owned firms to invest more in the production of Canadian titles. The book retailing and distribution industry, including new "giant" Canadian bookstores, has been sheltered from foreign competition and, in a few high-profile cases over the past several years, foreign book retailers have been turned away from the Canadian market.

These attempts to assist the industry have been costly, however, and it is far from clear that they have successfully bolstered the output or readership of Canadian material. For example, the federal government was left holding Ginn Publishing when a Canadian purchase could not be arranged, and in 1994 Ottawa sold the company back to its original US owners. Yet this is an industry in which Canadian content — for example, works of fiction written by individuals who are currently permanent Canadian residents, or nonfiction books concerning Canadian topics — ought not to be difficult to identify.

Policy Outline

Given their size and the constraints of the international market, most publishers specializing in Canadian literature cannot survive without subsidies. But the total subsidy envelope could be better targeted. For example, grants could be reserved for publishers whose output consists of certain percentages of Canadian "trade" titles, "literary" works such as poetry or plays, or for which the dollar value of Canadian titles sold represents a high percentage of total sales. Foreign-owned publishers could qualify if their Canadian operations were to meet these criteria. Rewards for sales performance would be a proxy for rewarding the successful placing of books in the hands of a willing public or for concentrating on the development of promising authors.

The idea behind such a suggestion is to inject some competition into the market for Canadian authors (through competition for subsidies) and to limit the amount of public money spent on publishing material that is not going to be read or used, while still guaranteeing the publication of some less popular, more experimental, or "literary" works. In other words, these subsidies must somehow be tied more closely to actual success in selling or otherwise distributing Canadian authors, or to generally nurturing "merit" activities with little chance of commercial acceptance. The subsidies should not aim to guarantee the survival of existing publishers or even to sustain them at very low returns.

With a subsidy program that focuses more directly on the promotion of publishers specializing in Canadian content, restrictions on foreign ownership in the Canadian publishing industry become unnecessary. Indeed, by attracting retaliation, they may even be harmful. Such restrictions, therefore, should be phased out, subject, of course, to normal review by Investment Canada for "net benefit" to Canada. In particular, Ottawa should take steps to ensure that Canadians who order from distributors or shop in bookstores have access to lists containing the full range of available Canadian titles from Canadian publishers.

I also recommend that the book distribution and retail industry be opened to foreign ownership, but only following the passage of a strengthened copyright act, which should help allay publishing industry concerns about its distribution rights. Ottawa should also encourage Canadian book distributors to lower distribution costs for small bookstores and libraries, which are often tempted to bypass the Canadian market and buy directly from US wholesalers.

Magazines and Newspapers

The Canadian magazine industry has grown under such policies as postal rates that are lower for domestically produced periodicals than for imported magazines, a prohibitive tariff that stops the physical entry of split-run editions of foreign magazines, and an 80 percent tax on advertising in split-run editions to prevent them from being printed in Canada from electronic signals transmitted across the border. And, since 1965, the centerpiece of Canada's support of its magazine industry has been section 19 of the Income Tax Act, which disallows the deductibility of advertising expenses in foreign-owned magazines aimed at the Canadian market. As a result of these policies, Canadian magazines' share of the Canadian market increased from 30 percent in 1970 to 67 percent in 1994, indicating that magazines seem to be performing well as a "national" medium.[47]

Today, however, the industry is confronted by the challenge presented by the WTO panel decision. If Canada is not successful in appealing the WTO report (which will be known by July 1997 at the latest), the first three of the measures noted above will likely have to be modified substantially. It therefore appears as if the entry of split-run editions of US and other foreign magazines into the Canadian market will become a fact of life for the industry. It has been estimated that this could cost Canadian consumer magazines collectively up to 37 percent of their revenues.[48]

Policy Outline

I outlined earlier the main implications of the WTO panel decision for subsidies in the cultural industries, but it is worth noting again that the panel expressed the view that "the ability of any [WTO] Member to take measures to protect its cultural identity was not at issue in the present case."[49] Also of note is that the United States did not, "in this proceeding," directly challenge section 19 of the Income Tax Act. What the WTO decision did disallow, however, and what is likely to be disallowed in similar cases involving other industries, are discriminatory policies vis-à-vis foreign products that perform essentially the same function as domestic products ("like products"). Thus, the magazine case suggests that it is important to establish a policy based on a cultural product's performance in distributing domestic culture and information, not on its physical origin or the country of ownership of its producer or distributor.

In response to the WTO panel decision, Canada should engage its trading partners with a view of establishing with certainty that products emanating from distinct countries or regions or from different cultures are not, in general, "like products" and, therefore, that policies subsidizing production of or access to these products or reserving and subsidizing shelf space in the domestic market for these products are acceptable practices under the national treatment provisions of the GATT (Article III) and the WTO Agreement on Subsidies and Countervailing Duties (thus joining the list of other acceptable or "nonactionable" subsidies under the latter agreement). These policies would include direct subsidies to producers specializing in domestic cultural content, measures such as Canada's "funded" postal rates for certain magazines (which have been found consistent with the GATT), and tax measures designed to encourage the use of the product.

As a quid pro quo, however, limits should be placed on how discriminatory a measure relating to foreign cultural products can be, so that it does not constitute a prohibitive barrier to entry for those products. For example, Canada's disallowance of advertising expenses in foreign media aimed at the Canadian market could be replaced by a tax credit for advertising expenses in products or channels with high Canadian content. This tax credit could be designed to offset specific disadvantages faced in the production of the domestic cultural product, such as relatively small economies of scale, or even the presumption of "dumping" of editorial content (in which case, it should be based on a demonstration that either the advertising or the magazine itself are sold at a lower price in Canada than in a comparably sized US region). Or direct subsidies could offset distribution barriers faced by the domestic product. I note, however, that this option runs counter to current policy to eliminate the postal subsidy for magazines by 1999.

In the case of magazines and newspapers, this line of response would respect the policy principle of ensuring Canadians' access to reading material with high Canadian content, while not preventing the entry or sale of foreign products per se. At the same time, it would allow current barriers to foreign ownership in the industry to fall while ensuring that production of and access to Canadian cultural and informational content continues to be supported.

Film and Television Production

In discussing the problems of the Canadian film industry, the single indicator that recurs most often is the tiny proportion of screen time in Canada actually devoted to Canadian films, said to be about three to four percent.[50] The low percentage of Canadian films in video stores (which now account for more retail dollars than theaters) is also often mentioned. The industry has had relatively more success with products made for television, bolstered in part by Canadian-content rules in broadcasting. The industry itself is growing, however, with substantially increased levels of production activity in recent years, despite declining levels of public financing.[51] Indeed, as an export industry, it is thriving.

Public support for the industry is conveyed mainly through the National Film Board (NFB) — whose mandate for 50 years has been to "interpret Canada to Canadians" and whose budget in fiscal year 1995/96 was $75 million — and through a new $200 million a year Canada Television and Cable Production Fund aimed specifically at Canadian-controlled entities producing drama, variety shows, children's shows, documentaries, and performing arts programs. The new fund's financing comes from a variety of sources, mostly Telefilm Canada and, starting next year, a 5 percent levy on all broadcasters. The levy is expected to generate $75 million a year and will replace the previous voluntary payments made by cable companies alone, which amounted to some $40 million annually. In addition, there is a tax credit on "qualified" labor expenditures not exceeding 12 percent of total production costs.

While NFB activities, by and large, fulfill the policy of being essentially targeted at products with Canadian artistic content and destined mainly for a Canadian audience, this is not the case to the same degree for the Television and Cable Production Fund, which disburses money on the basis of criteria that are other than strictly cultural, or for the tax credit, which is based on Canadian labor content.

Support of the Canadian film industry has also come about indirectly, through attempts to bolster the ability of Canadian distributors to obtain distribution rights to foreign films. Usually, distribution rights for the Canadian market are lumped in with those for the US market. In 1986, however, this became a significant problem when US-owned Paramount acquired the Canadian rights to products that were usually available to Canadian-owned distributors. Ottawa tried to artificially create a separate market for Canadian distribution rights in 1987, but backed down in the face of heavy criticism from Hollywood and from Canada's trade partners generally. These critics took a dim view of the policy's potential for responding to Hollywood's production stranglehold by creating what they saw as a Canadian film distribution cartel. (This criticism has been revised recently as a result of CRTC-imposed conditions for the awarding of pay-per-view licenses, which required, among other measures, that nonproprietary film rights be acquired from Canadian distributors.)

In 1988, Investment Canada introduced new rules disallowing takeovers of Canadian-owned and -controlled distribution businesses. Now, foreign investment in new film and video distribution businesses is allowed only for the importation and distribution of proprietary products, while indirect and direct takeovers of existing foreign-owned distribution businesses are allowed only if the investor undertakes to reinvest a portion of its Canadian earnings in Canadian cinema. (Again, existing Hollywood distributors were exempted from these provisions.)

Policy Outline

Allowing foreign film distributors to operate in Canada or encouraging alliances of foreign film distributors with domestic ones likely would improve the exposure of Canadian cinema, both domestically and abroad. Following its recent acquisition of Famous Players, US-owned Viacom undertook to reinvest a portion of its Canadian revenues in Canadian productions, to distribute Canadian films outside Canada, and to make its "best efforts" to increase Canadian film exhibition and promotion. There is no reason such undertakings cannot be matched or bettered by non-US-owned firms. These types of undertakings are part of normal policy to review significant investments, including those in the cultural industries. And because they ensure that the investor contributes sufficiently to Canada's cultural development, they are an acceptable quid pro quo for allowing foreign investments in these sectors. As a result, I recommend that Canada accord non-US distributors treatment similar to that already offered Hollywood film studios. These investments could remain subject to normal investment review procedures, which would include requirements that firms undertake to encourage Canadian talent and production.

In addition regarding this sector, I recommend tightening content rules with respect to the receipt of money from production funds, by focusing on Canadian cultural content, as I outlined in the section on content rules.

Television and Radio Broadcasting

Due to rapidly evolving communications technologies, the broadcasting industry is undergoing massive changes in the number of and the ways services are delivered to consumers. In particular, in addition to cable television and the traditional transmission of signals by terrestrial means, direct-to-home satellite broadcasting, by using digital video compression, is able to offer hundreds of channels to subscribers equipped with the appropriate unscrambling equipment. Telephone companies will also be able to use their facilities to offer services, such as video-on-demand, that will compete directly with existing cable and DTH services.[52]

In applying this Commentary's general recommendations to the Canadian broadcasting industry, there are four basic premises to consider. First, no matter how many hundreds of channels become available, it will almost certainly be impossible to maintain a "preponderance" of Canadian signals. And even if it were possible, these channels likely would contain much imported material (as is already the case for much Canadian programming), or export-oriented products that would dilute the meaning of Canadian content so as to make it indistinguishable from US content.

Second, since the Aird Commission of 1929, it has been assumed that only publicly owned broadcasters could provide essential cultural and information services. In my view, however, while the provision of such services is certainly in the public interest and requires active public intervention, their delivery need not be the concern of a monolithic, dedicated, publicly owned corporation. Furthermore, the public has an interest in seeing that subsidies to programming and broadcasting be used as effectively as possible to deliver the Canadian product. In this light, giving a number of broadcasters the opportunity to compete for available space and subsidies to present Canadian content may spur innovation and help to provide the best product for the taxpayers' money.

Third, in this sector as in others, Canadian ownership does not guarantee Canadian content. To quote Florian Sauvageau, former co-chairman of the Task Force on Broadcasting Policy,

> Canadian ownership does not...guarantee Canadian content: new channels acquire American programs at low cost, or become clones of those American networks which they have arranged to exclude from the Canadian landscape. In Quebec, [music video channel] Musique Plus talks in French, but nevertheless spreads American culture at full blast, the threat of which its promoters used in order to get a license.[53]

Fourth, television remains the way in which many Canadians prefer to learn about events in their community. By definition, this cannot be provided by services that distribute signals that are national or continental in scope. Despite the availability of US channels along the border, for example, the vast majority of Canadians tune in to their local stations for newscasts that are more relevant to them. Indeed, the CRTC recently decided that cable companies would no longer be required to provide financial support to community cable channels, because these services had matured beyond the point where such support was needed. The point here is that Canadian cultural policy should be concerned mainly with national, not local, services, about which regulatory decisions could even be devolved to more regional bodies.

Policy Outline

With respect to the broadcasting industry, easily accessible and identifiable shelf space should be provided for signals with high Canadian content, commercially viable if possible, but with the help of subsidies if necessary to provide certain types of information or cultural services. Under this approach, a number of signals carrying programming defined as significantly Canadian would continue to be made available on a priority basis to Canadian audiences, but private domestic broadcasters would not need to convey a certain amount of Canadian content on each of their stations, as is currently the case. In the "500-channel universe" and once digital rollout by the cable industry is completed and full DTH service is available across Canada (both are likely by September 1999), the aim should be to make quality Canadian programming easily available, rather to than attempt to maintain a set ratio of "Canadian" channels to foreign ones.

For example, domestic TV channels or radio stations might be identified as having 80 percent, 20 percent, or zero Canadian content. The latter two types would be allowed to compete on a purely commercial basis, but the policy would be always to have "room" available across Canada for broadcasters ready to provide high-Canadian-content programming. How much room would be a matter for government policy. Indeed, at the limit, if investment restrictions in the broadcasting industry between Canada and the United States (or other countries) are ever removed, this approach could pave the way for an agreement to provide this Canadian shelf space on foreign-owned satellite services.

Providers of Canadian cultural products and information would compete for this shelf space. If too few private parties come up with a commercially based proposal to do so, and the Canadian-content shelf space remains unoccupied or underoccupied, Ottawa could choose to offer subsidies to ensure that the space is filled. The private party requiring the lowest subsidy to operate the service would then be awarded the subsidy for a certain length of time. In my view, given that Canada would want to ensure the maximum competition among such providers, this approach would work best with a privatized CBC television service, although I expect the CBC would continue to have a comparative advantage in providing some of these services.

As is now the case, support for the production of Canadian-content programming could come from funds partly paid for by the distributors of the signals (on a technology-neutral basis) and from tax allowances or subsidies for Canadian productions.

With respect to radio, in keeping with the objectives of cultural policy described above, subsidies would be available to radio broadcasters who promise to carry “coast-to-coast” programming high in Canadian content, whether in the form of news, commentary, documentary, or musical and audio programs specifically devoted to Canadian performances. These subsidies would be provided on the same basis as I have proposed for “coast-to coast” or regional TV programming with high Canadian content. Currently, it appears that the CBC is best able to carry such a mandate in both French and English.

The philosophy here is to use public policy to ensure that recognizably Canadian voices are heard and to ensure competition in the awarding of these mandates. The approach calls for developing more distinctly Canadian channels than are currently available, although fewer of them would carry given amounts of Canadian content. This would meet the concerns expressed by Henighan about whether or not a Canadian voice will be heard in the multichannel universe:

> Had the CBC developed an elite arts channel, financed by donations and cable fees, it could be producing serious art that would be in demand in narrow-market cultural services around the world. Such an enterprise would not only cover part of its production costs through revenue but would also be the means of marketing our distinctive elite culture around the world. This channel would be one way of ensuring that we don’t lose out when the global network matures and solidifies.[54]

Music and Sound Recordings

Direct financial support for the music and sound recording industry is sparse compared with that accorded other cultural sectors, and has declined considerably in recent years. It now consists mainly of a $4.2 million sound recording development program.

Key strategic assistance is, however, provided by CRTC content rules established in 1971. Under these rules, Canadian radio stations must give music that satisfies Canadian-content criteria 30 percent of total musical airplay. (The percentage is progressively lowered for FM stations that broadcast mostly instrumental pieces, special interest, or traditional music, and is as low as 7 percent for stations that specialize in “ethnic” music.) Guidelines also ensure that Canadian music occupies slots in the schedule when it is most likely to be heard, and limit the repetitive playing of “greatest hits” on FM stations. In addition, on French-language stations, 65 percent of vocal works must be in French. These rules are generally more stringent for the CBC than for private broadcasters.

Policy Outline

In a recent report, the Canadian music recording industry asked for a strengthening of support.[55] Among other measures, it suggested toughening content rules for pay-audio services (currently, those offering such services through satellite or cable can provide one foreign channel for each Canadian one that comes under CRTC content rules), providing additional funding out of broadcasters’ revenues, introducing a refundable tax credit for Canadian-owned enterprises investing in new audio or music video recordings, and strengthening copyright laws.

In my view, it is appropriate to ensure stable or increased direct and indirect (through industry-sponsored funds) financial support for music producers, concentrating primarily on developing and recording Canadian talent. Small size and Canadian specialization, not ownership *per se*, should be the basis on which support is received, however, especially since Canadian artists face no particular discrimination or barriers when dealing with the six major international recording companies operating in Canada (one of which is Canadian owned). In fact, the (mostly Canadian) management of Canadian branches of international recording companies now actively seeks and promotes Canadian artists.

In addition, strengthening authors' and interpreters' claims on revenues flowing from their work through improved copyright legislation should help them establish claims to fair compensation for the dissemination of material through new distribution methods, such as pay-audio. It is clear, however, that the copyright rules that ultimately should apply in this case should be acceptable to broadcasters, and in general not stifle the diffusion of the work itself, which would run contrary to the objective of cultural policy.

Finally, there is also a growing market in Canada, as in other countries, for new commercial-free, digital-quality, pay-audio services. These have tended to be highly specialized in, for example, classical music and, far from representing the invasion of new foreign "mass" media, are examples of the more individualized choices of cultural products now becoming available to Canadians. The music industry has recommended that more stringent Canadian-content requirements be imposed on these new services. But given the increased individualization of the choices available, the appropriate response here would be to ensure adequate shelf space for Canadian cultural products on these new services. While it would be of concern if pay-audio services were to offer no Canadian products (as a result of programming that was conceived abroad), this does not seem to be the case here, as half the authorized services already must offer programs that fall under Canadian-content rules.

In general, asking broadcasters to comply with even higher Canadian-content requirements, particularly as they will have to comply with more stringent copyright requirements, would deprive Canadians of valid cultural choices only to promote the growth of an industry for which the cultural policy objective — ensuring that the Canadian public is exposed to the industry's products — seems already to have been largely achieved.

The Information Highway

Many Canadian cultural industries seem to view the Internet as a threat at least as much as an opportunity. Indeed, it does constitute competition for many existing firms engaged in the distribution and diffusion of cultural products. It also reduces the ability to regulate, say, a particular level of Canadian content, through conditions imposed on the awarding of licenses to cultural product distributors; licenses work in the context of exploiting limited public resources, but for all practical purposes, this does not apply to the Internet.

The "interactivity" potential of the Internet also makes it difficult to know where rules on programming should end and those on telecommunications should begin. In this respect, as Acheson and Maule noted recently, it makes no more sense to regulate foreign content on the Internet than it does to regulate international telephone conversations:

> [M]any Canadians might find it objectionable to be asked to place a certain percentage of phone calls to other Canadians so "more Canadian voices can be heard".[56]

Policy Outline

This does not mean the Internet is a threat to the dissemination of Canadian culture. Indeed, from a cultural policy perspective, the Internet likely represents a far smaller challenge to Canadian culture as such than it does to some current purveyors of that culture. In place of the challenges typical of the age of "mass" media, characterized by economies of scale and vertical integration in the transmission of information and of cultural products, the information highway represents declining costs of distributing and transmitting information, and even of producing it in certain cases. Relatively speaking, the impact of these changes is likely to be more favorable on a country like Canada, whose communications are hampered by long distances and a relatively small population. A similar point was underlined by the European High-Level Group on the Information Society, which noted that new information technologies give Europe's regions

> [n]ew opportunities to express their cultural traditions and identities and, for those standing on the geographical periphery of the Union, a minimising of distance and remoteness.[57]

The corollary of enjoying the benefits of easy access to Canadian cultural products is that it would be very costly or impossible to regulate the degree of "Canadian-ness" of the content available on the Internet: the very features of the Internet that make Canadian cultural products more easily accessible to other Canadians also increase the availability of global information sources for Canadians. On the other hand, there is probably a role for government with respect to citizens' access to the information highway, promoting the availability of products with Canadian content on the Internet, and enhancing Canadians' awareness of where to find these products. Such directions seem roughly in line with current federal government initiatives to bolster its presence on the Internet and support the spread of this technology across the country.[58]

Conclusion

The key tools of Canada's current cultural policy apparatus, which have been gradually put in place since the 1930s, include:

- foreign-ownership rules in broadcasting and the creation of a publicly owned broadcaster;
- increased financial support for creators of culture and for Canadian cultural industries;
- fiscal disincentives for business to advertise outside Canadian media;
- rules mandating Canadian content on radio and television;
- attempts to establish Canadian cultural industries on a firmer footing by extending effective ownership restrictions to most of them; and
- extending the reach of Canadian-owned firms in the distribution of foreign and domestic cultural products in Canada.

These policies are now being challenged by the evolution of technology — which is giving Canadians an unprecedented ability to choose with respect to the consumption of cultural

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products — and by the increased budgetary pressures Canadian governments face. In addition, a number of Canada's policies in the cultural sector are likely to come under increasing scrutiny by its trading partners, given Canada's own choice to subscribe to and enjoy the benefits of freer trade and investment rules — and this at a time when Canada's cultural scene has matured to the point where cultural products have become a significant Canadian export.

As I have shown, there are still good reasons for the state to intervene in cultural issues. These include the need to compensate for the underprovision of cultural products that have a public-good aspect (such as sharing domestic culture, experience, and information), and to encourage the provision of "merit goods." (A third reason, "national security," is for all practical purposes subsumed under the first one.) The state also has an important role to play in ensuring a fair private market for cultural products, through such tools as the maintenance of open distribution channels and the protection of intellectual property rights. The aim of the policy should be to ensure Canadians' access to a range of Canadian cultural products, and to promote the production of this material.

With respect to the three main instruments of Canadian cultural policy, Canadian-content rules, limits to foreign investment and ownership, and the use of subsidies and fiscal incentives, I recommend the following:

On Canadian-content rules: The definition of Canadian content should focus more on Canadian artistic and informational content, and less on such factors as the ownership of the firm making the product or the amount of money spent in Canada. The explosion of global entertainment and information products is directly related to the fact that they are being transmitted to the public less through "mass" media and increasingly through new communications technologies that permit a greater number of cultural transactions to take place in the same way that consumers purchase books or records. Therefore, rather than attempting to impose Canadian-content requirements across a large number of channels, Canada's cultural policy objectives would be better served by reserving or creating easily accessible shelf space for channels or sites with high Canadian content across these media.

On foreign-investment and -ownership restrictions: It is becoming increasingly clear that, because there is no automatic link between, on the one hand, the nationality of producers or distributors of cultural products and, on the other, the national cultural content of the product being distributed, restrictions on foreign investment in and ownership of Canadian cultural industries are losing their effectiveness. Therefore, in a number of sectors, notably film distribution and book retailing, the entry of foreign competitors could actually increase the promotion of Canadian cultural products to a Canadian and foreign audience, as long as continuing scrutiny by Investment Canada and, ultimately, by the Bureau of Competition Policy, results in fair access to, and a prominent role for, Canadian material in all cultural industries. At the same time, this does not preclude the retention of restrictions that exist for reasons other than cultural policy, such as national security or a lack of reciprocal access by Canadian investors.

On the use of subsidies and fiscal measures: These need to be refocused to emphasize as much as possible support for the production and distribution of products with high Canadian cultural content. Specifically, direct subsidies and tax incentives for advertisers should encourage the provision of Canadian content or be directed at producers that demonstrably focus on Canadian content. They should not be related to the country of ownership of the provider of the cultural product, as is currently the case in the magazine and newspaper industries. Finally, it is important, in the wake of the recent WTO ruling on Canada's magazine policies, to clarify in an international agreement the extent to which such subsidies and tax incentives can be used to promote domestic cultural output, and to ensure the provision of adequate shelf space for domestic cultural products. In both cases, these types of support could be made compatible with evolving multilateral trade and investment rules.

These policy directions should increase competition for the provision of Canadian cultural products, while ensuring continued public support and a level playing field for these products. This approach would be more suited than the current one to fostering, not only the growth of Canadian cultural output, but also access to and enjoyment of these products by a Canadian public that is exposed to an increasing global array of information and entertainment products. Ultimately, the environment toward which Canadians are heading is one in which Canada's cultural environment will be less responsive to the efforts of the legislators and regulators, and more reflective of the decisions taken in each Canadian home.

Notes

1 See, for example, Canadian Radio-television and Telecommunications Commission, Competition and Culture on Canada's Information Highway: Managing the Realities of Transition (Ottawa, May 1995); Canada, Information Highway Advisory Council, Final Report (Ottawa, September 1995); Keith Acheson and Christopher Maule, "Culture on the I-Way," Policy Options, October 1996; and IBM Canada, Multimedia Content and Services in a New World: A Rationalized Convergence Policy Framework for Canada (Toronto, December 1996).

2 A theme that runs through Richard G. Lipsey, Economic Growth, Technological Change, and Canadian Economic Policy, Benefactors Lecture, 1996 (Toronto: C.D. Howe Institute, 1996).

3 See Canada, Direct-to-Home Satellite Broadcasting Policy Review Panel, Report (Ottawa, April 1995), p. 8; and Gordon Arnaut, "Will Canada lose out to DBS grey market?" Globe and Mail (Toronto), December 3, 1996, p. C6. Further, a report mandated by the European Council blames the slowness of regulatory reform touching telecommunications operators in European countries (except the United Kingdom) for the slow spread in both the demand and the supply of new information products. See High Level Group on the Information Society, Recommendations to the European Council: Europe and the Global Information Society (Bangemann Report) (Brussels, May 1994), retrieved at www.earn.net/EC/report.html, pp. 10–12.

4 Robert Brehl, "We're glum on guarding culture," Toronto Star, February 7, 1997, p. E1.

5 Isaiah Litvak and Christopher Maule, Cultural Sovereignty: The Time and Reader's Digest Case in Canada (New York: Praeger, 1974), p. 8.

6 Ibid.

7 Ibid.

8 Ibid., p. 9.

9 Tom Henighan, The Presumption of Culture: Structure, Strategy, and Survival in the Canadian Cultural Landscape (Vancouver: Raincoast Books, 1996), pp. 87-88.

10 Ibid., p. 87.

11 Kenneth J. Arrow, The Limits of Organization (New York: W.W. Norton, 1974), p. 56.

12 See, for example, Steven Globerman, Cultural Regulation in Canada (Montreal: Institute for Research on Public Policy, 1983), pp. 37–38, 49–50.

13 Litvak and Maule, Cultural Sovereignty, p. 6.

14 Kevin Dowler, "The Cultural Industries Policy Apparatus," in Michael Dorland, ed., The Cultural Industries in Canada: Problems, Policies and Prospects (Toronto: James Lorimer, 1996), p. 337.

15 Franklyn Griffiths, Strong and Free: Canada and the New Sovereignty (Toronto: Stoddard, 1996).

16 Globerman, Cultural Regulation in Canada, pp. 54–57.

17 For a short exposition of the problems of Hollywood cost inflation in the midst of a difficult year, see "Star Wars," The Economist, March 22, 1997, pp. 15–16.

18 Most of these potential problems are, of course, general and not confined to cultural industries, as exemplified by a recent report of the US General Accounting Office, which stated that "airlines that control the largest U.S. airports are increasingly using their clout to block use by new carriers." See "What's News," Globe and Mail (Toronto), November 14, 1996, p. B17.

19 Arrow, The Limits of Organization, p. 37.

20 Ibid., p. 49.

21 Litvak and Maule, Cultural Sovereignty, p. 6.

22 High Level Group on the Information Society, Recommendations to the European Council, p. 14.

23 Richard A. Goldthwaite, Wealth and the Demand for Art in Italy, 1300-1600 (Baltimore; London: Johns Hopkins University Press, 1993), pp. 248–249.

24 Ibid., p. 250.

25 Globerman, Cultural Regulation in Canada, p. 48.

26 Dowler, "The Cultural Industries Policy Apparatus," p. 344.

27 Griffiths, Strong and Free, p. 9.

28 China successfully pressured Star TV's Asian satellite broadcaster to drop the British Broadcasting Corporation from its offering, and attempted to pressure Disney into not releasing a film sympathetic to the Dalai Lama.

29 Henighan, The Presumption of Culture, p. 51.

30 Ibid., p. 86.

31 Quoted in Litvak and Maule, Cultural Sovereignty, p. 7.

32 Polygram recently announced that it would establish a fully integrated film company in Canada, even though rules restricting its distribution activities to films it has produced or for which it has world distribution rights remain in place. This does not, however, constitute a validation of current policies so much as an indication that the company may well become a good corporate "cultural citizen" and intends to promote Canadian cultural products regardless of barriers put in its way.

33 A.E. Safarian, Multinational Enterprise and Public Policy: A Study of the Industrial Countries (Aldershot, UK: Edward Elgar, 1993), p. 507.

34 Val Ross, "Chapters computers slight Canadians," Globe and Mail (Toronto), December 21, 1996, p. C2.

35 See "The great Canadian bookstore invasion," Globe and Mail (Toronto), March 1, 1997, p. D11.

36 Canada, Receiver General of Canada, Public Accounts of Canada, Vol. II, Part I, Details of Expenditures and Revenues (Ottawa: Minister of Public Works and Government Services, various issues). To concentrate on direct support measures for the industries discussed in this paper, I exclude from this figure spending on the maintenance of "heritage resources" such as parks and museums, general departmental expenditures, and expenditures for regulatory activities such as those of the the CRTC.

37 Here also encompassing the items previously excluded in note 36.

38 Statistics Canada, Government Expenditures on Culture 1992–93, cat. 87-206 (Ottawa, October 1994), tables 1.2, 3.4–3.6.

39 See "Canadian viewers get more control: CRTC changes rules of TV game," Globe and Mail (Toronto), March 12, 1997, p. A1.

40 See "Special Report," Inside U.S. Trade (Washington, DC, January 24, 1997), p. S-5.

41 Ibid., p. S-4.

42 Ibid.

43 See, for example, John Metcalf, "Freedom from Culture," in John Metcalf, Freedom from Culture, Selected Essays 1982–92 (Toronto: ECW Press, 1994), pp. 20–36; and Andrew Coyne, "Making Art That Matters," Next City, Fall 1996, pp. 41–47, 63.

44 See, for example, Robert Fulford, "Fostering Canadian Culture," Imperial Oil Review, Spring 1997, pp. 20–23.

45 Canada, Task Force on Program Review, Culture and Communications: A Study Team Report (Ottawa: Supply and Services Canada, 1985), pp. 297–298.

46 Henighan, The Presumption of Culture, p. 28.

47 Leon Dubinsky, "Periodical Publishing," in Dorland, ed., The Cultural Industries in Canada, pp. 43–44.

48 Estimated by a 1994 federal task force on magazines, as reported in Val Ross, "Magazines urge reader reaction," Globe and Mail (Toronto), February 27, 1997, p. C1.

49 See "Special Report," Inside U.S. Trade (Washington, DC, January 24, 1997), p. 1.

50 See Ronald G. Atkey, Peter H.G. Franklyn, and Jennifer Fong, "The Canadian Regulation of Foreign Investment in Film Distribution and Home Video," in Entertainment Partnering: Opportunities for Canadian and U.S. Companies (Toronto: Olser, Hoskin & Harcourt Seminar Program, November 1996).

51 See Canadian Film and Television Production Association with Nordicity Group Ltd., The Canadian Film and Television Production Industry: A 1997 Profile (Toronto, February 1997).

52 See Direct-to-Home Policy Review Panel, Report, pp. 5–6.

53 Florian Sauvageau, "Identité nationale et mondialisation: le cas de la télévision canadienne," in André Lapierre, Patricia Smart, and Pierre Savard, eds., Langues, cultures et valeurs au Canada à l'aube du XXIe siècle, Actes d'un colloque tenu à Ottawa (Ottawa: Conseil international d'études canadiennes et Carleton University Press, 1996), p. 191. [Author's translation.]

54 Henighan, The Presumption of Culture, p. 26.

55 Groupe de Travail sur l'avenir de l'industrie canadienne de la musique, Le temps d'agir ([n.p.], March 1996).

56 Acheson and Maule, "Culture on the I-Way," p. 38.

57 High Level Group on the Information Society, Recommendation, p. 4.

58 Of course, this in no way obviates the need for protection of proprietary services through encryption, the protection of privacy, public morals, and so on. But these are cross-cutting issues and not relevant to cultural policy per se.