

L E G A L E Y E

by Michael Bergman

The Jolly Roger

International piracy of film and video has become a major issue in the Western World. The advent and growth of both satellite broadcast transmissions and video tapes have made their unauthorized use, reproduction and retransmission a popular way of pinching other people's investment and hard work. The estimated losses in revenue through piracy exceed well over one billion U.S. dollars. Widespread piracy across national frontiers and the substantial economic losses involved have made the issue not only a legal sore point but a diplomatic and trade one as well. This is particularly true for those countries who are the most adversely affected by international film, video and broadcast piracy, countries such as the United States and the members of the European Economic Community.

Canada has a real interest in this issue which seems to extend to domestic piracy. Two reasons may be advanced for this. Firstly, the majority of illegal reproduction or retransmission of broadcasts, films and tapes made in Canada is domestic and internal. More to the point, there does not seem to be any real present concern about the interception of Canadian network broadcasts in other countries nor the illegal duplication in foreign markets of Canadian-made films and programs. Secondly, Canada is considered by other countries, particularly the United States, as a piracy culprit. This sentiment is largely grounded in the reception and retransmission of U.S.-emanating satellite broadcasts by Canadian Cable systems and individual satellite dish owners.

Nevertheless, Canada cannot stand aloof from the international aspects of the problem. As a legal problem, international piracy of film, video tape and satellite transmission is an incident of Copyright Law and the inadequacy of national laws and international treaties or conventions to deal with advancing technology. At the same time though, piracy is both a cultural and trade issue, aspects which should figure with greater and greater prominence as the problem continues and escalates.

Piracy is a cultural problem because it both evades and invades national cultural consciousness. As an invasion, piracy of non-national films, tapes and broadcasts encour-

ages the dissemination, domestically, of foreign material. This foreign material is normally

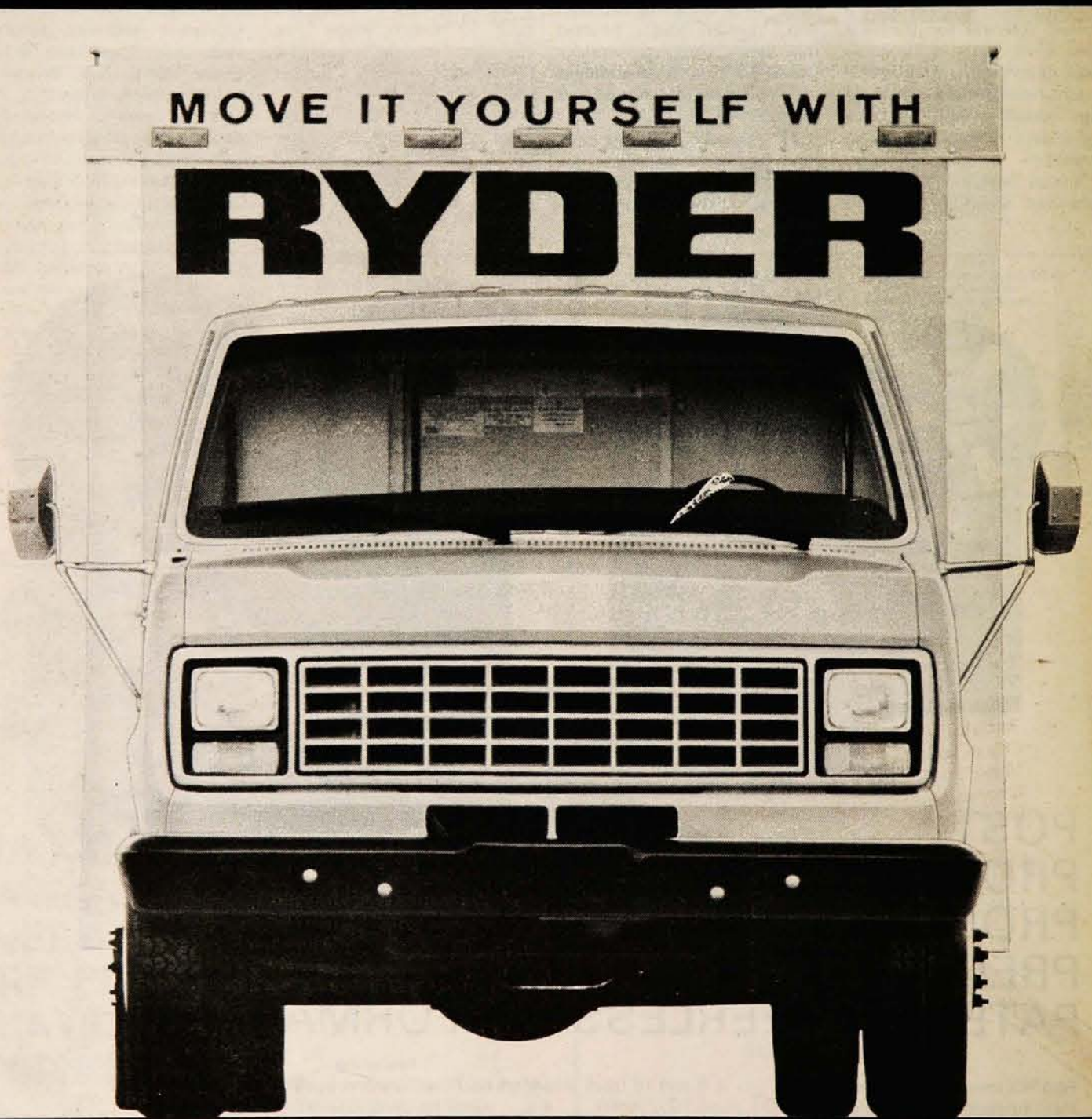
lucrative, attractive and persuasive as entertainment. Presumably domestic audiences are attracted to this foreign material in preference to local output. This is not only a Canadian problem. This is a world problem better viewed from the perspective of competing cultures; East versus West, developed countries versus Third

World countries. At least the legal regulation of retransmission and reproduction puts a monetary price as a restriction on incoming, foreign culture. As an evasion of culture, piracy violates the integrity of the cultural and social message of the original material. Illegal reproduction or retransmission can alter editorial content and

the quality of the audio-visual presentation.

Piracy is a trade issue because of the huge sums of money lost. Entertainment and information duplication and telecasting is a significant, worldwide industry. The financial integrity of this industry is

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based on incoming revenue which supports it, the more so in countries of the private enterprise tradition. Continuing piracy negates open and reasonable trade in films and video tapes. It incites protectionist measures against those

countries which tolerate piracy. As a result of this, piracy issues will probably figure more and more in international trade talks. Just to show how much this kind of issue can cut both ways is amply demonstrated by the fact that unauthorized use of satellite transmissions will certainly be one of the issues in the free

trade talks between Canada and the United States. Controlling unauthorized reproduction or retransmission is a balance between the rights of the original owner of the material and national interest. In some countries the price of paying for the right to use the material will result in a net outflow of monies which would have

otherwise gone to encouraging domestic film and television. Piracy is a trade issue that not only affects producers but many artistic and creative individuals who would otherwise receive some reward for their input. Piracy makes the monitoring of the real use of the product of their creativity impossible. It denies directors,

actors and musicians their rights to residuals or other forms of post-production reward. France has addressed one element of this problem by the Statute of July 3rd, 1985 which imposes on the sale of video tapes an additional charge as a fixed royalty to be paid to the producer, director, actors, musicians and writers.

These tariffs will be collected by various French organizations which represent producers, directors, actors, musicians and writers. The organizations will in turn distribute it to these individuals, whether French nationals or foreigners.

On a diplomatic or foreign policy level, piracy is a matter of reestablishing international uniformity of the minimum rules and protection accorded to the owners of original material. Piracy evokes responses which address national or continental problems that need not be international in scope. There could develop a series of dissimilar protection schemes between the European Economic Community, Canada, the United States and the countries of the Pacific rim, each scheme designed to be used to secure concessions with other nations in related or even other trade fields.

As the decisions which are ultimately made internationally to deal with piracy will have repercussions on the world film industry, the Canadian film industry should develop its own position so that the Canadian government will be able to respond to each of the film and broadcast industry's particular needs.

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Telefilm changes

MONTREAL – Faced with the vacuum created by the departure of André Picard, past executive of operations at Telefilm Canada, executive director, Peter Pearson announced on Nov. 17 a reorganization for an interim period.

Falling back on the prior structure of the agency, projects will be considered once again according to geographical origin.

Covering in Toronto, Linda Beath, hired to oversee the feature film fund, will handle all operations involved in both the feature film fund and the broadcast fund originating from Toronto and points West. In Montreal, Francine Forest will coordinate productions from Montreal and the East.

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