

AGAINST ALL ODDS

by Virginia Kelly

"Until the government takes some responsibility, or until the Majors begin failing enough, the situation is not going to get much better... The best distributors are going to survive in some form...but it's going to be despite the CFDC and despite the government allowing the Americans to do anything they want."

— Linda Beath, president,
New Cinema, 1982

"Today, I would like to address the question of film distribution in Canada and to tell you what the government plans to do about it."

— Hon. Flora MacDonald,
minister of Communications,
February 13, 1987

"Now the old plot is dead, fallen into obsolescence. You cannot seduce anyone when innocence is not a value."

— Elizabeth Hardwick,
Seduction and Betrayal

Currently, Virginia Kelly is working in the public relations department at Simcom Norstar in Toronto. Previously, she has worked at Spectrafilm, at United Artists Classics and at New Cinema as assistant to Linda Beath, who now holds a top post at Telefilm Canada.

So it is as a concerned insider that Kelly accepted our request to test the waters of the distribution sector, just now as federal legislation is about to be considered in Parliament, and comment on the preparedness of the industry in the sink-or-swim context of the free trade talks.

In *Cinema Canada's* February 1982 issue, an article entitled "Lament for an Industry" told the depressing tale of the Canadian independent distributors' desperate plight to survive against seemingly impossible odds. It wasn't a pretty picture. And, in fact, only two of the independents based in English Canada at the time (Astral Films and Pan Canadian Films) did survive.

The story in Quebec was different. If the rest of Canada has always been considered the Americans' 51st state, Quebec has always been thought of as another country, even by the distributors in English Canada. While isolation and separateness may have meant a small market, the difference has actually served to protect the Québécois distributor to a certain extent and most of the independents based in French Canada actually managed to see to the other end of a very rough period.

I wrote that article five years ago. A novice to the business, and with some naïveté. I was angry, outraged by the obvious and tolerated inequalities in a sector of the Canadian economy that awarded foreign-owned companies in the domestic market, while Canadian-owned companies were forced to eke out existences on the margins of their own marketplace. What I found in 1982 was a group of very angry and frustrated business people who didn't shirk at personal or financial risk-taking and had spent core career years in an industry that could be challenging and exciting.

What they had begun to put together in the early 1980s was the concept of how an independent distribution sector was intrinsically tied to a healthy production sector. That, in fact, is what had propelled the Major American studios to their present prominence, not only with their own marketplace but throughout the world.

Canadian distributors tried to take

"There are many existing obstacles that must be overcome by the negotiators. And among the most contentious, it appears, are the obstacles to United States companies that depend on intellectual property protection or that seek to enter the service sector in Canada.

"Canada refers to these issues as ones affecting its 'cultural sovereignty,' but the real import is that they are basic areas of commerce in which we are very competitive — indeed, more competitive than any other country in the world." ...

Again, under the false pretext of cultural sovereignty, Canada already has in place protectionist policies that discriminate against United States filmmakers. Now it's attempting to further shut the door on distributors, which is intolerable. And, when viewed in the context of other exclusionary Canadian policies, it is even more significant for it suggests that Canada is seeking a limited, self-serving trade agreement." ...

"We must make it clear to the Canadian government that its so called cultural sovereignty policies cannot be maintained if we are to achieve a free trade-agreement that is acceptable to the Congress."

— Senator Pete Wilson,
in the United States Senate.

that message, over and over, to a Liberal government embarking on what was thought to be a sincere and determined series of attempts to reclaim a colonized distribution sector that could act as the structural support for a fledgling production industry. Instead, they found themselves ignored, and some felt betrayed.

Nevertheless, like the proverbial "tree that grew in Brooklyn," an independent film distribution system has managed to push itself up through the cracks — surviving and, dare I say, even beginning to flourish in Canada despite overwhelming odds and a hostile environment. Today, the picture has changed.

Probably a little worn, but definitely a lot wiser, many of the distributors surveyed in "Lament" have now moved to other areas of the industry, bringing private sector expertise to help shape government policy. Others have continued to build their companies, some expanding greatly. The field has even attracted new players, willing and ready to take

the plunge into a still decidedly risky business. To boot, in 1987 the minister of Communications of a Tory government announced her intent to introduce in the House of Commons legislation that would defy the American Majors' historical domination of the Canadian marketplace.

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On Friday, February 13 — almost five years to the day "Lament for an Industry" was published — the Honourable Flora MacDonald announced her government's intention to pass "The National Film and Video Products Act" The industry had been hastily gathered that day, both in Toronto and Montreal, enticed by vague indications that a policy matter of grave importance was to be considered.

There was genuine excitement and rampant speculation in the room and an almost audible shock as Ms. MacDonald proceeded with a speech that included almost everything a Canadian distributor ever hoped to hear:

"We are on an important threshold, on the verge of having a true... national cinema in this country. But this cinema needs a firmer foundation, beginning with the definition of the Canadian market as a distinct national market..."

With those words, a Canadian government finally assumed the right to regulate the amount of foreign ownership of the film distribution sector within the Canadian territory.

The last five years have seen significant changes of great consequence to the future of the Canadian film industry and the distributors have grown and strengthened with those changes. The opening up of foreign markets to Canadian product, the new frontier of the home video marketplace, and better-quality Canadian films have created possibilities for Canadian distributors. Telefilm Canada has increased its support to distributors and, in Quebec, the government finally adopted the regulations which complete the Cinema Act.

Everything, and nothing, has changed for the independent Canadian film distributor. The extraordinary progress made by the film and television industry in general will mean little to the independent Canadian distributor until the gnawing 60-year-old imbalance in the domestic marketplace between the dominant American companies and the marginalised Canadian distributors is righted.

The statistics in 1987 remain alarmingly consistent to those from five years ago. The Majors control 92-93 per cent of the English track theatrical market and 80 per cent of the French track box office.

Then I wrote, "The bottom line is money. It doesn't matter whether people go to the theatre to watch *Raiders of the Lost Ark* or *Who Has Seen the Wind*. What does matter is that 80 per cent of the money that is collected at the box office ends up in the U.S. and that the government allows that to happen."

What has changed is the perception that the distributor is the vital link in the chain of a healthy film industry. The current Conservative government seems to have addressed that issue in a comprehensive fashion, not piece-meal as did past governments.

Whether its initiatives will lead to correct measures remains to be seen. However, the general reaction to the proposed legislation is one of cautious optimism, at best. Depending on the point of view, the proposed legislation is either an empty promise, or a half-filled pot at the end of a rather watery rainbow. But its passage would be a forceful symbolic act, echoing faintly the original recommendations of the 1985 Report of the Film Industry Task Force, "Canadian Cinema: A Solid Base."

The Task Force Report is probably the strongest and clearest statement to date of the structural weaknesses of the Canadian film industry. Initiated by the then minister of Communications Marcel

Masse, the report has resulted in the two most radical recommendations ever to be considered.

First, that the distribution of films and videos in all media in Canada be by companies owned and controlled by Canadians. The Task Force went on to insist that the government "make a clear policy statement that Canadian ownership and control over distribution in Canada is essential" and further, "take the appropriate legislative and regulatory measures to ensure that this policy is carried out."

Second, that a Canadian Feature Film Fund with an annual budget of \$60 million be created. A precondition of access to this Fund by a producer would be a commitment by a Canadian distributor for distribution of that film in Canada so as to establish, at the outset, the essential relationship between production and distribution.

The Fund should be administered by Telefilm Canada, and should support every stage in the life of a film: development, production, domestic distribution and foreign sales. Therefore, it must be accessible to Canadian production, distribution and export companies.

When the Task Force Report came out in November, 1985, it seemed a major fantasy. What a difference a year makes! In July 1986, Flora MacDonald announced the creation of the Feature Film Fund, finally acknowledging that distribution is inextricably tied to production.

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This approach had been tried before in a limited way during the Canadian Film Development Corporation's (CFDC) first years. Originally established in March 1968, the CFDC required that all feature projects be accompanied by a letter of commitment from a distributor. Between 1968-74 the CFDC participated in the financing of a total of 119 films: 68 English-language and 51 French-language projects.

The Francophone side enjoyed the greater success. As the Task Force reports: "Quebec distributors had years of experience, and Quebec distributors were numerous and significantly controlling their own regional markets...the results were that between 1971-74 Quebec films occupied an average of 9 per cent of all screen time...20 films returned their investments, of which eight went into profit."

As vice-president of the Quebec's distributors' association, René Malo outlined why Canadian ownership of a distribution sector, committed to production, is vital to a healthy, indigenous film industry: "...we do have some independent distribution companies which are wholly-owned by Canadians, and which have succeeded, through their courage and tenacity, in capturing about 10 per cent of the market, or some \$9 million in billings. These distributors, most of whom belong to the Quebec Association of Film Distributors, have a greater cul-

The following comments come from a variety of distributors in answer to the question of how important it is that the distribution legislation be passed, and why.

Daniel Weinzweig, consultant, Norstar Releasing Inc.

"How important? Is that a rhetorical question?"

"It's more important than it ever has been in terms of the White Paper. It's vital for the long-term survival of the Canadian film industry."

"The evidence is now in that we need an infrastructure — a healthy, private sector infrastructure — in order for there to be a film industry at all. Continued reliance on government regulations and government policies to totally satisfy the needs of the production industry is a fool's paradise. We now know that. Every time that somebody in Ottawa sneezes, your industry goes into a state of desperation and the bottom falls out from under us. We cannot continue this way. We could think of other lines of work, like mining or farming, but if we're to go on, then we need a healthy and viable Canadian distribution sector, a healthy and growing pay-television movie sector, the existing government programs like Telefilm and the provincial funding agencies. Those must be constants. Reliance on government policies concerning taxation is not realistic."

"The distribution legislation is going to be the cornerstone, really, of the survival of the Canadian film industry."

René Malo, president, Malofilm Group

"It's always the same story, a new minister every one or two years, and it takes them a year to understand how the industry works here."

"Masse understood the fastest. He really understands the importance of the marketing function to an industry. He understood it's not enough to spend millions of dollars on producing films if we don't know what to do with them after they're made... A law like MacDonald's would be great but I'm sure it won't be easy for her to get it through... I don't think anything will happen until the free trade deal. Our politicians are so afraid of the Americans."

"The Americans should count their lucky stars... if the NDP get in the result for the Americans would be much more severe."

"If the legislation does go through I don't see any special impact, at least not right away. There is nothing to keep the Majors from buying North American rights and selling off Canada through "front people", like we have in production now. Already, people are doing business here without licenses."

Pierre René, president, La Compagnie France Film

"Sure it's important that the legislation passes. It's the only measure which will give Canadians access to the Canadian market. We can talk about it for four hours, if you want, but that's really the only reason to care about the legislation."

**Barry Young,
president,
Spectrafilm**

"The Canadian government has assessed, quite correctly, some weaknesses in the Canadian distribution sector and it has designed legislation which is an attempt to redress that.

"If, as has happened in the last few months, the American lobby goes ahead and ignores the issues that triggered the legislation... and doesn't appreciate that the Canadian government and the Canadian industry is intent on seeking some solutions, then they'd be making a bad mistake and the legislation is clearly going to be passed and cause obvious business difficulties back and forth across the border.

"If, on the other hand, the American distribution industry is prepared to step back, see the pronouncement of the legislation as a warning shot that we will not tolerate this anymore and come forward with some solution of their own that makes it acceptable, then the enunciation of the legislation was a good thing. If not, and they don't recognize there is a serious problem that must be addressed, it's a go... I've just got to believe there's room for some good hard-nosed negotiation. Anything is negotiable if everybody wants to do it right."

**Marven Werner,
president,
Cinema International Canada Ltd.**

"It's very important for the Canadian independent distributors to have access to films, in order to increase their capabilities. For the moment, we're handcuffed because it's very hard to get major films.

"I wonder whether the government has the courage to go ahead. They've been backing down continually on this issue and the Americans are calling the shots. The time has now come for the government to say that we don't need the Americans to that degree and to show them that Canada should take care of its own destiny."

**Didier Farré,
president,
Key Largo Film Limitée**

"The legislation will simply cause the number of foreign distribution companies which establish themselves in Canada to grow. There are already lots of companies which have tried to buy me out and which are planning to set up shop. Then they can distribute their own films. As usual, they'll distribute from here but they won't spend any money in here. They'll have two or three employees here, but the budgets will be decided in New York and the money will return there.

"They'll set themselves up like, say, United Artists. Already you have companies from the States like Vestron which distribute films here without having one person employed in Canada. It's dramatic! Vestron is the largest company in the world in videocassette distribution, and it has no employees in Canada! Everything is done directly from the United States and it massacres the market here without spending one cent. The new legislation will simply benefit foreign companies."

tural and economic impact in Canada with their \$9 million than the Americans with their \$91 million" (pay-TV hearings, CRTC, 1981).

In English Canada, foreign control of distribution was already very strong. In its Annual Report for 1974-75, the CFDC stated that its successful stimulation of the production sector hit a roadblock when Canadian distribution of these films was required. These distribution and marketing problems severely reduced both the profitability of Canadian productions and their possibilities for financing. The "solution" to this dilemma was the establishment of the Capital Cost Allowance (CCA) Programme, a financial incentive designed to encourage private investment in film production.

Although at its peak the CCA generated 67 feature projects with total budgets of \$180 million, the CFDC at the same time agreed to drop its requirement of a commitment by a distributor for the tax-sheltered projects. This proved to be the true disaster of those years. As the Task Force reports, "There was negative fallout from the program — principally because it widened the gap between production and the market."

A recent independent study by Stratavision Inc. noted that: "...the advent of the CCA for film production significantly reduced the importance of distributor participation in the front end of the production of a property. This not only reduced the number of films to which Canadian distributors had access, but also precluded knowledgeable Canadian distributors from influencing the type of property that was produced. As such, while the supply of Canadian theatrical properties increased considerably, many were totally unmarketable." ("The Structure and Performance of the Canadian Film and Video Distribution Sector," department of Communications, Oct. 1985).

In Quebec, the impact of the CCA on indigenous, French-language production was catastrophic. Whereas the health of Québécois production had always been linked to the financial health of Québécois distributors who participated in production (Cinepix, Films Mutuels, Ciné Art, Astral, Malo), now tax shelter dollars were fuelling English language production. The Quebec feature film industry virtually shut down and the empathic relationship between production and distribution was ruptured. Ironically, the distributors made it through the period, relying on foreign-language films which they could still buy, being of little interest to English-language North America.

When the bust came which followed the tax shelter boom, it became clear that the CFDC's misguided policies had left a weakened national distribution sector and scared away private investment in feature film production.

These were bleak years for the industry in general and the Canadian distributors in particular, and valuable lessons were learned. The Quebec experi-

ence was recognized as the model of how distribution and production served and profited each other.

It is not accidental that today, among the distributors who have survived from the early years, the strongest are those with integrated production capacities: Astral, Cinepix/ICI, Malo, Pan Canadian. Nor is it a coincidence that the new, stronger Toronto based distributors are — now also vertically integrated: Spectrafilm, Simcom/Norstar, Alliance Releasing.

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The name-change from the CFDC to Telefilm Canada and the creation of the Broadcast Program Development Fund within the agency in 1983 was an attempt by the government to redress past errors while adapting to the new television environment.

At the outset the Broadcast Fund seemed to be addressing two problems: drastic budget cuts at CBC and the belated birth of pay-TV in Canada. Perhaps inadvertently, the Broadcast Fund locked out the film distributors completely this time.

Telefilm made the acquisition of a broadcasting license mandatory for producers who wanted to access the Fund. By making the broadcaster a partner in the production deal, it removed the television sale — a most important source of revenue — from the distributor. Even if the distributor were to buy rights to a Canadian film, only theatrical rights would be available. When the distributors lobbied the CRTC in an effort to confirm their rights to make sales to television, their arguments fell on deaf ears.

What did become apparent was that linking productions to their delivery system, in the television context, reaped results for the broadcasters. "In 1984, private TV broadcasters in Canada reported net after-tax profits 12 times higher than those of 1971, while meeting the CRTC's Canadian content, and investment in Canadian production requirements."

But the Broadcast Fund also technically excluded theatrical feature film producers. Monies meant to support the production of television fare, however, found their way to several productions that would have more impact on the future shape of the Canadian film industry — and particularly Canadian distributors — than all the task forces and commissions put together.

Three projects in particular, *Joshua Then and Now*, *My American Cousin* and *Le Déclin de l'empire américain* illustrate the dawn of a new age in Canadian distribution. The way in which these films were marketed, not only in Canada but around the world, gave the newly elected Tories valuable information for formulating their future film policies.

Despite the fact that each of these films was funded under Telefilm's Broadcast Fund, they all reached audiences in theatres in both the U.S. and

Canada. Their theatrical distribution brought into sharp focus the problem of Canadian distribution.

RSL Films, headed by Robert Lantos and Stephen Roth, was one of Canada's largest and most successful production companies. Founded in Montreal during the early days of the tax shelter, it also had offices in Toronto when it undertook its most ambitious project.

Joshua Then and Now was a Canadian project with a pedigree. Immediate comparisons to **The Apprenticeship of Duddy Kravitz** were made and rightly so. Both were written by the novelist Mordecai Richler, both directed by Ted Kotcheff, and both starred well known American actors in plum roles. Produced as a feature film and a mini-series for television, **Joshua Then and Now** went substantially over-budget and 20th Century-Fox came to the rescue. The idea of a Canadian film having a Major U.S. theatrical release was so exciting it almost overrode outrage over the fact that a no Canadian distributor could get near the rights to a potentially lucrative film in his own territory.

On the opening evening of Toronto's Festival of Festivals in 1985, there was an audible buzz in the air. For the first time in its 10-year history, the Festival was opening with two Canadian movies. The film at the Gala screening, to be attended by the usual mix of well-heeled Toronto and industry elite, had received mixed reviews but had generated a lot of expectations, for **Joshua Then and Now** had been invited to the official competition at Cannes, the first Canadian film in a decade to have that lofty honour. How ironic, then, that **Joshua** was to open to regular Canadian audiences, later that month, in theatres owned by Americans (Famous Players) and through the Hollywood Major 20th Century-Fox. Even more ludicrous, perhaps, was the fact that one of Canada's largest and most established distributors, Astral Films had (and still has) a "service deal" with 20th Century-Fox. It was the Astral staff, in fact, which handled **Joshua** for 20th Century, for a fee, in markets outside of Toronto.

Around the corner from the glamour of the **Joshua Then and Now** Gala, a little film with no expectations was screening to a packed, standing-room-only audience. **My American Cousin** was the star that evening and its subsequent success turned the industry around, back toward the small-budget film it had always handled so well. Producing films with manageable budgets means producers and investors can realistically expect to at least break-even and perhaps make profit enough to keep on producing.

The distributor who handled **My American Cousin** was Spectrafilm, a new company founded in the spring of 1983 by partners Linda Beath (disillusioned by her short stay with the Americans at UA Classics) and Bahman Farmanara (now executive vice-president Distribution of Cineplex-Odeon

Films, U.S. division) with backing from Barry Young's Skyld Group.

Based on past experiences and current realities, the partners decided the only way to make a Canadian-owned distribution company viable was to go after North American rights for all films. Unlike the situation with **Joshua**, therefore, they retained not only Canadian rights but world rights to **My American Cousin**. Spectrafilm also had an equity position in the film. In handling world rights, Spectrafilm got to know foreign buyers and sellers, making an end-run around the Americans who, previously, had handled most of the foreign sales of Canadian films.

What is most notable about the handling of **My American Cousin** was Spectrafilm's record-breaking \$600,000 (U.S.) sale of North American video rights to Media Home Entertainment.

Video had opened up a whole new source of revenue to distributors and Canadian distributors, especially the newly formed Norstar Releasing — which also handled video — was particularly outraged. Spectrafilm, having taken the pioneering steps of expanding to New York City and financing a North American operation and becoming involved as an investor in the film, thought itself justified as that one sale to video almost recouped the entire production costs of **My American Cousin**.

Norstar Releasing was founded in the fall of 1984 by veteran distributor and Task Force member Dan Weinzwieg (who, as president of Danton Films, had not survived the late '70s) and Tom Lightburn, in partnership with Peter Simpson's production and foreign sales company, Simcom Ltd. It felt justified in its criticism of Spectrafilm's video sale because Simcom/Norstar had found themselves in a similar position when Universal said it wanted North American rights to the Simcom production **Bullies**. Simpson told Universal Films that Canadian rights were already taken, thank you very much, and made both a theatrical and video sale to Universal Films for the U.S. only, retaining Canadian theatrical and video for Norstar Releasing.

A year later, the 1986 Festival of Festivals was again opening with two Canadian films. This time both films had been to Cannes and had both received high critical praise. One of the films, **Le Déclin de l'empire américain** came home with a top prize. Both Leon Mârr's **Dancing in the Dark** and Denys Arcand's **Le Déclin** were well received by Canadian audiences but **Le Déclin**'s success was phenomenal. Distributed by co-producer René Malo, it broke box-office records in Quebec and became the highest grossing Québécois film ever to play to audiences in English Canada.

The spillover effects from this one film's success has had an enormous impact on the structure of Malo's business and, by ricochet, on the distribution picture in Canada. Although Malo has been distributing in English Canada since 1982, through New World Mutual Films

Peter Simpson, president, Norstar Releasing Inc.

"I think it would be very good for the industry if the legislation were passed. It's not strong legislation. It still leaves the Americans 87 per cent of the market, right? I welcome any and all legislation which returns our market to our own people.

"We have survived and thrived for the last three years without the legislation. So how can you ask me the question? If you're asking me if business will be better as a result of it, I think it definitely will. Is it part of an overall structure which will see us having better and more controls over our own market and the interrelationship between our producers and our distributors? Will it ultimately — long-term — contribute substantially to the development of an indigenous feature film industry? The answer is most definitely.

"Do I want to be the person who says that we should blow the free trade agreement over this one piece? I don't want that on my conscience, thank you very much. Do I think it would blow a free trade agreement? Probably not. Right? If it gets blown, it will probably get blown for other reasons.

"I think it is one of a number of steps which have to be prudently taken to provide the environment for a truly independent feature film sector, which we do not have. Telefilm would like to think we have one, and so would a lot of other people like to think they are feature film producers. The truth is, we have a lot of people doing TV movies on 35mm."

Jean Zaloum, president, Les Productions Karim

"It's very important because I have no access to many films which I would like to distribute in Quebec. Every time we speak to the producers in Europe, and even to the independents in the United States, they tell you they are making a deal with a Major and that if the Major doesn't work, then they'll think of us.

"For example, I was negotiating for a British film called **The Fourth Protocol** with John Goldstone, the producer, before the film was even made. We went back and forth and back and forth, and then finally he made a deal with Lorimar and Lorimar refused to deal with me because they said they were going to give the distribution of that film to a Major. I could give you titles one after another; it's the same thing.

"If it doesn't happen, then we'll have to struggle to find the half-assed films and that's just an exercise in futility because they just don't work."

Gord Guiry, president, Cinéma Plus

"Is it important? That's like asking if it's important to eat during the day.

"It would give us the ability to have access to products for Canada. It goes back to — well, as long as I've been in the industry, Canada does not have access to product for its own, indigenous marketplace.

"If it doesn't pass, we'll just keep struggling as we're struggling now. We've been living with it for 50 years. Why should things change?"

Victor Loewy,
president,
Distribution Alliance/Vivafilm

"It's crucial that the distribution legislation be passed.
 "We've set up a large operation in Toronto — spent a lot of money and have 10 people working there — and we need films. We have just about bought up everything in the market and — as you know we have a franchise, New Century/Vista — and we can handle a lot more. We've made a deal with Vestron Pictures and I would purchase everything they have available to sell; there's nothing else on the market. The law would help us get our hands on product which is not available to us otherwise.
 "I'm not even thinking about what would happen if the law shouldn't be passed. The prime minister assured us that the law was just delayed. I'm trusting his honesty and he said it would pass, as presented, without any changes or watering down. There's no question that Flora MacDonald wants it to pass; she brought the whole thing down. It's Mulroney who stopped the whole thing but who went on record to say it was only delayed because of lack of time, so I'm taking that at face value."

André Link,
president,
Cinépix Inc.

"It is very important, but we have been burned. When you are so close and the minister tells you that every effort is being made to have it before the Cannes festival, and then you are shut down, why then you get a bit distrustful. There is no doubt that in everybody's mind it's very important. It's just that, to some degree, we've lost confidence in the government.
 "Nothing has changed in the logical conclusion that the government has arrived at. If they have the political courage of putting into deeds the things they are talking about, then the legislation should pass as planned.
 "If it is not passed, then next year there will be a few less distributors, and the year after that there will be an empty picture. And then there was none, you know?"

(and in Quebec since 1973 through Les Films René Malo) the success of that film encouraged him to expand his activities outside of Canada. This year he formed a foreign sales partnership, Image, with longtime colleague Pierre David (based in L.A. since 1982) and Nelvana Films. He has founded Lance Entertainment in partnership with David for production and has restructured his domestic releasing activities under the Malofilm Group which now include a television and video arm.
 Le Déclin's tremendous success spilled over the borders earlier this year with an Academy Award nomination for Best Foreign Language Film. It qualified for the nomination because it received extensive theatrical play in the United States through Cineplex-Odeon Films.
 The examples of *Joshua Then and Now*, *My American Cousin* and *Le Déclin de l'empire américain* show how successful productions in Canada have become tied to distribution and how the Canadian distributors, independent of aid or measures from the govern-

ment, have managed to find ways of flourishing in a domestic marketplace which is still controlled by foreign interests. It is interesting that the producers of *Joshua*, now under the banner of Alliance, have merged with Quebec distributor Vivafilm to form Alliance Releasing with offices in Montreal and Toronto. They seem anxious to avoid another *Joshua*.
 The ultimate irony for Canadian distributors in 1987 is that despite the fact that they are responsible for distributing 95 per cent of Canadian feature films, they can still only claim a marginal place within the marketplace.
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 When Communications Minister Flora MacDonald addressed that hastily organized gathering of the film industry on Friday, Feb. 13, she seemed ready to award the independent efforts of distributors with legislation to consolidate their gains and confirm the potential they had manifested. It was a courageous, if cautious, step: surely her advisors

had reassured her that such legislation would not make much of a dent in American revenues.
 It is estimated that the proposed legislation would mean a loss of revenues to the Americans from all markets — theatrical, home video, and television — of approximately 7 per cent.

Toronto Star entertainment editor Sid Adilman recently worked out the calculations:
 "What's at stake, aside from the cultural question of Canada's right to be deemed by Hollywood as a separate country and not, as it always has been, part of the U.S. "domestic" market?
 "Answer, as near as inside Canadian movie sources can tally: About \$26 million in pre-tax revenue, which under that law would flow directly into the hands of Canadian distributors. That's about 7 per cent of an estimated \$365.5

million, in total pre-tax revenue from a combined movie house box office, video sales and rentals and sale of American movies to Canadian TV, that American companies now reap a year from Canada.

"In short, Canada's intended law is a 7 per cent solution; not much of a real loss to Hollywood's Major studios and other American companies.
 —Toronto Star, June 27, 1987

Now that the dust has settled, it has become obvious why the government made such a moderate move. The American reaction has been swift and damning. Jack Valenti and the Motion Picture Association of America has mounted an aggressive lobby against the proposed legislation, coming as it does smack in the middle of the free-trade talks. Valenti has pulled out all the stops this time in-

Senate Resolution 227
Relating to the Canadian Proposal
to Close Market
to American Film Distributors.

Whereas the United States and Canada are each other's most important trading partners, having the largest bilateral trading relationship in the world, with such relationship providing jobs for two million Americans and as many Canadians: Whereas both nations recognize that strengthening and developing economic relations between them would be for their mutual benefit and to that end, have been negotiating a trade agreement since 1984:

Whereas both nations desire the negotiations to culminate in a historic Free Trade Agreement that would liberalize trade in goods and services and investment flows and alleviate the causes of bilateral trade disputes and enhance Canadian-U.S. relations:

Whereas the successful completion of a Free Trade Agreement desirable to both Canada and the U.S. depends on the good will of both governments to negotiate the elimination of trade barriers: and

Whereas the Government of Canada is considering proposals to impose discriminatory limitations on the ability of foreign companies to distribute motion pictures in Canada: Now, therefore, be it

Resolved by the Senate of the United States of America —

(1) that proposals by the Government of Canada to impose discriminatory limitations on the ability of foreign companies to distribute motion pictures in Canada reflect a highly protectionist trade policy aimed primarily at U.S. motion picture distributors: and

(2) such measures are totally at odds with concepts of free trade between nations and could result in an absolute bar to the successful completion of negotiations and Senate approval of a Free Trade Agreement between the U.S. and Canada.

"In addition to the disastrous impact the enactment of the Canadian proposal would have on American distributor revenues, I am also concerned that global film trade may be ruined if other countries follow Canada's lead. The gravity of the situation is clear given that the exportation of films and home videos returns more than \$1 billion annually to this country in surplus balance of trade. Canada's adoption of the proposed legislation could create an epidemic of similar actions around the world, the financial implications of which would be far more serious than just the loss of revenue in Canada.."

"The Canadian Government can't have it both ways: Canada cannot negotiate to obtain freer access to United States markets, and at the same time enact new measures severely restricting United States access to the Canadian market for film distribution..."

— Senator Alan Cranston in the United States Senate

The following document was circulated this Spring
 "For discussion proposes only"
 by the department of Communication

Title of the Act:
**THE NATIONAL FILM
 AND VIDEO PRODUCTS ACT**

Purpose of the Act:

The Government of Canada will regulate the importation of film products into Canada in order to assure that Canada is accorded the status of a national market for purposes of film distribution, and to encourage the development of a healthy Canadian distribution sector which is essential to a healthy Canadian film industry.

Coverage of the Act:

The Act will apply to all films imported into Canada for purposes of distribution for gain to any of the following markets:

- theatrical exhibition
- broadcasting or other telecommunications transmission
- home video sale or rental.

The Act will contain the power for the Minister of Communications to exempt from the provisions of the Act certain categories of films and video products on the basis of length, language or origin, or intended audience. These exemptions will be contained in regulations, and may therefore be altered from time to time. The exemptions contemplated in the first instance are:

- all importations by not-for-profit groups (e.g., cine-clubs, festivals)
- all importations for educational use
- all importations by holders of broadcast licences
- all importations of films to be made available to the public in languages other than French and English
- all films and videos under 60 minutes in length.

Application of the Act

The Act will prohibit the importation into Canada of film and video products for (a) distribution in Canada, or (b) copying in Canada and distribution in Canada of the copies, except under the authority of and in accordance with a proprietary or a general licence. The Act will also prohibit a proprietary or a general licence from entering into an arrangement with another party to carry out the distribution of the imported product, unless that party is a general licensee.

Who is Entitled to obtain a General Licence?

Any Canadian (a defined term) having a business in Canada who has not previously contravened or failed to comply

with any provision of the Act, the Regulations, or a condition of licence.

A general licence must be renewed annually.

A general licence entitles the holder to import any film or video product into Canada.

Who is Entitled to obtain a Proprietary Licence?

Any other person having a business in Canada (as defined by the Investment Canada Act) who has not previously contravened or failed to comply with any provision of the Act, the Regulations or a condition of licence.

A proprietary licence will be issued to such a person authorizing that person to import a specific title for which he has demonstrated that he holds world-wide rights at one of two points in time; (a) at the completion of principal photography or (b) at the time the film is to be imported.* The applicant must not merely possess those rights, but must exercise them itself in all countries in which it has a business establishment and must do so for a reasonable period of time. Nominal possession in order to circumvent the intent of the legislation would be regarded as a contravention of the Act, and could bar the applicant from obtaining subsequent licences.

What is Meant by World-Wide Rights?

The applicant must have the right to distribute the film or video product in all territories and all media. All territories includes country or origin.

The exercise of world-wide rights will be interpreted in its usual business sense; that is to say, legitimate arrangements with affiliates would be recognized.

Additional Terms and Conditions

The Act will provide the Minister of Communications with the power to impose additional conditions on certain classes of licences if necessary. These additional terms may require general licence-holders or importers corporately linked to an exhibitor to take additional steps on behalf of Canadian productions.

(a) The Re-investment Provision

The Act presumes that Canadian licen-

sees will use a portion of the additional revenue they are expected to earn to reinvest in the production and promotion of Canadian films. The Minister reserves the right, however, to review the results of the legislation after a reasonable period and if general licence-holders have not been reinvesting in Canadian films, such reinvestment could be required as a condition of licence.

(b) The Vertical Integration Provision

In view of the fact that licensees who are corporately linked to exhibitors enjoy a preferred competitive position because of their access to screen-time, the Minister reserves the right to set a pre-condition to the granting of an importation licence of either type. That pre-condition would be the voluntary undertaking by the exhibition branch to make available an acceptable proportion of screen-time either to Canadian films or to films from other Canadian distributors who compete with the licensee.

Suspension or Revocation of a Licence

The Minister may suspend or revoke a licence if the licence-holder ceases to be a person to whom a licence can be granted, or if the licence-holder contravenes or fails to comply with any provision of the Act, the Regulations, or a condition of licence.

Penalties

Contravention or failure to comply with the Act, the Regulations, or the conditions of licence is an offense which will be liable on summary conviction to a fine not exceeding \$10,000 or imprisonment for 6 months or both. Where an offense is committed on more than one day, it shall be deemed a separate offense each day it is committed.

Administration of the Act

The granting of licences will be carried out by the Canadian Film and Video Certification Office within the Department of Communications.

Canada Customs will be empowered by the Act to seize and dispose of any film or video product brought into Canada contrary to the provisions of the Act, and the Royal Canadian Mounted Police will be authorized to enforce its provisions.

cluding filing documents with the department of Communications claiming that Hollywood's six Major studios would lose 50-60 per cent of pre-tax revenue if the law was passed. The lobby has the ear of the United States Senate where the Canadian legislation is being seen as extremely protectionist — threatening successful completion of a free-trade agreement.

For the moment, the legislation is caught in the crunch of the free-trade talks. First promised for March, then thought to be ready for the Cannes festival, the legislation was not tabled before Parliament's summer recess, despite confirmation from the prime minister himself that the government will move forward as promised. Now, it must wait until a free trade agreement is either scuttled or signed this October.

In contrast to the hysterical tone of the American politicians, the Canadian distributors seem to be handling the stress of waiting calmly. There is a sense that, although the extent of the anticipated impact on the industry is yet to be measured, it is vital that the government not cave in under pressure from the Americans.

In fact, according to Dan Weinzwieg, who acted as consultant to the department of Communications, it was the Americans' own patronizing attitude that strengthened the government's resolve to do something to rectify the situation in "the 51st state." The infamous statement, "We're not afraid of competing with Canadian culture, so Canadians shouldn't be afraid of competing with American's culture!" made by Senator Clayton Yeutter, sparked a direct reaction from the Prime Minister's office itself which instructed Communications to make its announcement on February 13.

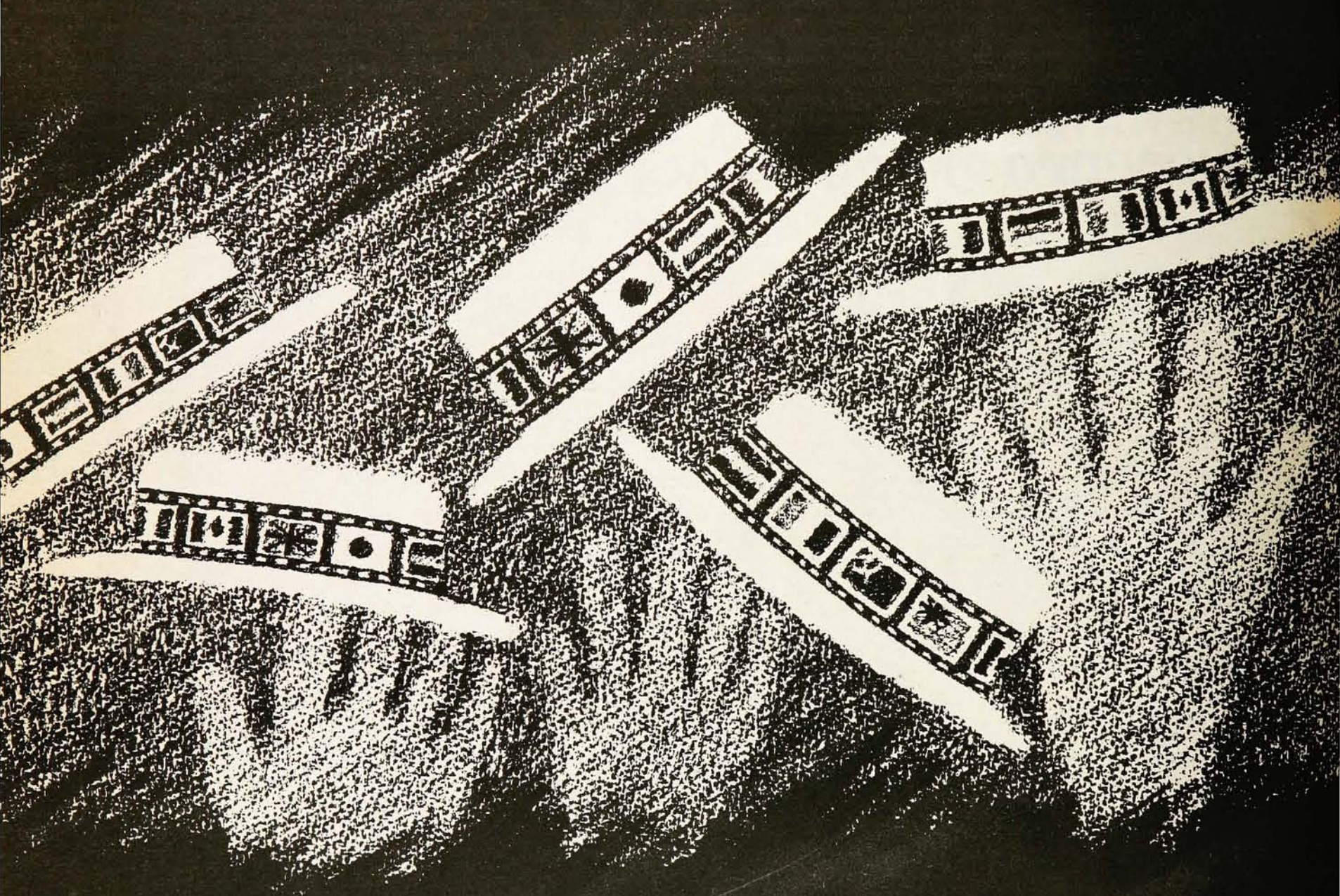
Eventually, this Tory government must pass the legislation. If it doesn't, it will have committed a major betrayal of good faith toward the Canadian distributors who have supported and actively participated in policies to build a stronger production sector.

A 7 per cent solution means a loss of less than 1 per cent to each of the American distribution companies involved. The government could have just as easily imposed a much larger tax bite which would have gathered even more revenue. And let's not lose sight of the fact that the flip side of the legislation actually guarantees protection of the American presence in Canada.

If the government decided to nationalize our oil industry, the American reaction would be much more conservative. They would be at a negotiating table quicker than you could say Exxon. This is because they need that particular natural resource from us. With this proposed legislation, it has become apparent that they don't need one of Canada's most important natural resources, its film culture.

The question is, do we? Are we prepared to take even the smallest risk to protect and guarantee it?

CHAPEAU!



**FESTIVAL DES FILMS DU MONDE
MONTREAL**

 Telefilm Canada