

# Why Maintain the Current Foreign Ownership Regulations in Telecommunications?

Presentation to the Standing Committee on Industry, Science and Technology  
by the Canadian Conference of the Arts

[Canada's Foreign Ownership Rules and Regulations in the Telecommunications Sector](#)

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M. le Président, membres du Comité,

Mon nom est Alain Pineau et je suis le directeur général de la Conférence canadienne des arts. À mes côtés, M. Garry Neil, président de Neil Craig Associates, notre conseiller en matière de propriété étrangère.

La CCA est le plus ancien et le plus vaste organisme-parapluie du secteur art, culture et patrimoine au Canada. Elle a pour mandat de contribuer à un débat informé sur toute politique ou réglementation au niveau fédéral qui affecte ce vaste secteur d'une façon ou d'une autre.

Nous vous remercions de nous donner l'occasion d'intervenir dans l'étude que vous faites des règlements concernant les intérêts étrangers dans les télécommunications. Il s'agit là d'une question d'importance primordiale pour la culture canadienne en général, bien au-delà des enjeux spécifiques au secteur de l'audiovisuel.

### **L'effet domino**

À cause de la convergence des technologies et de la concentration de la propriété, les secteurs canadiens des télécommunications et de la radiodiffusion sont en fait les deux faces d'une même réalité. Télécoms, distributeurs par câble et satellite, diffuseurs traditionnels sont de plus en plus la propriété des mêmes intérêts et se font concurrence sur les mêmes terrains, dont celui d'offrir l'accès à des contenus culturels.

This is why we believe that it is virtually impossible to change foreign ownership rules in telecom and isolate broadcasting from the consequences of doing so. Opening the door to foreign control of satellite and telecoms can only lead to a domino effect and to foreign ownership of cable companies and broadcasters. Some of Canada's largest corporations operate in these fields and they would apply tremendous pressure on policymakers to level the playing field with their competitors and permit them to obtain foreign investment on the same terms. How will it be possible to deny one protagonist access to foreign investments granted to its main competitor? Where can we draw a clear line between the tangled interests of BCE, Rogers, CTVglobemedia, Shaw or Québecor?

### **The need for regulation**

It has long been recognized in this country that market forces alone are insufficient to ensure we have access to a reasonable supply of high quality Canadian choices in every medium and that we need to have public policies and regulations to achieve this objective. Ensuring Canadian ownership and effective control of our cultural industries is based on the notion that it is far easier to regulate Canadian-owned firms than foreign ones.

The absence of appropriate regulation in the movie industry is the best illustration of the impacts of foreign ownership and control of a cultural industry. Because film distribution policy does not effectively distinguish the distribution rights for the Canadian market from North American rights for most of the largest distributors, foreign film distributors maintain a lock on the majority of the film distribution activity in Canada. Foreign films (i.e. US movies) occupy over 98% of screen time in English Canada, the situation being somewhat better in Québec cinemas. This is as eloquent an example of foreign

controlled cultural industries shutting Canadian cultural goods and services out of the market with impunity in a weak or ineffective policy context.

### **Canadian ownership and Canadian cultural expression**

Cultural products are not products like any other, a fact recognized by the Canadian government when it sought and obtained the cultural exemption clause in the Free Trade Agreement and NAFTA. The fact that cultural products play a defining role for Canada as a nation is also a reason why Canada remains a key proponent of the UNESCO *Convention on the protection and promotion of the diversity of cultural expressions*.

For the past several decades, the operating principle in Canadian cultural policy has been that Canadian ownership and effective control of our cultural industries will ensure more Canadian content is made available to Canadians. Canadians are more likely than non-Canadians to tell our own stories and to present our own view of the world based on our own values. Statistics support this belief: Canadian-owned firms are responsible for the overwhelming preponderance of production by Canadian artists and creators, even when they have only a small share of the domestic market.

It is also worth noting that Canada currently permits foreign investment in Canadian broadcasting and telecommunications services; it simply prohibits foreign nationals from controlling these services. There is also no evidence that lack of foreign investment has hurt either industry.

Garry...

(Garry Neil)

### **International trade treaties implications**

Alain has explained the interconnectedness between Canada's telecommunications and cable companies (all the big players now offer wireless and home telephone, radio and television services, and the Internet) and between Canadian cable companies and broadcasters (all the big players own services which produce, acquire and schedule television programs and movies).

We don't have time to explore fully the international trade implications of opening up our foreign ownership rules, however, we are extremely concerned about the implications of NAFTA and specifically Chapter 11, which provides foreign investors with a right to sue the Canadian government and seek compensation for government actions, including those of regulatory agencies such as the CRTC, which investors believe violate their rights under NAFTA.

1. First, in relation to NAFTA overall, we would point out the so-called cultural exemption is limited in scope to the cultural industries that existed at the time. Importantly, this did not include the new media sector, such as interactive television, computer games and so on.
2. Second, Chapter 11 rights could potentially come into play in two ways in this matter. If the rules in Telecommunications are changed, a foreign company that

decides to invest in a Canadian cable company or broadcaster could structure a deal in a way that mirrors the new telecom rules. If the CRTC were to prevent them from proceeding, they could launch a Chapter 11 challenge on the basis that they are being treated unfairly in relation to a direct competitor operating in the same marketplace.

3. If foreign companies are permitted or force entry into Canada's broadcasting system, existing rules and regulations relating to the production and distribution of Canadian content productions may be sustainable, since the foreign company is entering the market where those rules exist. But if the CRTC or the government were to try to update the rules to reflect a new environment, the foreign company may have a cause of action under Chapter 11. CCA continues to believe that some regulatory requirements should apply to all platforms with regards to the production and exhibition of Canadian programs. Such regulation, if adopted, may be unsustainable with respect to foreign owned companies.

There are of course other reasons to maintain the current restrictions on ownership. We will leave it to others to point to the threats to Canadian sovereignty, and simply note that most of our major trading partners (including the EU and the U.S.) also maintain foreign ownership limits, particularly in broadcasting, which is deemed to be a sector of vital national interest. By subjecting Canadian communications infrastructure to foreign ownership or control, a substantial risk exists that foreign national interests may dictate how we can use this infrastructure, as was made clear on several occasions in the past century. (Alain...)

## **Conclusion**

The complexity and interconnectedness of the various instruments developed to promote and sustain Canadian cultural expression cannot be fully appreciated by a scatter-gun approach to federal policy development. Opening up foreign ownership and control of our telecommunications can only lead to tremendous pressures to do the same in cable and broadcasting.

The potential impact of any such move through international trade must be fully understood by Parliamentarians and by the government. New distribution technologies open the world to Canadian cultural products. It is crucial that we not jeopardize the ownership requirements and other regulations and subsidies which ensure that such products are made.