

Frequently Asked Questions

6. Canadian producers of television programs and feature films struggle mightily to compete in a marketplace that is dominated by U.S. companies. Is there any federal legislation to protect us from this competition?

Yes, there are various types of federal laws that protect Canadian film and TV producers from direct competition with the much larger U.S. market. First, the Canadian Radio-television and Telecommunications Commission ("CRTC") administers regulatory regimes for broadcasters and broadcasting distribution undertakings ("BDUs"). These regimes include regulations and policies that provide support for producers whose content meets certain thresholds for "Canadian content". For example, many broadcasters have requirements or expectations for the proportion of their program schedules that consist of Canadian content; this creates a demand for Canadian content. Similarly, BDUs are now required to ensure that each subscriber receives a "predominance" of "Canadian" TV channels, compared to non-Canadian channels. (Under new rules coming into force in March 2016, BDUs will only be required to *offer* a predominance of Canadian channels to each subscriber.)

In addition, there are various tax measures, both at the federal level and in a number of provinces including Ontario, that provide support for the production of content which meets certain Canadian content thresholds and for other content that may not be classified as Canadian, but is produced in Canada using Canadian labour.

Further, as a matter of copyright law, the owners of TV programs and films have the right to control the reproduction, transmission, broadcast, distribution, and telecommunication to the public of the works that they own. This creates a separate Canadian market for these works, enabling producers to license rights for Canada separately from the licenses that are granted to U.S. broadcasters and theatrical distributors.

As a practical matter, however, some of these rights are being threatened by the grant North American rights and the ease of reproduction and distribution via the Internet. For additional information about the analysis that would apply to your situation as a producer, please contact Carol Anne O'Brien at caob@caobrienlaw.com or (416) 640-7270.