

Broadcasting a reflection: Cultural distinctiveness on screen

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Executive Summary

- Canada's proximity to the United States and deeply integrated media and cultural industries highlight the vital role of the CBC in providing distinctively Canadian programming
- The regime to protect Canadian content is effective in supporting cultural sectors and the economy but insufficient in producing distinctively Canadian programming as the system includes no qualitative cultural assessment. As such, the CBC's distinctively Canadian programming should exceed the criteria used for certifying Canadian content
- The 'cultural tests' used by European Union member states provide helpful benchmarks for developing qualitative criteria that can capture cultural distinctiveness and highlight these elements in programming
- Distinctively Canadian programming should have decipherable qualities and elements that reflect the country and its regions, such as people and places, their values and interests, histories, issues and other qualitative elements
- Canada's cultural policies should be remodeled around cultural tests to complement existing industrial criteria like ownership and authorship
- Given the precarity of Canadian media and journalism in the digital age, the need for a public broadcaster that can provide distinctively Canadian programming is more important now than ever

Introduction

The Canadian Broadcasting Corporation (CBC) has an obligation under the Broadcasting Act to provide programming that is “predominantly and distinctively Canadian.”¹ However, notwithstanding its prominence in broadcasting law, a precise definition of ‘distinctively Canadian’ remains elusive. This report seeks to clarify what ‘distinctively Canadian’ means, and how that definition can be applied to Canadian broadcasting regulations.

One of the reasons why it is so difficult to define ‘distinctively Canadian’ is that Canadian culture is itself an amorphous concept. After all, *what is* Canadian culture? Definitions of any national culture are complex, and cultural qualities are notoriously difficult to measure.² But the problem is particularly complex in Canada, a nation constructed from diverse indigenous and colonial histories, generations of immigration, and proximity to one of the largest exporters of culture in the world. Yet there are numerous reminders of the desire to celebrate ‘Canadian-ness’ in public discourse and through key cultural institutions and policies, including the CBC and the policies that protect and support the production of Canadian content on radio and on screen.

However, protectionist cultural policies and the institutions that uphold them are increasingly ineffectual, as digital platforms destabilize the production and dissemination of all media and information content. Digital platforms have already caused considerable harm to Canadian media organizations – firms that have grown under protectionist policies that have shielded them from American competitors. In the Internet age the rules have been sidestepped; Canada’s cultural policy now resembles a Maginot Line. As media and culture are vital to the functioning of democracy – keeping communities informed and connected through shared stories – decline in these sectors can have grave consequences.

As a result, Canadian media and culture are vulnerable. While the number of Canadian outlets declines, Canadian stories, both fictional and journalistic, are going untold. These stories are priceless: they connect, and in doing so, create the nation. If protectionism is no longer sufficient for ensuring that Canadian stories are told and disseminated, Canada must develop new mechanisms to keep these shared stories, and by extension, the country, alive. A cultural definition of “distinctively Canadian” programming can help to achieve this.

¹ <https://laws-lois.justice.gc.ca/eng/acts/B-9.01/page-1.html?txthl=predominantly+distinctively+predominant#s-3>
[Accessed 4 Jan 2020]

² There is little agreement among academics or industry experts on how to measure the particular ‘qualities’ of cultural products, be it music, visual arts, or other products. This challenge exists across relevant institutions such as granting bodies, awards bodies, and other sectoral and industrial organizations. For example, see Victor Ginsburgh’s assessment in, *Awards, Success and Aesthetic Quality in the Arts*, *The Journal of Economic Perspectives*, Vol. 17, No. 2 (Spring, 2003), pp. 99-111

Living with a giant next door

Canada occupies a challenging space when it comes to maintaining its cultural distinctiveness, especially with respect to broadcasting. It suffers from the “giant-next-door effect”, a phenomenon where “the big neighbour transfers more communications into the smaller state than vice versa.”³ This is particularly the case in contexts where cultural industries are deeply integrated and competition for audiences extends across national jurisdictions.

Consider the following visual comparison of cultural exports in eight countries that are implicated in a ‘giant-next-door’ relationship. In these contexts, countries share geographic proximity, linguistic similarities, and economic relationships that are integrated but are also imbalanced in terms of scale. For example, while Australia and New Zealand are located beside one another and share the same official language, Australia’s cultural exports are considerably larger than New Zealand’s, making it difficult for New Zealand’s exporters to compete, even in their own market.⁴



Across all of the countries presented, the United States outstrips comparators by a considerable margin, exporting almost double the amount in cultural goods as the United Kingdom. If Germany and Austria are removed, the United States exports more cultural goods than the remaining countries combined, all predominantly English-speaking countries. On a so-called ‘cultural neighbourhood’ level, Germany outperforms Austria’s

³ Steiner, C. and Woelke, J. (eds.) (2007) *Fernsehen in Österreich 2007*. Constance: UVK, as cited in Jackson, J.D. in Lowe, G.F. & Nissen, C.S. (2011). *Small Among Giants: Television Broadcasting in Smaller Countries*. Nordicom: Gothenburg. p 96 https://www.nordicom.gu.se/sv/system/tdf/publikationer-hela-pdf/small_among_giants.pdf?file=1&type=node&id=10308&force=0 [Accessed 8 Jan 2020]

⁴ 2017 Figures. Chart data sourced from Unesco Institute for Statistics, International Trade in Cultural Goods Dataset (UN COMTRADE Database). <http://data.uis.unesco.org/index.aspx?queryid=3629#> [Accessed 17 Jan 2020]

exports by a multiple of ten, while Australia surpasses its smaller neighbour, New Zealand by nearly a multiple of seven.

While the above demonstrates the general challenge of being the smaller state in a ‘giant-next-door’ relationship, Canada’s case is particularly acute. The United States exports nearly 25 times the amount of culture goods that flow outward from Canada.⁵



Unsurprisingly, this relationship has had a considerable impact on Canada’s broadcasting ecosystem. Due to their proximity and integration with the ‘giant-next-door’, Canada’s commercial broadcasters have necessarily taken advantage of this dynamic. They do so by buying rebroadcasting rights to content for which they invested no risk capital. In 2019, nine of the top ten shows in Canada were rebroadcasts from American networks. The only Canadian show, occupying the tenth spot in the top ten, was a newscast.⁶

With market incentives like these, audiences grow accustomed to the cultural content of the larger nation, such that even domestic programming decisions are heavily influenced by, and imitative of, the cultural norms of the other country:

“Broadcasting markets in relatively small and dependent states develop their systemic properties not only with regard to local conditions, but also in response to the social, cultural and economic ties they have with larger, more powerful neighbours as a feature of these conditions.”⁷

Indeed, this has been true throughout the history of broadcasting in Canada. Given the overwhelming economic incentive to rebroadcast American shows, it is safe to say that without regulation, Canadian commercial broadcasters would likely still be American

⁵ 2017 Figures. Chart data sourced from Unesco Institute for Statistics, International Trade in Cultural Goods Dataset (UN COMTRADE Database). <http://data.uis.unesco.org/index.aspx?queryid=3629#> [Accessed 17 Jan 2020]

⁶ According to Numeris, the top 10 shows of 2019 were: *The Good Doctor*, *Grey’s Anatomy*, *9-1-1*, *Survivor*, *Blue Bloods*, *NCIS*, *FBI*, *New Amsterdam*, *The Rookie*, and *CTV Evening News*.

⁷ Jackson, J.D. in Lowe, G.F. & Nissen, C.S. (2011). *Small Among Giants: Television Broadcasting in Smaller Countries*. Nordicom: Gothenburg. p 105 https://www.nordicom.gu.se/sv/system/tdf/publikationer-hela-pdf/small_among_giants.pdf?file=1&type=node&id=10308&force=0 [Accessed 8 Jan 2020]

affiliates, as was actually the case in the early years of radio broadcasting and again during the introduction of television broadcasting.⁸ As the Fowler Commission put it in the 1950s, “free enterprise has failed to do as much as it could in original programme production and the development of Canadian talent, not because of a lack of freedom but because of a lack of enterprise.”⁹

Given this uneven economic relationship between Canada and the United States, Canadian leaders, both Conservative and Liberal, created protectionist cultural policies and founded vital cultural institutions, including the CBC.

In 1929, the Royal Commission on Radio Broadcasting, which led to the creation of the CBC, explicitly called for the creation of a government owned broadcaster that would prevent the additional expansion of American affiliates:

“The Royal Commission’s 1929 Report recommended the end of private broadcasting in Canada in favour of a limited number of high-power stations owned and run by a government company. This was justified as the only way to provide adequate financing for Canadian broadcasting (receiver-licence fees could be utilized to pay for programs, network lines, and transmission) and to prevent the further spread of American radio into Canada.”¹⁰

Responding to this and other similar sentiments, Prime Minister Bennett rose in the House of Commons to speak in favour of the Canadian Radio Broadcasting Corporation. He emphasized the significance of a dominant public service broadcaster in Canada, citing its:

“great agency for communication of matters of national concern and for the diffusion of national thought and ideals... by which national consciousness may be fostered and sustained and national unity still further strengthened”¹¹

Without a national public service broadcaster to provide it, distinctively Canadian programming would not – and likely could not – exist. As a small neighbour, public service broadcasting can help Canada to rise above the competitive market pressures flowing upward from the United States. In this respect, the CBC plays a vital role in providing unique and distinctive programming that is Canadian, *because it can* – it need not respond to wider commercial practices being influenced by American cultural exports.

⁸ As Canadian listeners grew hungry for programming, Canadian private broadcasters such as CFRB in Toronto agreed to join the American network CBS. Others such as CFCH in Montreal joined NBC. The programming that was broadcast on these American affiliates was, and Canadian listeners were left with no Canadian alternatives. See p 63 of Nash’s (1995) *The Microphone Wars: A History of Triumph and Betrayal at the CBC*. McClelland & Stewart: Toronto

⁹ Privy Council Office (1957) *Report of the Royal Commission on Broadcasting*, ix.

¹⁰ Vipond, N. (1994) *The Beginnings of Public Broadcasting in Canada: The CRBC, 1932-1936* <https://cjc-online.ca/index.php/journal/article/view/806/712> [Accessed 30 Jan 2020]

¹¹ R.B. Bennett speaking in the House of Commons on 18 May, 1932.

Yet ever since those early days of Canadian broadcasting policy, the argument in favour of Canadian content was framed in cultural terms. As the Fowler Commission put it:

“as a nation, we cannot accept, in these powerful and persuasive media, the natural and complete flow of another nation’s culture without danger to our national identity.”¹²

The matter was considered to be existentially important for the young nation of Canada. Arguing that only government support could ensure sufficient supply of Canadian content on radio, campaigner Graham Spry coined his now famous adage: “the question is the State or the United States.”¹³

But the question of what makes content *Canadian* was never fully fleshed out. At the time, the assumption was simply that if Canadian-owned networks carried enough content by Canadian creators, the country’s cultural policy objectives could be upheld. With the advent of streaming, the obsolescence of exclusionary regulation, and the meteoric rise of foreign-controlled service productions, that assumption no longer holds.

Searching for ‘distinctiveness’ in Canadian content

In order to develop a better understanding of ‘distinctively Canadian’ programming, careful distinctions must be drawn between prevailing protectionist policies and incentives currently in place to support the creation of Canadian content. Specifically, a definition of ‘distinctively Canadian’ must not be limited to the criteria found in current protectionist systems, such as the Canadian Program Certification.¹⁴ This includes the existing points systems used to define Canadian content under the Canadian Film or Video Production Tax Credit (CPTC), which is administered through the Canadian Audio-Visual Certification Office (CAVCO).¹⁵

As demonstrated previously, the rationale underpinning the existing Canadian content regime is deeply informed by Canada’s cultural and economic relationship with the United States.¹⁶ Accordingly, Canadian content quotas were developed to ensure the employment of Canadians in creative positions and to protect Canada’s cultural industries, with the

¹² Ibid., 8.

¹³ Spry, G. (1932). *Canada, Special Committee on Radio Broadcasting*, 564-5.

¹⁴ The Points System for Canadian Program Certification: https://crtc.gc.ca/eng/cancon/c_cdn.htm [Accessed 7 Jan 2020]

¹⁵ *Guidelines for the Canadian Film or Video Production Tax Credit*: <https://www.canada.ca/en/canadian-heritage/services/funding/cavco-tax-credits/canadian-film-video-production/application-guidelines.html> [Accessed 7 Jan 2020]

¹⁶ American mass entertainment in the 1940s and 1950s flooded the Canadian market to much fanfare, leaving the Canadian entertainment industry with limited revenues and an inability to develop and improve. Canada’s protectionist industrial policies were developed to respond to this uneven playing field. See Edwardson (2008, p. 13). *Canadian content: Culture and the quest for nationhood*. University of Toronto Press: Toronto

assumption that the programming would buttress Canadian culture because it was made *by Canadians*. However, the limits to that assumption have become clear.¹⁷

For example, as indicated in the points system used to determine CPTC eligibility, certification of ‘Canadian’ content is based primarily on economic or industrial factors (i.e. number of Canadians employed, number of Canadians in senior positions, remuneration for Canadian talent, etc.):

To be recognized as a Canadian film or video production, a live action production must (other than where it is a treaty co-production) be allotted a total of at least six points according to the scale below. Points will only be awarded if the person(s) who rendered the services is/are Canadian.

- Director - 2 points
- Screenwriter - 2 points
- Lead performer for whose services the highest remuneration was payable - 1 point
- Lead performer for whose services the second highest remuneration was payable - 1 point
- Director of photography - 1 point
- Art director - 1 point
- Music composer - 1 point
- Picture editor - 1 point¹⁸

Notably, the criteria for certification as ‘Canadian’ does not require a production to include specific cultural subjects or qualities, such as Canadian places, communities, people, issues, stories, or histories. This is also the case for other tests within the Canadian content regime, including the MAPL system for music.¹⁹

Under this regime, programming that is deemed ‘Canadian’ and released into the broadcasting ecosystem is not necessarily concerned with representing Canadian qualities or values, nor need it be concerned with telling Canadian stories. Rather, the system ensures that Canadians have access to programming that employs Canadian artists, actors, directors, writers and composers, which in turn supports Canada’s cultural industries and economy.

One recent example that illustrates this point is the television drama *The Bletchley Circle: San Francisco*, which was certified Canadian under the CRTC’s points system in 2018, scoring nine points out of a possible ten.²⁰ The television program, which is directed and

¹⁷ For example, Edwardson argues that the cultural policies of the 1960s, which led to Canadian content quotas, produced the current environment where, “the production of industrially quantified Canadian content – with little concern for the qualitative elements – has become an end in and of itself.” See *Ibid*, p. 19.

¹⁸ *So what makes it Canadian?* https://crtc.gc.ca/eng/cancon/c_cdn.htm [Accessed 20 Jan 2020]

¹⁹ *The MAPL system - defining a Canadian song* https://crtc.gc.ca/eng/info_sht/ri.htm [Accessed 20 Jan 2020]

²⁰ Record for *The Bletchley Circle: San Francisco* (1)(#101-108), certification number C42389, <https://services.crtc.gc.ca/pub/CanrecList/eng/CanadianProgramList> [Accessed 26 Jan 2020]

produced by Canadians, is set between the United Kingdom and the United States. It tells the fictional story of two code-breakers from England's renowned Bletchley Park who travel to San Francisco to apply their code-breaking skills to solve murder cases.²¹ While the program was shot in Vancouver, it tells a notably British and American story, with British and American characters, histories, locations, and issues.

The same is true for treaty coproductions, where a project is financed jointly between a Canadian producer or funding agency and those of a partner country, and is eligible for certification as Canadian. The criteria used for certifying a treaty coproduction are similarly focused on a mix of creative and cultural industry concerns:

- Canada and the coproducing country must provide a minimum financial contribution of 15% to 30%, as per the terms of the applicable treaty
- financial, creative and technical contribution, and the level of expenditure must all be in proportion
 - for example, if the project is 40% Canadian, it is expected that 40% of the budget be spent in Canada
- all personnel hired to work on an official coproduction must come from the coproducing countries
- production and post-production of the project must be carried out in coproducing countries
- subject to the approval of administrative authorities, most of the treaties allow for non-coproducing country actor(s) and foreign location shooting when the script so requires²²

One recent example of a certified treaty coproduction is the television program *Vikings*, jointly financed by Canada and Ireland.²³ The program tells the story of Ragnar Lothbrok, a legendary Viking who earns notoriety for his heroic leadership, daring adventures, and violent exploits in Britain and France.²⁴ While the program features Canadian talent and benefits Canadian industry, the story, its characters and its locations are neither Canadian nor Irish, but rather Norse, Scandinavian, British and French.²⁵

It should be emphasized that such policies play a vital and effective role in protecting, supporting and growing the Canadian media and cultural sectors, the required skills and capacities, and the Canadian economy in general. However, on its own, the Canadian content regime does not serve the purpose of fostering and supporting cultural products that reflect the more qualitative aspects of Canadian culture – its diverse stories, histories, people, places, issues, and attitudes. Indeed, the criteria used to certify Canadian content include no language that captures the qualities of 'distinctively Canadian' programming.

²¹ *The Bletchley Circle: San Francisco* <https://www.imdb.com/title/tt7978912/> [Accessed 26 Jan 2020]

²² Telefilm's treaty coproduction eligibility criteria: <https://telefilm.ca/en/coproduction/submit-a-coproduction-request> [Accessed 30 Jan 2020]

²³ *So what makes it Canadian?* https://crtc.gc.ca/eng/cancon/c_cdn.htm [Accessed 23 Jan 2020]

²⁴ *Vikings* <https://www.imdb.com/title/tt2306299/> [Accessed 23 Jan 2020]

²⁵ *Viking hords are back to make history*. Irish Independent (17 Aug 2012) <https://www.independent.ie/irish-news/viking-hords-are-back-to-make-history-26887894.html> [Accesses 23 Jan 2020]

In a context where the national public broadcaster is mandated to provide programming that is distinctively Canadian, it is not reasonable for the CBC to consider the fulfillment of Canadian content quotas under the current regime as being adequate. A more 'reflective' approach to programming is required if Canada is to maintain the independence of spirit and culture that distinctively Canadian programs have the potential uphold.

Defining Canadian cultural distinctiveness

A critical question remains in this examination: what makes something Canadian? Searching for belonging in such a large place is no simple task. Canada has six official time zones; there are two official languages; it physically occupies the lands of First Nations, Inuit, and Indigenous peoples, who have remained a constant in the region for thousands of years. There are numerous ethnic and linguistic communities who have come to Canada from around the world. Each community has its own stories, histories, and experiences of Canada. All share a connection to one another and to the land upon which the 'imagined community' of Canada has been constructed.²⁶

For Canadian author and philosopher John Ralston Saul, "what we are today has been inspired as much by four centuries of life with indigenous civilizations as by four centuries of immigration... Today we are the outcome of that experience."²⁷ Canada is often defined by the catch-all terms people use when a pluralistic social or political context escapes precise definition: 'diverse'; 'multicultural'; a 'melting pot'.

Some have framed this lack of clarity around national identity as one of Canada's strengths. In one of his most widely cited speeches, Prime Minister Pierre Elliot Trudeau famously declared in October 1971:

"Uniformity is neither desirable nor possible in a country the size of Canada. We should not even be able to agree upon the kind of Canadian to choose as a model, let alone persuade most people to emulate it. There are few policies potentially more disastrous for Canada than to tell all Canadians that they must be alike. There is no such thing as a model or ideal Canadian."²⁸

In this construction, the thing that makes Canada distinctive is its lack of discernable distinctiveness. Taken as a whole, one might argue that the ability for so many people from so many cultures and religions to live in relative peace is a globally distinctive trait. Indeed, Canadian diversity and inclusivity are often spoken of as virtuous, even uniquely virtuous characteristics.

²⁶ See Benedict Anderson's seminal text from 1989, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Verso: London

²⁷ Saul, J. R. (2008). *A Fair Country: Telling Truths About Canada*. Penguin: Toronto

²⁸ Pierre Trudeau delivered these remarks at the Ukrainian-Canadian Congress on 9 October 1971.

While the first Prime Minister Trudeau’s assertion may resonate with many Canadians, it is precisely this sort of construction that makes it difficult to maintain a Canadian broadcasting system. Indeed, given Trudeau’s remarks, the question could be asked: is it possible for enough people to share a common understanding of what ‘distinctively Canadian’ means – enough critical mass to make the term actionable for policymakers?

One way to begin to address this question is to ask Canadians to articulate their shared values and interests. In preparation for the festivities of Canada’s 150th year since confederation, research and marketing firm Abacus Data conducted a national survey looking at what makes people proud to be Canadian.^{29 30}

TOP 20 THINGS THAT MAKE CANADIANS PROUD

RANK		% Really Proud	# of Cdn adults	RANK		% Really Proud	# of Cdn adults
1	Freedom to live as we see fit	59	17.1 M	11	Our steadiness & consistency	34	9.8 M
2	Terry Fox	50	14.7 M	12	How we provide health care	32	9.5 M
3	Open mindedness towards people who are different	49	14.2 M	13	Our food	29	8.5 M
4	Politeness	46	13.5 M	14	Wayne Gretzky	29	8.5 M
5	Rocky Mountains	45	13.1 M	15	Celine Dion	29	8.4 M
6	Maple Syrup	45	13.1 M	16	David Suzuki	28	8.1 M
7	Enjoyment of the outdoors	42	12.3 M	17	Canadian wheat	27	7.8 M
8	Reputation around the world	39	11.4 M	18	Our cities	26	7.6 M
9	Multiculturalism	34	10.0 M	19	Sidney Crosby	25	7.4 M
10	Caring for the world around us	34	10.0 M	20	Leonard Cohen	24	7.1 M

ABACUS DATA

Do these things or people make you really proud, pretty proud, a little proud, or not make you proud of Canada?

The top ten items on the list include many qualities and values that circulate in popular discourses about Canadians: “open mindedness”; “politeness”; “maple syrup”; “multiculturalism”; “caring for the world around us”. However, these qualities and values are not distinctive in isolation. Polite people are found in numerous cultures and nationalities, as are people who are open minded, and also those who care for the world around them.

One could argue that taken together, these traits form a distinctive whole, but this doesn’t help to define Canadian distinctiveness for the purpose of broadcasting, where the

²⁹ Abacus Data (2017) *What Makes Us Proud to be Canadian*, <https://abacusdata.ca/the-true-north-friendly-free-what-makes-us-proud-to-be-canadian/> [Accessed 7 Jan 2020]

³⁰ Out of a representative panel of 500,000 people, 1,848 respondents participated in an online survey in the middle of December, 2016. *Ibid.*

determination is made on a program-by-program, rather than a catalogue-by-catalogue basis.

But qualities and values like those mentioned above can gain meaning through a comparative point of reference. While it is difficult to demonstrate the ‘Canadian-ness’ of these cultural qualities and values on their own (i.e. “open mindedness”), it is possible to better understand how these qualities and values give meaning to a ‘distinctively Canadian’ culture when they are considered against a cultural comparator, such as the United States.

Renowned sociologist Seymour Martin Lipset argues that “Nations can be understood only in comparative perspective,” and of the two northernmost countries in North America, “Looking intensively at Canada and the United States sheds light on both of them.”³¹ For example, rather than saying “Canadians value open mindedness”, it can be said that “compared to Americans, Canadians value open mindedness.” Apply the same comparative framing to ‘politeness’, ‘multi-culturalism’ and ‘public healthcare’, and a picture of two nations with distinctive cultures, values, and political imperatives begins to emerge.

The healthcare example can further substantiate this point. Canada is known for its publicly-funded healthcare system where free access to most services is enshrined in law. This is a cultural norm that Canadians clearly value. As indicated in the above Abacus Data report, it is 12th on the list of things Canadians are most proud of.

Conversely, in the United States tens of millions of people face barriers in accessing even the most basic of healthcare services due to a lack of insurance coverage in a system that is largely privatized.³² Attempts to address the issue through government policy have prompted considerable backlash and even provoked hysterical responses, including fears over non-existent ‘death panels’ that supposedly decide who will receive life-saving treatment.³³ It is highly unusual – if not entirely unlikely – to hear Canadians speak about government-funded healthcare in such ways.

It is important to note that general comparisons between the two countries do not *necessarily* yield insights into Canadian ‘cultural distinctiveness’. A preliminary analysis of several integrated industries reveals a particularly close relationship and similar cultural interests. Take professional sports as an example, where Canadian franchise teams are fully integrated into American leagues. While Canada might argue that it is the country of ice hockey, there are far more American teams in the National Hockey League.³⁴ Conversely, while a Canadian team has not won a Stanley Cup championship since 1993, the American

³¹ Lipset, S. M. (1990) *Continental Divide: The Values and Institutions of the United States and Canada*. Routledge: New York. p xiii

³² *The 3 Reasons the U.S. Health-Care System Is the Worst*. The Atlantic
<https://www.theatlantic.com/health/archive/2018/06/the-3-reasons-the-us-healthcare-system-is-the-worst/563519/>
[Accessed 12 Feb 2020]

³³ For example, see the following report from Fox News, *The return of Obamacare’s ‘death panels’*.
<https://www.foxnews.com/transcript/the-return-of-obamacares-death-panels> [Accessed 11 Feb 2020]

³⁴ <https://www.nhl.com/info/teams> [Accessed 20 Jan 2020]

championship-winning teams that have followed have consisted of a considerable number of Canadian players.^{35 36}

As noted earlier in the report, Canadian and American film, television, and music sectors are well-integrated, which further complicates this notion of Canadian ‘cultural distinctiveness’. For example, numerous American films and television programs are shot in Canada.³⁷ Numerous Canadian actors star in highly successful American films.³⁸ Those familiar with artists such as Neil Young, Celine Dion, Avril Lavigne, or Drake will know that Canadian musicians regularly feature in the American charts, while American musicians also appear prominently in Canada.

In a context where culture and cultural products circulate freely around the world and are often produced in collaboration across several jurisdictions, determining the ‘nationality’ of a film, song or television program will not necessarily address the question of its cultural substance. As Grant and Wood argue, “culture itself defies straightforward national attribution.”³⁹

While it may not be possible to identify the precise boundaries of a given culture, there are many indications in daily life that can point in the general direction. One such area for comparison is linked to the values that underpin many aspects of everyday life within the jurisdictional boundaries of a nation: the laws and institutions concerned with freedom of expression, which inform cultural practices, more generally.

A comparison of how Canada and the United States treat freedom of expression is particularly insightful. In the American context, the First Amendment to the United States Constitution is emblematic of a particularly well-known American set of values, where the protection of freedom of expression is explicitly enshrined:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

Canada’s approach to freedom of expression under the Charter of Rights and Freedoms is strikingly different. Unlike the libertarian approach that protects American citizens from the potential tyranny of government, the Canadian Charter of Rights and Freedoms declares from the outset that all rights and freedoms are subject to limits:

³⁵ The Montreal Canadiens were the last Canadian team win a Stanley Cup Championship, in 1993.

³⁶ <https://www.ctvnews.ca/features/hometown-heroes-mapping-out-the-birthplaces-of-every-current-canadian-nhl-player-1.4216666> [Accessed 28 Jan 2020]

³⁷ <https://www.theguardian.com/film/filmblog/2007/nov/01/kellynestruckthursampic> [Accessed 28 Jan 2020]

³⁸ <https://www.buzzfeed.com/rachelhorner/79-actors-we-can-thank-canada-for> [Accessed 28 Jan 2020]

³⁹ Grant, P.S. & Wood, C. (2004). *Blockbusters and Trade Wars: Popular Culture in a Globalized Word*. Douglas & McIntyre: Vancouver, p 140

Rights and freedoms in Canada

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. [emphasis added]

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; [emphasis added]⁴⁰

Canada's measured approach in its treatment of freedom of expression is emblematic of a cultural norm, shedding light on what behaviours and attitudes are deemed acceptable. The US Supreme Court has ruled that hate speech is legally protected under the First Amendment, which safeguards one's right to express thoughts freely in public.^{41 42 43} In Canada, such an approach has been rejected, and subsequently, there are Canadian laws that impose limits on freedom of expression, such as that which promotes hatred.⁴⁴

This 'distinctively Canadian' approach to freedom of expression is reflective of the broadly accepted values and principles that inform the Charter of Rights and Freedoms (i.e. 'all freedoms have limits'), which are distinct from American values (i.e. 'government should not impose limits to freedoms'). By extension, these shared Canadian values are reflected in Canadian laws, cultural policies and in Canadian culture more generally.⁴⁵

Cultural norms around freedom of expression can have a deep impact on the media through which such expression is universally diffused. This cultural distinctiveness is manifested in media content a variety of ways. Take for example a comparison of the most watched news programs in Canada and the United States. In Canada, the most watched news network in 2019 was CTV National News, which has won numerous peer reviewed

⁴⁰ Canadian Charter of Rights and Freedoms as laid out in the Constitution Act, 1982 <https://laws-lois.justice.gc.ca/eng/const/page-15.html> [Accessed 20 Jan 2020]

⁴¹ The United States Supreme Court has ruled that 'hate speech' is protected under the First Amendment. See *Matal v. Tam* <https://supreme.justia.com/cases/federal/us/582/15-1293/> [Accessed 20 Jan 2020]

⁴² See, also, this analysis of John Stewart Mill's Harm Principle in reference to hate speech. <https://plato.stanford.edu/entries/freedom-speech/#MilHarPriHatSpe> [Accessed 21 Jan 2020]

⁴³ There are exceptions to freedom of expression in America, such as inciting actions that would specifically harm others (yelling "fire" in a theatre), uttering state secrets, distributing obscene material, etc. <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does>

⁴⁴ For example, see Section 319 (1) and Section 319 (2) of Canada's Criminal Code, which are concerned with inciting or willfully promoting hatred: <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-319.html> [Accessed 15 Jan 2020]

⁴⁵ FRIENDS of Canadian Broadcasting produced a series of television commercials in October 2006 to articulate distinctively Canadian storytelling as measured against American storytelling through Hollywood. For example, see FRIENDS' commercial about 'Richard the Rocket': https://www.youtube.com/watch?v=G_PgP54plcs [Accessed 15 Jan 2020]

broadcasting and journalism awards for excellence in its news programming from across the country.⁴⁶

In America, Fox News remains the most watched news network in the country, breaking records for viewership in 2019.⁴⁷ The network is famous for its rightwing opinion programming, and often finds itself at the centre of controversy for the extreme views of its hosts. It was Sean Hannity of Fox News who propagated the notion that “ObamaCare death panels” would attend the introduction of universal health insurance, and this segment was broadcast on the most popular network in the country.⁴⁸ To take peer review as an indication of its quality, Fox News has never won a Peabody Award for its news programming.⁴⁹

The respective popularity of these news programs reflects some of the emblematic values and interests that contribute to a ‘distinctively Canadian’ culture, which is notably different from that of America.

Here, it is important to remember the policy interventions that were implemented in order to protect Canada’s cultural distinctiveness. As established earlier in the report, Canada was unable to nurture its own private broadcasting ecosystem due to the immense influence of American affiliates like CBS and NBC. In response, key cultural institutions and policies were established in order to protect Canadian cultural interests and support the production of Canadian content.

While these systems remain effective in supporting Canadian artists, content creators and cultural industries economically, they are insufficient in supporting distinctively Canadian programming that reflects these values and cultural qualities.

Broadcasting Canadian distinctiveness by reflecting the country

The previous section of the report demonstrates that the distinctively Canadian approach to freedom of expression reflects the broadly accepted Canadian values and principles enshrined in the Charter of Rights and Freedoms. What might this mean for our understanding of the distinctively Canadian programming?

⁴⁶ CTV National News recently won the *Best Television Newscast* award from the *Radio Television Digital News Association*. <https://www.ctvnews.ca/canada/ctv-national-news-wins-best-tv-newscast-at-rtdna-awards-1.4418879> [Accessed 12 Feb 2020]

⁴⁷ The Hill. *Fox News hits highest viewership in network’s 23-year history* <https://thehill.com/homenews/media/476220-fox-news-hits-record-high-viewership-in-networks-23-year-history> [Accessed 12 Feb 2020]

⁴⁸ Fox News, *The return of Obamacare’s ‘death panels’*. <https://www.foxnews.com/transcript/the-return-of-obamacares-death-panels> [Accessed 11 Feb 2020]

⁴⁹ Peabody Awards are given for excellence in broadcasting, including a category for news broadcasting. <http://www.peabodyawards.com/about#originawards> [Accessed 12 Feb 2020]

Distinctively Canadian programming is that which reflects the values, interests, stories, histories, people and places throughout the country and its various regions. ‘Reflecting’ infers that the programming contains decipherable Canadian elements and qualities. Indeed, if ‘distinctively Canadian’ programming does not reflect the stories, histories, people and places of Canada, *how can it be* distinctively Canadian?

To this end, the Broadcasting Act contains a useful point of reference against which distinctively Canadian programming can be theorized and understood, and clearly assigns responsibility for providing such programming to the CBC:

... the programming provided by the Corporation should:

- 1) ... reflect Canada and its regions to national and regional audiences ⁵⁰

While the Act provides helpful guidance, we have established that existing criteria and tests employed in the Canadian content regime do not attempt to capture the decipherable elements and qualities of ‘distinctively Canadian’ programming in their considerations. So, how might this shortcoming be addressed?

Experiences in other jurisdictions provide insight into some possible solutions. One such experience is that of the European Union, where ‘cultural tests’ have been integrated into eligibility criteria for television and film production tax incentives. Under special legislation, member states are granted power to develop their own ‘national criteria’ for cultural products. ⁵¹ Germany, for example, has the power to develop its own national criteria to measure ‘German-ness’ for the purpose of providing state aid to German cultural products, and other member states are empowered to do the same for their own cultural products.

This has manifested itself across the European Union with the creation of substantive cultural tests for film and television production, with each member state having the power to develop its own cultural test. As evident in the following examples (which are excerpts from their respective cultural tests), these criteria include a variety of elements that capture distinctive cultural qualities, such as stories, histories, landmarks, locations, and others:

The German Cultural Test

- Film (substance/underlying material) plays mainly in Germany or in the German culture area
- Uses German landmarks (i.e. motives that can be attributed to Germany, e.g. German architecture or landscape, such as “Black Forest cottage”)
- Uses German locations
- Main character(s) of the underlying material is/was German

⁵⁰ The Broadcasting Act. <https://laws-lois.justice.gc.ca/eng/acts/B-9.01/page-1.html?txthl=predominantly+distinctively+predominant#s-3> [Accessed 4 Jan 2020]

⁵¹ See the European Commission’s 2001 *Communication on State aid for Films and other Audiovisual Works* https://ec.europa.eu/commission/presscorner/detail/en/IP_01_1326 [Accessed 4 Jan 2020]

- Storyline/underlying material is German ⁵²

The French Cultural Test

- A relative majority of the scenes take place in France
- A relative majority of the scenes take place in France and in a French-speaking country
- The plot and story highlight French artistic heritage or a period of French history
- The plot and story deal with political, social or cultural issues specific to French society or European societies ⁵³

In both of these tests, the criteria contain specific cultural elements and qualities that are distinctive in both national contexts. A film that deals with a French political issue while highlighting French artistic heritage, for example, reflects a uniquely French experience and context, making it distinctively French. To reiterate the point, a television program that is set in Germany, features German characters, and is based on a German storyline, reflects Germany and represents a distinctively German program.

How can this be applied in a Canadian context? In their analysis of the Canadian drama *Due South*, Marsha Tate and Valerie Allen distill a list of ‘distinctively Canadian elements’ that reflect Canada and its regions, which may prove helpful in the development of a cultural test for the distinctively Canadian programming that the CBC is required to provide:

“These elements included, among other things, a diverse array of activities, attitudes, historical events, issues, symbols, and styles as well as notable individuals or places identified with Canada.” ⁵⁴

A more recent example of distinctively Canadian elements or qualities appearing in a television program can be found in an episode of the *Baroness Von Sketch Show*, exhibited by CBC. In this episode, the cast confronts the topic of Indigenous land acknowledgements by staging an awkward encounter between a host on a theatre stage and a member of the audience. The host opens the show with a land acknowledgement – nowadays a common feature of public gatherings in Canada. When the acknowledgement is finished, the audience member asks what percentage of the ticket sales will be given to Indigenous peoples as compensation for the use of their unceded lands. The answer: nothing. It goes on most uncomfortably from there.

The topic of discussion – how to meaningfully address the issue of Canada being built upon Indigenous lands, and the appropriateness and sincerity of the acknowledgement itself – is

⁵² See the *Test of Characteristics for Feature Films* https://focal.ch/prodvalue/working_conditions/docs/Germany/Test-of-Characteristics-for-Feature-Films.pdf [Accessed 6 Jan 2020]

⁵³ See the *Tax Rebate for International Productions* <http://www.idf-film.com/media/trip-english-presentation.pdf> [Accessed 6 Jan 2020]

⁵⁴ Tate & Allen, 2003. *Integrating Distinctively Canadian Elements into Television Drama: A Formula for Success or Failure? The Due South Experience*. <https://www.cjc-online.ca/index.php/journal/article/view/1341/1402> [Accessed 7 Jan 2020]

a distinctively Canadian issue.⁵⁵ People who live elsewhere will not fully grasp the sensitivity of the issue as Canadians do – at least not without an explanation. Given the moral and political implications of Canada’s current and historical treatment of Indigenous peoples, this sketch provides viewers with a very necessary opportunity to consider a matter of profound national and ethical importance.

Another vital, and perhaps self-evident example of distinctively Canadian programming is that which millions of Canadians depend on daily: news. Almost by definition, Canadian news programming reflects the issues, stories, people and places of the country and its regions. Indeed, news programming can pass a cultural test with flying colours. Today, delivering journalism and news – local news in particular – is increasingly difficult. In 2019 alone, CTV, CBC, *La Presse*, Groupe Capitaux Médias, Torstar and Postmedia eliminated newsroom jobs.

The dire situation facing Canada’s news media conglomerates highlights the increasing importance of the CBC in providing such programming. However, even with its parliamentary appropriation, CBC is not able to maintain a consistently strong local news presence across Canada. As such, local news is a form of distinctively Canadian programming to which a growing number of Canadians have little or no access.

The CBC’s limited budget, coupled with the declining financial prospects of major private media, reveals a looming crisis facing distinctively Canadian programming and content. The current system of policies is insufficient in protecting Canada’s domestic broadcasters, it does not mandate digital streaming services to create distinctively Canadian content, and it does not sufficiently support public service media to do so.

It is imperative in these circumstances that Canada’s cultural policies be remodeled around substantive cultural tests, to complement industrial criteria like ownership and authorship, which would become proportionally less significant. When industrial definitions of Canadian content were introduced, it was assumed that they would lead to the creation of ample Canadian cultural programming because it would be produced *by Canadians*. However, as demonstrated throughout this report, this is no longer the case.

If Canada wishes to retain its cultural distinctiveness, then it follows that its cultural policies should protect and support programming and content that reflects this distinctiveness. Crucially, in such a precarious period for media in Canada, these standards should apply to all broadcasters, including international streaming services that dominate the market. If we intend to continue producing programming which reflects Canada and its regions, articulated through Canadian places and people, their values and interests,

⁵⁵ Land acknowledgement, *Baroness von Sketch Show*
https://www.youtube.com/watch?v=xIG17C19nYo&list=PLo_UQZib9ijjyMfyC4p3XH3O1iTim2Mj&index=22&t=os
[Accessed 21 Jan 2020]

histories, stories and experiences, then we must urgently and sincerely pursue a policy agenda that can achieve such an objective.

Conclusion

As technologies have evolved, so too has the challenge of sustaining a Canadian media and cultural ecosystem. In the era of Facebook, Netflix and YouTube, preserving a Canadian broadcasting system that adequately serves Canada's diverse and dispersed population is an increasingly difficult task. Exclusionary regulation, historically the dominant tool of Canadian broadcasting policy, is no longer the means to a desirable end. Disruption from digital platforms has enforced a new level of precarity on Canadian media, one that has yet to be addressed through updating or introducing new protectionist policies. As platforms grow, commercial media are in decline or are disappearing altogether, and in communities where a local newspaper, radio or television station has closed, people in power are being left unchecked and Canadians are finding themselves disconnected and misinformed. Public service broadcasting has never been more essential.

Canada's current definitional regime for Canadian content is primarily concerned with featuring Canadian artists and supporting Canada's cultural industries, rather than supporting the creation of content that is distinctively Canadian. Existing systems do not attempt to capture the qualities and elements that reflect Canadian stories, histories, people or places, and by extension, these systems are unable to protect or support the creation of 'distinctively Canadian' programming.

There is a distinctive Canadian culture in evidence. Canada's distinctive approach to freedom of expression is but one example, reflecting the broadly accepted values and principles enshrined in the Charter of Rights and Freedoms (i.e. 'all freedoms have limits'), as distinct from American values (i.e. 'government should not impose limits to freedoms'). While Canada's 'giant-next-door' relationship with the United States has necessitated the creation of institutions and systems to protect Canadian cultural distinctiveness, these systems remain insufficient in supporting distinctively Canadian programming. While the CBC is legally mandated to be "predominantly and distinctively Canadian", it lacks the clear guidance and funding that would allow it to achieve such a requirement. This does not bode well for the future of Canadian stories on air or online. Without decisive policy intervention that expressly privileges substantive cultural objectives, the underlying goals of the Canadian broadcasting system will be undermined.

Distinctively Canadian programming is not an arbitrary imposition. It includes that which focuses on reflecting Canada and its regions. Experiences from other jurisdictions such as the European Union provide helpful insights into the kinds of qualities and elements that contribute to such programming. The crucial point is that these criteria go beyond industrial quotas and include substantive characteristics in support of a country's cultural sovereignty and independence. In Canada, this reflection can be articulated through

Canadian places and people, their values and interests, their local communities, histories and stories, among other qualities and elements. In this respect, reflecting the country is about telling Canadian stories because these stories are valuable in their own right, stories that tie the country together and set it apart. This is about providing local and regional programming from Canada *precisely because it is Canadian*.

Here, it is important to highlight the vital role of the CBC's in providing this programming moving forward. In a context where the United States is the 'giant next door', and where providing distinctively Canadian programming remains beyond the financial interests of commercial broadcasters, a potentially ominous outcome emerges: the weakening of Canada's shared story. With the rise of highly competitive digital platforms and increasingly global flows of cultural products, the CBC may soon become the only broadcaster in Canada that can provide distinctively Canadian programming across the country. Likewise, as local media and journalism decline, the CBC could soon become the only media organization that can comprehensively reflect Canada and its regions. The need to deepen and expand its capacity to fulfill this requirement is greater now than ever.