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INTRODUCTION: TELECOMMUNICATIONS AND CULTURE: TRANSBORDER FREEDOM OF INFORMATION OR CULTURAL IDENTITY?

*J. Michael Robinson**

Thank you for staying so late on a Saturday evening after a good dinner. I am Michael Robinson from Fasken, Martineau, DuMoulin in Toronto.

It is my pleasure to be the referee. We always describe the presiding person as a referee whenever we are discussing Canadian culture between Americans and Canadians, because of course, Canadian culture is sort of an oxymoron in the United States. Here "culture" means the entertainment business, with a big "B" in business. Really there is a lot of difficulty in understanding what it is that Canadians mean when they discuss culture. Canadians, of course, are not sure what they mean by culture, but they will fight all you Yanks to the death and certain others, too, to defend their right to protect it, which adds to the confusion. We will even take on that short silver-haired Jack Valenti fellow, although not when he says he is going to bring out the F-16s. I am sure you all heard his famous quote that he said on the Hill.¹ He was unhappy about some Canadian cultural move and he said the United States was going to bring out the F-16s, and the Minute Men, and whatever else it takes to stop these terrible people, the Canadians. Jack, of course, wanted to make sure that nobody would try to stop him from taking the last five percent of Canadian screens that the United States did not already control.

We have analyzed and debated here at this Institute many times Canada's right to defend Canadian culture. This evening we are furthering our perspective on it with a particular emphasis on cable television and telecommunications. The last time we talked about this was, I think, a restrained debate between John Ragosta and myself? One thing that has happened since then, which was creeping up on us then: technology.

Here is a recent example. This Monday, the Canadian Radio Television and Telecommunications Commission (CRTC) received 452 applications in one day for new cable television licenses for the new digital channels. I see

* Robinson bio.

¹ See J. Michael Robinson, *The Information Revolution – Culture and Sovereignty – A Canadian Perspective*, 25 CAN-U.S. L. J. 147, 151 (explaining remarks made by Jack Valenti, President and Chief Executive Officer of the Motion Picture Association of America, regarding Canadians and their culture).

my American friends are looking quizzical and are asking what the heck cable television has to do with culture. Well, in Canada, cable transmission is, in fact, television broadcasting; and we think television is certainly culture. So we regulate the bejesus out of it. You do not regulate it in the United States. It is easy to understand why Canada regulates it, being a highly regulated jurisdiction. You might recall that the Canadians virtually invented the practice of stealing television signals for re-broadcasting on cable without payment, of course, to the signal originator back in the 1950s.

Almost all Canadians live within 200 kilometers of the U.S. border, so that means we can grab these signals easily. And when we only had one network, which was our public broadcasting network, the Canadian Broadcasting Corporation, it was very lucrative to steal the three U.S. network signals and then sell them to the Canadian public. I do not think the networks thought it was a great idea, but they could not really do anything about it because this was happening in another country.

I do not want to take the time allocated to the speakers, Henry will do that well enough. So let me just end by circling back to the 452 applications to the CRTC and technology. I think the Canadian regulators are losing control and will probably lose what little control they have left. There are 452 digital broadcasters, many now are also program originators, who want access to the communications facilities. The CRTC may explode or implode trying to handle this volume. It strikes me like King Canute trying to stem the tide.

Now, I think we will let the experts tell us what is really happening on both sides of the border. I am sure there will be some interesting, differing positions. Ken Stein is going to speak first. He is Senior Vice President of Corporate and Regulatory Affairs at Shaw Communications. He is a board member of the Canadian Cable Television Association. He is Chairman of the Sectoral Advisory Group on International Trade (SAGIT), which is a dollar-a-year advisory role to our Department of Foreign Affairs. I am sure he is delighted to have that.

These industry organizations are very important. I remember when they were set up; I called my friends in Ottawa and asked if they were going to need lawyers on those. They said, "Absolutely not." The reason they exist is so the government hears from the business people. They do not want any lawyers on the committee. I do not think there is a lawyer on any one of the SAGITs. But, since they were only paying a dollar a year, we were not too upset.

Ken, in his previous life, was a long-time former government official in the Department of Finance, and other places, and worked on policy issues affecting broadcasting, telecommunications, privatization, and even fish.

His education is, for a nice change, relevant to the subject. He is an electrical engineer, a Bachelor of Science rather than just a J.D. and he, of course, has the compulsory advanced management training at Harvard.

Hamilton Loeb is in private practice at Paul Hastings, et al., in Washington where he runs the local office there and he heads their International Trade Communications and Practice Group. He co-chairs the ABA International Trade Committee. And he is Secretary of the ABA International Law Section, where this morning he was trying to keep the minutes of a debate on what the ABA was going to say about that little Cuban kid down in Florida. I cannot remember his name. We are not too worried about that, because we have lots of Cuban kids in Canada, and a lot of Canadians in Cuba.

Hamilton was an advisor to Canada on the World Trade Organization negotiations. I hope that will not affect his ability to take a vigorous U.S. position here in contradiction to what Ken will say. His education was at Harvard, magna cum laude. Of course, he was law review editor.

Now, we are going to hear from Ken first, and then I will take the questions afterwards.

