

# **“O Canada”: Recognizing Gay Pornography as a Part of Canadian Culture**

by

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## **Abstract**

In 2014, the CRTC warned three adult channels to conform to Canadian content regulations. The general response by op-ed writers and bloggers surrounding this issue was one of trivialization. These writers believed and argued the CRTC was wasting its time, as well as taxpayers' money, enforcing Canadian content regulations in pornography — a product thought to have no redeeming social or cultural value. However, this capstone takes a different stance on the issue, arguing pornography and its industry as a product and business like any other with cultural and economic implications in Canada and the rest of the world that must be taken seriously. This paper argues that Canadian-produced gay pornography not only fits the Canadian government's definition of a cultural product, but also the CRTC's criteria for a Canadian product. In the end, this capstone argues gay pornography as a part of Canadian culture worth studying and critiquing like any other mediated text.

**Keywords:** gay pornography; Canadian culture; national identity; cultural products; CRTC; CanCon regulations

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## List of Acronyms

AOV	Adults Only Video
BYOC	Build Your Own Cinema
CanCon	Canadian Content
CFCS	Canadian Framework for Culture Statistics
CRTC	Canadian Radio-television and Telecommunications Commission
DFATD	Department of Foreign Affairs, Trade and Development
IAAV	International Amateur Adult Video
PPV	Pay-Per-View
SEM	Sexually Explicit Media
VOD	Video-On-Demand
VPN	Virtual Private Network

# Chapter 1.

## Introduction

On March 5, 2014, the Canadian Radio-television and Telecommunications Commission (CRTC) notified Channel Zero that it suspected three of its Adults Only Video (AOV) channels — AOV Adult Movie Channel, AOV Action Clips, and AOV Maleflixxx — of failing to comply with Canadian content and closed-captioning requirements. Many news outlets and commentators used this opportunity to not only trivialize and question the CRTC’s Canadian content (CanCon) requirements of adult pornographic channels, but also the existence of the CRTC itself (Coutts, 2014; The Economist, 2014; The Huffington Post Canada, 2014; Kennedy, 2014; Taylor, 2014). Collectively, these news outlets’ and commentators’ opinion of the CRTC, CanCon requirements, and adult programming is best summed up by Kate Taylor of *The Globe and Mail*: “the sheer silliness of requiring Canadian content in adult movies isn’t merely a dirty joke at the CRTC’s expense: It exposes serious questions about the effectiveness of the regulatory system” (2014, para. 3).

However, this issue deserves to be taken seriously considering how much pornography is consumed in private, but is rarely discussed or understood in the public sphere outside of sensationalizing its possible harmful effects on consumers.<sup>1</sup> Furthermore, there seems to be a relatively new shift — at least in academia — to push for the understanding and discussion of pornography’s role in a given society or culture.<sup>2</sup> According to the opinion piece of director of the Institute for Gender Research at the University of Calgary Dr. Rebecca Sullivan in *The Globe and Mail*, the CRTC’s warning

<sup>1</sup> Section 2.2 of chapter 2 will discuss in greater detail the anti-pornography arguments of the perceived harms of porn consumption.

<sup>2</sup> For example, 2014 saw the launch of a new academic journal dedicated to the study of pornography: *Porn Studies*.

to Channel Zero highlights how most Canadians view pornography.<sup>3</sup> Dr. Sullivan argues that pornography, both as an industry and as a product, should be studied because “[p]orn is a part of our culture” (2014, part of the title). If pornography is viewed as such, then it is not “silly” — to use Kate Taylor’s description — for the CRTC, which was established by the Canadian *Broadcasting Act*, to require broadcasters to abide by CanCon laws in order to continue “to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada” (Broadcasting Act, 1991, p. 3, sec. 3.d.i) by protecting and encouraging the growth of its domestic pornography industry.

This capstone argues that pornography is indeed a part of Canadian culture and that it is a cultural product<sup>4</sup> with deep economic impact (e.g., using local talent and resources). Considering how culture and national identity are so intrinsically tied together, this capstone will also examine how pornography aids in nation-building.<sup>5</sup> Although pornography is more accessible online and arguably transcends borders because of the Internet’s ease-of-access, this capstone will focus on subscription-based 24-hour adult specialty channels because they are — unlike the Internet — more directly regulated by the Canadian government to abide by CanCon requirements, thus having some impact on the domestic production of pornography. While this capstone will ultimately examine the wider implications for how pornography as a whole should be viewed in Canada, the main focus of the paper will be the examination of the gay male pornographic channel of AOV Maleflixxx (henceforth referred to simply as Maleflixxx)<sup>6</sup> in distributing cultural products (i.e., Canadian-produced gay pornography) that aid in

<sup>3</sup> Dr. Rebecca Sullivan writes, “Those discussions, on the heels of commentary over Canadian-content regulations for pornography channels, all lead to the same conclusion: Pornography is something good, decent Canadians don’t think about” (2014, para. 2).

<sup>4</sup> This is defined in chapter 5.

<sup>5</sup> According to the Canadian *Broadcasting Act*, “the Canadian broadcasting system . . . provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty” (Broadcasting Act, 1991, p.3, sec. 3(1)(b)).

<sup>6</sup> AOV Maleflixxx is sometimes referred to as Maleflixxx Television on the Sureflix Digital Distribution Inc.’s website. Sureflix Digital Distribution Inc. (henceforth known as Sureflix) is one of two owners of AOV Maleflixxx — the other being Channel Zero. And, while Sureflix owns and operates other Maleflixxx products and services — Maleflixxx Pay-Per-View (PPV), Maleflixxx Video-On-Demand (VOD), Maleflixxx Tribe, a mobile media distribution, and a Maleflixxx build your own cinema (BYOC) for affiliate websites — this capstone uses “Maleflixxx” to refer to the discrete product of AOV Maleflixxx/Maleflixxx Television. Other Maleflixxx products are identified by their full title, but for the most part are not examined in this paper.

nation-building. This essay will focus on gay male pornography for a few reasons: gay porn not only serves as a form of sex education for young gay men (*i.e.*, a sexual guide in a heterosexually-dominated sex education, as well as a reinforcement of homosexual identity as both desirable and acceptable) (Ellis & Whitehead, 2008, p. 199), but there has also been a lack of academic research on gay pornography and national identity (Leap, 2011; McKee, 1999; Sikes, 2010; Westcott, 2004).<sup>7</sup>

Following the introductory chapter of this capstone, chapters 2 and 3 act as the foundation on which the paper is built. Collectively, they constitute the literature review of the essay. Chapter 2 defines pornography, the current debates surrounding pornography, and how pornography is currently viewed and regulated in Canada. Each section starts broadly on the topic of pornography before narrowing its focus specifically to gay male pornography. This is followed by an overview of the CRTC and CanCon requirements, the CRTC's goals as a Canadian institution, and the CRTC's role in broadcasting in Chapter 3. Chapter 4 brings the previous two chapters together by examining the criticisms the CRTC faced in online news articles and opinion pieces in March of 2014 for issuing a warning to Channel Zero for failing to comply with CanCon requirements. This section examines the importance surrounding the critiques and discussions of CanCon requirements of adult broadcasting channels. Building from the point of recognizing why these discussions are important, chapter 5 will argue the merits of gay male pornography as a cultural product. This chapter then examines the criteria for Canadian content and how, in the end, this certification process leans more towards benefiting Canadians economically than it does in persuading an audience of the product's "Canadian-ness". The goal of this chapter is to examine what is required to achieve Canadian content status in order to be seen as a Canadian cultural product, before ultimately discussing how these Canadian cultural products fare in the global market. Finally, this capstone will discuss some of the implications and

<sup>7</sup> This is not to say that heterosexual pornography, or any other form of pornography for that matter, does not constitute a form of pedagogy (*i.e.*, being viewed as a visual reference for specific sex acts), cultural product, or identity reinforcement, but that gay male pornography achieves these same goals and more. This will be discussed in further detail in chapter 2.

recommendations for how people should begin viewing pornography.<sup>8</sup> The purpose is to bring discussions of pornography into the public sphere<sup>9</sup> so that pornography can be examined and critiqued like any other cultural product, instead of being consumed in secret, which ignores the impact the pornography industry has on a society.

<sup>8</sup> Because of the focus on Western societies in this capstone, the implications and recommendations discussed in chapter 6 may not be globally applicable.

<sup>9</sup> An argument used by Michael Warner in his book, *The Trouble with Normal* (1999).

## Chapter 2.

### Pornography

In 2006, John Cameron Mitchell's American film *Shortbus* was banned in South Korea for its unsimulated (actual) sex scenes and gay content. The film was considered pornographic and was rated "Restricted" by the Korea Media Rating Board. This rating effectively banned the film from being shown in Korean theaters (Noh, 2009). Independent film distributor Sponge Entertainment took the issue to court, where eventually the Supreme Court of South Korea "ultimately stated the Restricted classification was too ambiguous, and that it was not up to the KMRB to interpret and apply in any case" (Noh, 2009, sec. "Smoother Ride Outside Asia"). Three years after its initial ban, *Shortbus* was released in South Korea.

A film being considered pornography and therefore banned, however, is not unique to South Korea. Because the definition of pornography is inherently subjective, the classification of a film as "pornographic" depends on the cultural context of the time and place. Thus a film may be initially banned but later released, or banned only in some areas. The following section defines 'pornography' as it is applicable to this capstone.

#### 2.1. Defining Pornography

There is no clear, agreed upon definition of 'pornography'.<sup>10</sup> What one considers 'pornography' may be 'erotica' to another and still 'obscene' to someone else. However,

<sup>10</sup> Director of the Pacific Center for Sex and Society, Dr. Milton Diamond, defines pornography as "any media basically construed as intended to entertain or arouse erotic desire" (2009, p.309), while anti-porn feminist scholars Catharine MacKinnon and Andrea Dworkin define it as "the graphic sexually explicit subordination of women, whether in pictures or in words" (1997, p. 444).

as all three terms are defined — to varying degrees — with the intent of sexual arousal,<sup>11</sup> these terms can be viewed as different points on a scale of the social acceptance of sexually mediated texts (e.g., film, television, books, art, etc.). On one end is ‘erotica’ and at the opposite end lies ‘obscene’, while ‘pornography’ falls somewhere in between. The more explicit and graphic the content of the mediated text (and by extension, the less publically accepted it is), the more pornographic or obscene the material is thought to be. Of course, the lines that demarcate the three terms on this continuum vary depending on the contexts; that is, people from different cultures or times may position the same text at different points on the continuum.

For the purpose of this capstone, ‘pornography’ is defined as hardcore, sexually explicit mediated texts with unsimulated sex acts intended to sexually arouse the viewer. The term will be treated as a synonym for the broader scientific description of ‘sexually explicit media’ (SEM).<sup>12</sup> Although pornography includes various media, as well as types of production (*i.e.*, studio-produced and independent), this capstone limits its scope by examining mainstream studio-produced pornographic films. More specifically, this capstone examines studio-produced gay male pornographic films that are broadcast on the Canadian specialty channel Maleflix<sup>13</sup> and are thus subject to the rules and regulations of the CRTC. Therefore, pornographic films and clips produced and distributed online — studio-produced, self-produced, or otherwise — are beyond the scope of this capstone. Furthermore, as the films broadcast on Maleflix are regulated by industry standards and laws (such as being in compliance with 18 US Code §

<sup>11</sup> Oxford Dictionaries defines ‘pornography’ as “Printed or visual material containing the explicit description or display of sexual organs or activity, intended to stimulate erotic rather than aesthetic or emotional feelings” (“pornography”), ‘erotic’ as “Of, relating to, or tending to arouse sexual desire or excitement” (“erotic”), and ‘obscene’ as “(Of the portrayal or description of sexual matters) offensive or disgusting by accepted standards of morality and decency” (“obscene”). It should also be noted that the term ‘erotic’ is used instead of ‘erotica’ because Oxford Dictionaries defines ‘erotica’ to be “Erotic literature or art”, and said definition is insufficient in comparing to the terms ‘pornography’ and ‘obscene’.

<sup>12</sup> Likewise, ‘pornography’ is — on occasion — also used interchangeably with ‘erotica’. See Hopper’s news headline for an example (2014).

<sup>13</sup> Currently, Maleflix is broadcast in Canada through different service providers such as Bell ExpressVu and Rogers, to name a few (Maleflix Television — Gay Adult Channel).

2257<sup>14</sup>),<sup>15</sup> this paper will limit its focus to those films which are legally registered and regulated by law.

For a number of reasons, the focus of this capstone is on gay pornography, as opposed to pornography in general. First, as a gay man, I have a vested interest in a product that is arguably central to the normalization of the gay identity. That is, it has been argued that gay pornography is pedagogical for young gay men in reaffirming their sexual orientation as normal, understanding and executing various sexual acts, and experiencing various types of bodies (Ellis & Whitehead, 2004, p. 199). Second, most studies on gay pornography have focused on the effects of its consumption — how it promotes and reinforces hegemonic masculine images (Fejes, 2002; Kendall, 1993; Poole, 2014) or whether the prevalence of bareback gay pornography<sup>16</sup> correlates to an increase in HIV rates (Lee, 2014; Mowlabocus, Harbottle, & Witzel, 2013; Vastenburg, Jonas, Groot & Hawk, 2014). Few studies, however, have been conducted on the production side of gay pornography: in particular, how gay pornography is related to national identity (Leap, 2011; McKee, 1999; Sikes, 2010; Westcott, 2004). Third, and more directly related to Canada, gay pornography has not existed independent of Canadian history and national development, but has reflected and interacted with the attitudes of the time — a point which is further explored in chapter 5. In moving the discussion forward, the debates surrounding pornography must be examined as they have influenced the laws which regulate the production and distribution of pornography. The debates and laws regarding pornography are examined in the following two sections, respectively.

<sup>14</sup> See <https://www.law.cornell.edu/uscode/text/18/2257> for the content of 18 US Code § 2257.

<sup>15</sup> Under 18 US Code § 2257, foreign productions that are broadcast or distributed within the US, must comply with said US regulation (18 US Code § 2257, sec. a.2). Most foreign productions voluntarily comply.

<sup>16</sup> Bareback gay pornography can be defined as gay pornography with condom-less anal penetration.

## 2.2. Porn Wars: The Current Debates Surrounding Pornography

In general, studies and debates on pornography tend to focus on one thing: pornography's effects on the viewer. Often this leads to an oversimplified and reductionist approach to the porn debate — a person is either pro-pornography or anti-pornography. There does not seem to be much middle ground.

On the anti-pornography side of the argument are moral and religious conservatives who argue that pornography promotes and encourages sex (*e.g.*, extramarital, exhibitionist, voyeuristic, sadomasochistic, etc.) that undermines society's morals and values, especially that of "family values" (*i.e.*, pornography destroys the nuclear family unit because it may lead towards divorce) (McNair, 2014, p. 161). The moral and religious conservatives are joined by anti-porn feminists who argue that pornography plays a role in reinforcing patriarchal norms. Activist Andrea Dworkin says pornography is misogynistic and encourages the viewer (*i.e.*, men) to commit sexual aggressions and crimes against women (1981). Likewise, lawyer, teacher, and activist Catharine MacKinnon writes that pornography is the production of male sexual and gender dominance, that it is an issue of sex discrimination, and that it gives men what they want and what they want is: "women bound, women battered, women tortured, women humiliated, women degraded and defiled, women killed" (1989, p. 327). Anti-porn feminists not only argue that images found in pornography encourage the subordination of women through sexually degrading acts, but that the production of pornography also plays a contributing role in subordinating women; for example, women are coerced — financially and physically — into making pornography (Dines, 2010). Although these arguments tend to focus on the moral issues surrounding pornography, some in the scientific community have conducted research on pornography through a harms-based framework. These scientists have argued that pornography is addictive (Hearing on the Brain Science of Pornography Addiction, 2004; Reid & Gray, 2006), that it influences the viewer to have unrealistic expectations about sex and about one's body image (Tylka, 2014, Cranney, 2015), and that higher rates of porn consumption are linked to higher rates of infidelity (Lambert, Negash, Stillman, Olmstead, & Fincham, 2012).

On the other hand, pro-pornography advocates argue that most of the anti-pornography arguments are based on personal anecdotes and interpretations of the material's content rather than on empirical evidence. According to Dr. Milton Diamond's research, an increase in pornography's availability in a country<sup>17</sup> is correlated to — but not necessarily the cause of — a stagnation or decrease in sex crime rates (2009). Psychologists Catherine Salmon and Amy Diamond provide an evolutionary basis for why men consume porn that — from an anti-porn feminist point-of-view — has features of female submission and oppression; that pornography is part of men's short-term mating strategy (2012, p. 195).<sup>18</sup> Salmon and Diamond also examine mainstream pornography for acts of sexual aggression — ultimately determining that the films examined do not “reflect an anti-female agenda” (2012).<sup>19</sup> Furthermore, clinical psychologist David Ley, as well as many in the scientific community, contests the concept of ‘pornography addiction’, arguing that ‘pornography addiction’ should be seen as a compulsion instead (2012).<sup>20</sup> And, according to communication professors Jay Clarkson and Shana Kopaczewski, defining pornography as an addiction only “maintain[s] traditional moralist fears about the effects of pornography while circumventing more complicated analyses of the role of culture, the importance of free speech, or the limitations of media effects research” (2013).<sup>21</sup> Moreover, psychologists Jason Winters, Kalina Christoff, and Boris Gorzalka argue that a person's “addiction” to pornography seems to be related to higher sex drives; however, the person feels social stigma for consuming more pornography than what they believe the average person

<sup>17</sup> Diamond looked at countries that have made pornography available to its citizens, such as the United States, Canada, Denmark, Sweden, Germany, and Japan.

<sup>18</sup> Short-term mating strategy is a strategy “in which impersonal sex with a progression of high-mate-value women is the norm rather than the rare exception” (2012, p. 195). That is, new technology has allowed for men to engage in a fantasy that provides a continuous supply of attractive women ready to engage in sex. For more on the evolutionary reasons for pornography consumption, see Salmon and Diamond's article, “Evolutionary Perspectives on the Content Analysis of Heterosexual and Homosexual Pornography” (2012).

<sup>19</sup> Salmon and Diamond's article lays out the methodology, criteria for what they consider to be sexually aggressive acts, and the types of pornographic films examined in detail. See article for more information.

<sup>20</sup> Ley challenges the popular mainstream narrative of ‘pornography addiction’ in chapter 1 of his book *The Myth of Sex Addiction* by providing the agreed upon clinical criteria for addiction and how pornography does not fit said criteria (2012).

<sup>21</sup> For more on the construction of ‘porn addiction’, see Voros' article, “The Invention of Addiction to Pornography” (2009).

consumes (2010).<sup>22</sup> Additionally, some research has shown “positive” benefits to porn consumption: pornography is a masturbatory aid (thus, making it a form of safe sex) (Ellis & Whitehead, 2004, p. 198), it expands already established sexual scripts (Weinberg, Williams, Kleiner, Irizarry, 2010; Sun, Bridges, Johnason, Ezzell, 2014), it normalizes one’s sexual identity (Albury, 2014; Hald & Malamuth, 2008; Ellis & Whitehead, 2004), and it has been shown to increase sexual knowledge, sexual self-perception, sexual satisfaction (both for the individual and for the partner), and overall wellbeing (*i.e.*, health) (Hare, Gahagan, Jackson, & Steenbeek, 2014; Hald, Seaman, & Linz, 2014; Hald & Malamuth, 2008).<sup>23</sup> The argument for pornography has not only been taken up by the scientific community, but also by ‘pro-porn feminists’ such as Camille Paglia (1991), who argues for pornography as a source of female empowerment, and Sara Diamond (1985), who argues against censorship of pornography.<sup>24</sup>

However, these arguments for and against pornography are not unique to heterosexual pornography; in fact, both sides of the argument have been extended to homosexual pornography. Perhaps the most vocal opponent to gay pornography is Christopher Kendall, who applies both Catharine MacKinnon’s and Andrea Dworkin’s anti-porn feminist arguments directly to gay pornography. Kendall asserts that gay male pornography reinforces sexual inequality, sexual aggression, hegemonic gender roles and hierarchies (*i.e.*, patriarchy and masculinity), hegemonic desires and images, and homophobia (Kendall 1993; 2004a; 2004b). Kendall further argues that pornography is not a moral issue but one of systemic inequalities (2004a, p. 166). While Kendall appears to be the most vocal opponent to gay pornography, others seem to only critique the content it perpetuates — namely, hegemonic masculinity (Fejes, 2002; Poole, 2014), stereotypical race and gender roles (Fung, 1991) and unsafe sexual practices (Mowlabocus, Harbottle, & Witzel, 2013) — without advocating for its censorship. Those

<sup>22</sup> This is not to say that Winters, Christoff, and Gorzalka do not recommend people seek treatment if their porn consumption interferes with other aspects of their lives, but that other factors should be taken into consideration before labeling a problem an addiction.

<sup>23</sup> It should be taken into account that most of these “positive” benefits for consuming pornography have often been determined in self-reports. Of course, there may be “negative” effects to viewing pornography for some individuals. These effects are highly subjective to the individual.

<sup>24</sup> See Brian McNair’s article, “Rethinking the Effects Paradigm in Porn Studies”, for a more detailed literature review on the debates of pornography.

who advocate for gay pornography may, on the one hand, critique its content, while on the other hand, recognize its role and purpose in gay men's lives. In addition to many of the arguments in favor of (heterosexual) pornography, advocates say gay pornography has additional benefits — that gay pornography serves as a source of sex education for young gay men in a heterosexually-focused sex education system, it normalizes one's sexual orientation, it acts as a release for repressed sexual desire, and it serves as a form of liberation for gay men (Morrison, 2004; Ellis & Whitehead, 2008; Thomas, 2010; Bishop, 2015; Nielson & Kiss, 2015).<sup>25</sup>

These ongoing debates about pornography appear to have no agreed-upon consensus in sight because much of the arguments — like the definition of pornography itself — are subjective. What one person considers harmful may not be so for someone else. Although scientific evidence does exist to varying degrees on both sides of the argument, further research is needed in order to better understand the effects of pornography — whether those effects are perceived as “positive” or “negative”. The purpose of this section is not to argue in favor of one side of the argument over the other, but to lay the foundation for how pornography has been debated, because these arguments have informed politicians on how to legally regulate pornography. While most of these arguments have been discussed from an American perspective, these same arguments have extended to Canada as well. The next section will provide a brief overview of how the laws on pornography have evolved in Canada.

### **2.3. How Does the Canadian Government Regulate Pornography?**

“Other than the criminal sanctions, there is little else in [Canadian] federal law that purports to control sexually explicit or violent material” (Casavant & Robertson, 2007, p. 6). The term ‘pornography’ only appears in one section of Canadian criminal law: section 163.1 of the *Criminal Code*. This particular criminal code, enacted in 1993,

<sup>25</sup> For a detailed review of the literature on gay male pornography, see CJ Bishop's literature review, “‘Cocked, Locked and Ready to Fuck?': A Synthesis and Review of the Gay Male Pornography Literature”.

sets out to define “child pornography”.<sup>26</sup> However, pornography — as it is defined in this capstone between legal consenting adults — is regulated through the obscenity law of the *Criminal Code*’s section 163 (1985). Section 163 defines ‘obscenity’ as:

For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene. (1985, sec. 163(8), p. 184)

That is, “crime, horror, cruelty and violence by themselves are not obscene; it is only when they are portrayed in conjunction with sex that obscenity exists for legal purposes” (Casavant & Robertson, 2007, p. 5). The definition of ‘obscenity’ is purposely vague because of the flexibility it allows for the interpretation of materials as public opinion of what is obscene shifts over time. If the public tolerates the material, then it is not obscene, but if the public does not, then it is deemed obscene (Casavant & Robertson, 2007).<sup>27</sup>

Although *Criminal Code* section 163 does not define ‘pornography’, the Supreme Court of Canada’s decision in *R. v. Butler* “made Canada the first country in the world to recognize in its law a link between hard-core pornography and violence against women” (Robertson, 1992, sec. “Conclusion”, para. 3). *R. v. Butler* is an important court case because it defines what forms of pornography are not covered under free speech acts as they are determined by the *Canadian Charter of Rights and Freedoms*. The ruling of *R. v. Butler* was later used in the Supreme Court ruling of *Little Sisters Book and Art Emporium v. Canada*. Originally, in 1994, Little Sisters Book and Art Emporium — an adult novelty store that specializes in LGBT material — challenged the Canadian *Customs Tariff* because of its role in the seizure of imported LGBT materials deemed obscene. Little Sisters argued the materials they were importing were being targeted specifically for their LGBT content, but were barred from the country under section 163

<sup>26</sup> See *Criminal Code*, R.S.C., 1985, c. C-84, sec. 163.1, p. 184 for the legal definition of “child pornography”.

<sup>27</sup> This tolerance, or intolerance, of materials must pass the “community standard of tolerance” test. The community standard of tolerance test is described in Justice Sopinka’s decision in *R. v. Butler*. See the court decision document prepared by Robertson (1992, sec. “Reasons of Mr. Justice Sopinka”, para. 3) for more information.

of the *Criminal Code* (i.e., the obscenity law). After Little Sisters lost their court case in the initial 1996 ruling and later in the 1998 appeals ruling, Little Sisters appealed to the Supreme Court; the court hearing was in 2000. The Supreme Court ultimately ruled:

The interpretation given to s. 163(8) of the *Criminal Code* in *Butler* does not discriminate against the gay and lesbian community. The national community standard of tolerance relates to harm, not taste, and is restricted to conduct which society formally recognizes as incompatible with its proper functioning. While it is true that under s. 163(8) the “community standard” is identified by a jury or a judge sitting alone, a concern for minority expression is one of the principal factors that led to the adoption of the national community test in *Butler* in the first place. The Canadian community specifically recognized in the *Charter* that equality (and with it, the protection of sexual minorities) is one of the fundamental values of Canadian society. The standard of tolerance of this same Canadian community for obscenity cannot reasonably be interpreted as seeking to suppress sexual expression in the gay and lesbian community in a discriminatory way. *Butler* validates a broad range of sexually explicit expression as non-harmful. (*Little Sisters Book and Art Emporium v. Canada*, 2000, p. 1122 & 1123)

In other words, no matter the type of pornography — whether heterosexual or homosexual — the standard of tolerance is consistently the same.

Aside from these criminal codes and court rulings, no other Canadian laws are in place that regulate the production or accessibility of pornography. However, the fact that Maleflicxxx is being broadcast on Canadian television means it must follow the rules and regulations of the CRTC as determined by the *Broadcasting Act*. The following chapter explores the role of the CRTC and CanCon regulations before ultimately — in chapter 5 — examining how gay pornography constitutes a part of Canadian culture.

## Chapter 3.

### The CRTC

Although other acts set a precedent for the federal regulation of broadcasting, the *Broadcasting Act* directly set forth policy objectives for the CRTC (Beaty & Sullivan, 2006).<sup>28</sup> According to Beaty and Sullivan, the drafting of the *Broadcasting Act* “was framed around distinctively nationalistic ideals about how broadcasting should serve the cultural, social, and economic infrastructure of the country” (2006, p. 30). In fact, the role of the *Broadcasting Act* is to promote the development of Canadian expression in three ways: by providing broadcasting programs that reflect the attitudes and values of Canadians, by displaying Canadian talent, and by offering information from a Canadian point of view (Broadcasting Act, 1991, p. 3, sec. 3(1)(d)(ii)). In order to fulfill these broadcasting needs over the airwaves (e.g., radio, television, and other forms of telecommunication), the *Broadcasting Act* led to the establishment of the CRTC.<sup>29</sup>

#### 3.1. The CRTC and its Goals

The CRTC is a specialized agency within the Government of Canada that operates as an administrative tribunal. In other words, it is a government agency that “operate[s] at arm’s length from the federal government” (CRTC’s “Three-Year Plan”,

<sup>28</sup> For more information on the history of broadcasting laws and regulation in Canada, see Bart Beaty and Rebecca Sullivan’s book *Canadian Television Today* (2006).

<sup>29</sup> The CRTC — as an organizational body — was formally established by the *Canadian Radio-television and Telecommunications Commission Act* (1985), but follows the broadcasting policies of the *Broadcasting Act* (1991). The respective dates listed here are when each act was most recently updated and assented to. However, the CRTC (in its current form) was originally established in 1968, while the *Broadcasting Act* was established in 1936.

2015, p. 3) while still having to report to the Department of Canadian Heritage.<sup>30</sup> The CRTC can develop and enforce policy, as well as act in a quasi-judicial manner when addressing broadcast regulation issues. The goal of the CRTC is to enact the *Broadcasting Act's* policy objective of promoting Canadian expression — and by extension, identity — through broadcasting. Three strategic pillars (*i.e.*, objectives) support this goal: create, connect, and protect (CRTC's "Three-Year Plan", 2015, p. 2).<sup>31</sup>

Each pillar supports the CRTC's goal of management excellence. Under the "create" pillar, the CRTC provides the Canadian broadcasting system with diverse content that reflects the various attitudes, values, creativity, and ideas of Canadians. The CRTC does not create this content but encourages producers to do so. The role of the CRTC in this objective is to issue and renew broadcasting licenses to channels, to determine if a product is Canadian through a certification process, to monitor channels for regulatory compliance, and to approve mergers and business acquisitions of broadcasting channels. This pillar aims to provide an array of entertainment choices for Canadians — that is, to address the needs and desires of a country with a multicultural background. The second pillar, "connect", allows the CRTC to create broadcasting service options (*e.g.*, cable, satellite, or online broadcasting) for Canadians to access the content produced by Canadians; ultimately, the creation of various broadcasting options reinforces and strengthens the economic industry of Canada. While there is some overlap between the "connect" and "create" pillars (for example, monitoring broadcasting content to ensure a compliance with CanCon regulations), the primary goal of the "connect" policy is to ensure all Canadians — regardless of location or income level — have some access to Canadian content through affordable broadcasting service options. Finally, the pillar of "protect" entrusts the CRTC to protect Canadians within the communication system through regulatory and legislative means (CRTC's "Three-Year Plan", 2015, p. 2-3). That is, by providing a protected communications system, the CRTC hopes to encourage more participation by domestic producers. In theory, these

<sup>30</sup> According to the CRTC's mandate, the CRTC's authority to carry out policies "is entrusted to [the CRTC] by the Parliament of Canada, and administered through the Department of Canadian Heritage" (CRTC, "About Us"). The CRTC's main priority is to carry out the policies set forth by the *Broadcasting Act*.

<sup>31</sup> For a visual representation of these three pillars, see p. 2 of the CRTC's "Three Year Plan" (2015).

three pillars work in conjunction: the protection of the communication systems secures the creative participation of domestic producers who are guaranteed to have their products connected to Canadian viewers.

While the pillars of the CRTC establish admirable goals, the vague wording of the strategic framework leaves one with a few major questions, mostly in regards to the third pillar: From whom or what is the CRTC protecting its communications system? And, for what reason does the CRTC need to protect its domestic communications system? As national cultural preservationists — of which the CRTC is one — recognize broadcasting as an important avenue for the preservation and support of Canadian identity, the CRTC argues in favor of the third pillar’s protectionist objective.<sup>32</sup> According to Beaty and Sullivan, Canadian broadcasting “has been an effective tool in cultural politics to justify the state through nationalist rhetoric and a claim to sovereign cultural identity” (2006, p. 28). Moreover, broadcasting works as a site where culture and communications intersect, allowing Parliament — by way of the CRTC — to monitor these two fields in one intersecting location. The monitoring of culture and communication is conducted through the Canadian content regulations.

## **3.2. CanCon Regulations**

Like the CRTC that enforces them, CanCon regulations are defined and outlined — very broadly — in the *Broadcasting Act*. These regulations set forth: (a) a proportion of broadcasting time must be devoted to Canadian content, (b) what constitutes a Canadian product, (c) an adherence to the broadcasting policies as defined in section 3.1 in the *Broadcasting Act*, (d) the time dedicated to advertising, (e) an equal amount of broadcasting time for political parties and candidates, (f) the conditions for network programming, (g) the broadcasting of foreign programming, (h) how to resolve disputes between programming and distribution undertakings, (i) the manner in which broadcasting licensees must report program and financial affairs, (j) the examination or audits of the broadcasters’ records in relation to its license with the CRTC, and (k) other

<sup>32</sup> Of course, there are those, such as free-market proponents, who argue against a broadcast protectionist objective, but the bulk of these debates are addressed in section 3.3.

matters the CRTC deems necessary (Broadcasting Act, 1991, sec. 10(1)). For the purpose of this section, CanCon regulations directly refer to sections 10(1)(a), 10(1)(b), and 10(1)(c).<sup>33</sup> Although reductionist in nature, a simplified understanding of CanCon regulations is that it is a broadcast quota system to ensure a certain percentage of daily broadcasting be Canadian. The purpose of these regulations is to uphold the cultural policies as outlined in the *Broadcasting Act* (1991, sec. 3), by protecting content that enhances, reinforces, and maintains Canadian cultural sovereignty and national identity.

The proportion of broadcasting time dedicated to Canadian content varies depending on which category the broadcasting channel falls under. In other words, a broadcast television channel may be recognized by the CRTC as conventional, pay-per-view, pay, direct-to-home, or specialty. Furthermore, even under the specialty heading are subcategory services — Category A, B, and C service — each with different proportions of time set aside for Canadian content. Because the focus of this capstone is on Maleflicxxx, a Category B specialty service channel, the remainder of this section will discuss CanCon regulations as they apply to specialty service channels. These specialty services are broadcasting channel categories that have been approved by the CRTC for broadcast and must offer unique and genre-specific programming. For example, because MTV Canada does not repeat the broadcasting offerings of Much (formerly known as MuchMusic) (*i.e.*, because MTV Canada does not broadcast music videos, it is not in direct competition with Much, which does broadcast music videos), MTV Canada was able to receive a broadcasting license in Canada.<sup>34</sup> The differences between the three category services are: Category A services are channels protected from competition and must be carried by all cable companies, Category B services are neither protected from direct competition nor considered mandatory to be carried by all cable companies, and Category C services — similar to Category B — are not required to be carried by cable companies, but primarily focus on news and sports programming. These three categories were formally known as Categories 1, 2, and 3 (Broadcasting

<sup>33</sup> Although section 3.2 of this capstone only examines sections 10(1)(a – c) of the *Broadcasting Act*, the other regulations are listed to provide background information for chapters 4 and 5 of this capstone.

<sup>34</sup> Although Much began as a channel dedicated to showing music videos, it has followed the path of MTV and lessened the broadcasting of music videos in recent years.

Distribution Regulations, 2009, sec. 1). Despite the variations in protection and carriage, all three categories must still abide by CanCon regulations. So it can be said that if the CRTC is anything, it is consistent with its CanCon regulations across the board, which has been a point of contention for some.

### **3.3. Culture Versus Profitability: Does the CRTC Matter?**

On the surface, the purpose of CanCon regulations is to protect and promote a sovereign Canadian cultural identity. This is in line with the *Broadcasting Act's* policy of promoting Canadian expression. However, there is more to CanCon regulations than the protection of Canadian content. In fact, there is an underlying economic intent to the safeguarding of domestic industries from foreign free-market competition — this “foreign free-market competition”, however, should mostly be understood as competition from the United States. And therein lies the threat — on both an economic and cultural level — to Canada: the United States. After all, how can (and does) Canada protect and promote a sovereign cultural identity when its neighbor, which tends to produce more popular and profitable broadcasting programs, shares a similar culture only distinguishable by subtle markers? For culturalists,<sup>35</sup> the threat of the US is part of the reason for the continued existence of the CRTC, yet for economists, the threat of the US is part of the reason why Canada should dismantle the CRTC — or at the very least, do away with CanCon regulations — in order to foster a competitive market.

For culturalists, Canadian culture is delicate and in need of protection (Beaty & Sullivan, 2006, p. 33). Without any protection, it's possible or likely that American media would come to dominate Canadian broadcasting. This would further erode the distinction between American and Canadian cultural identity. The Canadian nationalist argument (*i.e.*, culturalists), as discussed in Beaty and Sullivan, is that without CanCon regulations, recent immigrants would consume the more popular broadcasts (*i.e.*, American media) and fail to distinguish between Canadian and American identity (2006,

<sup>35</sup> Beaty and Sullivan use the terms ‘culturalists’ and ‘economists’ to signify those who are for protectionist broadcasting policies in the name of Canadian cultural preservation, and those who are for free-market economics, respectively (2006).

p. 19). In other words, the fear is that recent immigrants will not assimilate properly into Canada as “true” Canadians without these protective measures in place. Moreover, culturalists argue that CanCon regulations provide a safe space for Canadian artistic talent to thrive, which enables Canadians to see their own Canadian representations in broadcasting services. That is, Canadian consumers would be able to see their own on television and be proud of their own countrypeople’s achievements.

Although culturalists by definition focus on cultural arguments in favor of CanCon regulations, they also utilize economic arguments. By having the CRTC and CanCon regulations in place, there is a guarantee — according to the argument — of a growth in domestic creative industries. That’s because CanCon regulations guarantee domestic producers an avenue through which their products can be broadcast. Without any protections, the future of domestic broadcasting industries would be uncertain. People would thus be less likely to invest and work in the industry because of an uncertain future. The CRTC and CanCon regulations make the media industry a safer investment and a more attractive career. In short, the argument asserts that tighter regulations — and for some cultural producers, funding from the government as well — means more domestic jobs for Canadian cultural producers and those working on such products, as well as a greater chance for those products to be bought and broadcast over the airwaves (Beaty & Sullivan, 2006, p. 35). Without regulations, the global free market could completely erode domestic creative industries if said industries can be cheaply relocated abroad — or, in some cases, if foreign media can be cheaply rebroadcast in Canada. Allowing a totally free market assumes no strong preference of outcomes, and neither a governmental nor societal interest in maintaining domestic creative industries. Although economists argue for free market competition, culturalists ultimately believe that “[c]ultural producers . . . serve the national good, even if the nation doesn’t always realize it” (Beaty & Sullivan, 2006, p. 39).

The culturalists’ arguments for the CRTC and CanCon regulations focus primarily on the need to protect Canadian culture. This viewpoint rests on the assumption that protecting Canadian culture is a worthwhile cause and supersedes potential costs and economic disadvantages. On the other side of culturalists, economists argue against CanCon regulations — but not necessarily against the CRTC — on economic grounds.

Economists assert that an open and free-market approach to Canadian broadcasting would still help domestic creative industries by forcing cultural producers to create products that are not only competitive in the global market, but also of higher quality. These Canadian products would not be low quality or hastily made in order to simply fulfill broadcasters' CanCon requirements. Additionally, economists argue that consumers should be free to choose which products they want, because the act of choosing a television show to watch is, in essence, an act of voting. That is, consumers vote based on their selection habits, and broadcasters measure the financial success of a show by how popular it ranks (Beaty & Sullivan, 2006). Seen through a social Darwinian perspective, fierce and unrestricted competition will allow the most appealing and popular products to thrive. However, when economists — namely the broadcasters on the economists side of the argument — argue for consumers' free choice, economists really mean that consumers are free to choose a product as long as it is being broadcast on a Canadian communications system (Beaty & Sullivan, 2006, p. 41).

The economists' argument in favor of consumers to freely choose their entertainment by way of voting also extends into economists' cultural arguments against CanCon regulations. This act of voting is a democratic process, a process on which Canada prides itself. From another angle, if freedom is ingrained in Canadian culture, then the right to freely choose what to watch or consume should be left up to the individual. The individual should be able to choose a popular American program if they so desire, rather than be forced by the CRTC — and by extension, the government — to consume Canadian products because of a Canadian quota system built upon the idea of establishing and reinforcing a Canadian cultural and national identity. After all, as their argument goes, identity can be built from more than just the consumption of media.

However, the problem with both of these arguments is that they are set in contrast to the United States (Beaty & Sullivan, 2006, p. 64). For example, culturalists want to protect domestic cultural producers and creative industries from the Americanization of broadcasting, while economists want free-market competition so that domestic cultural producers create innovative, high-quality products that can directly compete against the United States. It seems that these arguments only shift ever so slightly to one side or the other depending on the contemporaneous political power. In

fact, the CRTC has recently lightened its CanCon regulations for most channels — though, the regulations have remained relatively the same for specialty channels, which still requires 35% of all content on specialty channels to be Canadian (Bradshaw, 2015). Regardless of the arguments for or against the CRTC and CanCon regulations, the fact is that this institution and its regulations are still in place and therefore have an effect on domestic creative industries in terms of cultural production and job creation — a point from which I continue my argument that gay pornography is part of Canadian culture. Ultimately, these culturalist and economist arguments don't take into consideration how Canada can transform itself into “a global leader in a radically transformed mediascape” (Beaty & Sullivan, 2006, p. 64). In the case of Canadian broadcast pornography, Canada has the potential to be seen as a forerunner in global sexual politics and sexual expression by embracing pornography for what it is: a fact of life and part of Canadian culture. Unfortunately, based on the public response to the CRTC's warning to Channel Zero in 2014, it seems the public discussion around pornography and CanCon regulations has gone nowhere new besides retreading over old arguments.

## Chapter 4.

### **CRTC and Porn Debates in Action: A Real World Example**

The public debates surrounding pornography and the CRTC have — for the most part — proceeded independent of each other. It was not until the CRTC’s warning against Channel Zero’s three AOV channels for failing to comply with CanCon regulations that these two debates intersected in the public sphere. The overwhelming response by journalists and opinion editors was one of criticism and derision. This is not by any means meant to suggest that these opinions are reflections of all or most Canadians, but that their dominance in mainstream news articles and opinion pieces left little room for alternative voices. Very generally speaking, the discussions and responses to the CRTC’s warning broke down to one of being either for or against the CRTC’s regulation of pornography. But, it is more nuanced than this simple reduction. The debate can be further broken down into three arguments that overlap with each other in a number of ways; being for or against the CRTC, being for or against pornography, and being for or against government regulation of pornography. One could conceivably support the general aim of the CRTC, and take a supportive or negative stance on pornography, yet still be opposed to CRTC regulation of broadcast pornography. This might explain the overall perception of news articles and opinion pieces as being “negative”; that is, negative in the sense that many are against the application of CanCon regulations to broadcast pornography. If one is against any of these three issues (*i.e.*, the CRTC, pornography, or government regulation of pornography), then one appears to be against the overall issue of the CRTC investigating Channel Zero’s three AOV channels. That’s why there are very few articles that endorse the CRTC’s actions as one would have to be progressive in terms of advocating for both the CRTC and pornography in order to take such a position.

The problem with these debates is not the question of whether people should be for or against the CRTC or pornography, but the trivialization of the overall issue by many journalists and opinion editors. There are more serious implications to unpack from these debates than simply being for or against these issues. As will be discussed in this chapter, the conversation should move away from simplistic, emotional arguing and get at the underlying premises of each side: Does the CRTC serve a useful purpose? Is pornography hurtful to individuals or to a society? And, should taxpayers' money — in any scenario — be allowed to indirectly support the regulation and production of pornography? Although I attempted to stay neutral in previous chapters when discussing the debates surrounding pornography and the CRTC, from this point forward, I will argue my opinion for the continued existence of the CRTC, as well as gay pornography's role in society — both economically and culturally. This chapter takes the CRTC's warning against Channel Zero as an example of how the pornography and CRTC debates have intersected and unfolded in the real world, ultimately illustrating that the overall issue is not to be trivialized, but one to be taken seriously.

#### **4.1. Does the CRTC Serve a Useful Purpose?**

You've got to hand it to the CRTC: The broadcast regulator has managed to turn a dry discussion of Canadian content rules into something kind of sexy . . . The whole thing points out the absurdity of Canadian Content regulations, and their attempt to impose cultural nationalisms on the airwaves. It's true that, without CanCon, 'Debbie' in *Debbie Does Deep River* might never have been given her shot at stardom. But is this really something a government regulator should be fighting for? When did porn become a strategic industry? (The Globe and Mail, 2014, para 1 & 3)

The above quote humorously and succinctly expresses a prevailing sentiment regarding the CRTC: it is pursuing a trivial issue (*i.e.*, requiring broadcast pornography to abide by CanCon regulations). In fact, the issue is considered so trivial, that there is no shortage of pun-filled titles or quips at the CRTC's expense. For example, some of the titles include: "CRTC to *Probe* Porn Broadcaster Over Lack of Canadian Content" (Kennedy, 2014, emphasis added), "Forget Ford and Bieber. Wait Till People Find Out

Canada Wants Its Porn Locally Sourced” (Nowak, 2014),<sup>36</sup> or from the American newspaper *The Economist*, “Don’t Screw With Them” (2014). While some of the quips read: “Canada’s broadcast regulator wants to hear a few more *ehs* along with the *oohs* and *ahs*” (Kennedy, 2014), and “So, what’s next in line for the CRTC’s strict regulations? Bilingual moaning? *Mon dieu . . . oh my God. Mon dieu . . . oh my God*” (Vancity Buzz Staff, 2014). Additionally, *Vancity Buzz*’s article (2014) as well as blogger Daily Brew’s opinion piece for *Yahoo* (2014) both provide potential Canadian-specific sex scenes for future pornographic videos, while *The Economist* suggests Canadian filming locations such as Dildo, Saskatchewan (2014), to name a few examples. All of these jokes stem from the CRTC’s pursuit of a purportedly — to some — trivial matter: requiring 35% of the daily content of broadcast pornography to be Canadian, as well as requiring closed-captioning for 90% of the pornographic films broadcast. Moreover, some writers feel that the CRTC should not have to regulate pornography because the Internet not only allows for porn to be much more accessible, but also makes pornography borderless (The Globe and Mail, 2014; Robinson, 2014; Vancity Buzz Staff, 2014). In line with the idea that pornography is “borderless”, is the suggestion by Robinson (2014), Brew (2014), and Taylor (2014) that there are no differences between Canadian pornography and other national pornographies.

In fact, Jonathan Kay of *The National Post*, wrote an opinion piece regarding the Americanization and the genericization<sup>37</sup> of homegrown Canadian gay pornography. At face value, the article laments the lack of distinctively Canadian gay pornography on Maleflixxx. According to Kay, Maleflixxx makes no attempt to market to a Canadian audience who are in search of gay Canadian pornography (2014). In response to this, Kay writes:

The irony is that there is, in fact, no shortage of worthwhile Maleflixxx-worthy Canadian-themed film scripts out there. But they languish in development because of the industry’s reluctance to tackle distinctively Canadian issues. Or they are de-Canadianized by “script doctors” brought in from outside our borders. (2014, para. 6).

<sup>36</sup> This is of course referencing the oft-lampooned Canadian public figures, Rob Ford and Justin Bieber.

<sup>37</sup> In other words, to make something generic.

Kay continues his opinion piece by providing a detailed example of when a gay pornographic script had its “Canadian-ness” changed to be more generic for a global market. What’s interesting about this article is that it gives no indication that it is satire. However, according to Jonathan Kay, it is in fact a satirical piece (personal communication, 2015). When asked about his sources on Canadian gay pornographic scripts being de-Canadianized, Mr. Kay simply responded, “That article was a piece of satire. I made the whole thing up” (personal communication, 2015). If that’s so, then what Kay is really trying to say about gay pornography is that it’s not identifiable by its national origin — that no one is actively writing overtly Canadian gay pornographic scripts, only to have them de-Canadianized for a global market. In other words, gay porn does not contain much cultural context, and is already indistinguishable from its American and other Western counterparts. So, the general argument exemplified by Kay, Robinson, Brew, and Taylor asserts that despite its national origins, all pornography essentially shows the same thing (*i.e.*, people engaging in sexual intercourse) in order to achieve the same goal (*i.e.*, providing sexual arousal for consumers). Therefore, requiring broadcast pornography in Canada to include a certain percentage of Canadian content or to contain closed-captioning is considered ridiculous.

Overall, the negative sentiment expressed in the aforementioned articles is not against pornography per se, but against the CRTC in general. The consensus from these writers is that the regulation of pornography is not a worthwhile pursuit for the CRTC because pornography is thought to contribute nothing positive to Canadian culture or identity. The beaver and Mountie jokes found in a few of the articles suggest a lack of understanding concerning what constitutes Canadian content by CRTC standards. Of course, the content of a film could include Canadian cultural symbols (*e.g.*, landmarks, maple leaves, beavers, etc.), but the primary focus of the CRTC’s CanCon criteria is one of economic importance. In general, it seems the set of CanCon criteria follows the money, so to speak. The listed criteria focus on the production team (*e.g.*, identifying which production team member is Canadian) to verify that the final product has contributed to Canadian culture<sup>38</sup> — but in this sense, Canadian culture can (and

<sup>38</sup> The breakdown of the CanCon criteria, as well as why the listed criteria focus on the production team rather than the actual content, is detailed in chapter 5.

should) be read as the Canadian economy. Even Kate Taylor of *The Globe and Mail*, who argues against the CRTC's regulation of porn because it is nothing more than a "generic product", admits that "If Canadian content regulations are merely in place to nurture a financially healthy industry . . . then you could argue that a porn shoot hires lighting technicians and camera operators just like any other TV production and, hey, jobs are jobs" (2014, para. 4 & 5). While the argument is made in chapter 5 that CanCon regulations are not in place solely for economic reasons (though it is a major reason), the fact is domestic porn productions *do* contribute to Canada's economy because of the jobs they create. And disagreeing with a legal and consensual job on moral grounds is not a sufficient reason to exempt pornography from the CRTC's CanCon regulations.

For the sake of consistency and avoiding the debates of what should and shouldn't be regulated, CanCon regulations should be applied to all channels within a category.<sup>39</sup> That means, if the CRTC requires all specialty Category B channels to adhere to a 35% daily broadcast of Canadian content, then this should be required of all channels in the category. Consistency should even be required in the (purportedly) 'absurd' case of requiring closed-captioning on pornography. The assumption made by the writers on this issue is that no one actually cares what's being said in pornographic films. While this might be true for some or most people, it is not true for all people. Omitting closed-captioning may marginalize those with hearing impairment or language barriers. Furthermore, having closed-captioning on pornography may be an interesting way for people to learn new foreign words. After all, where else would a person learn sexual terms in another language. For example, gay Canadian men may learn new (Quebecois) French terms when watching *Men of Montreal* (IAAV, 2002; Men of

<sup>39</sup> Of course, this leads into a 'slippery-slope argument' of sorts. However, what distinguishes this situation from other slippery-slope arguments such as those against same-sex marriage encountered in the United States is that of logical progression. It is illogical to assume that the legalization of same-sex marriage will lead people to marry animals because animals are unable to legally consent. But, it is logical to assume that exempting of pornography from CanCon regulations could lead to other cases of broadcast channels being exempted on the grounds of not being able to contribute to Canadian culture and identity. Moreover, considering the subjective definition of pornography, other forms of programming could also be exempted.

Montreal, 2013).<sup>40</sup> Of course, this is a bit tongue-in-cheek, but the core argument is present: the CRTC should stay consistent in applying CanCon regulations to its broadcast channels regardless of content nature.

**Top 3 Searches - 2013 vs. 2012**

Country	Year	#1	#2	#3
United States	2012	teen	amateur	milf
	2013	teen	creampie	milf
United Kingdom	2012	british	milf	indian
	2013	british	lisa ann	lesbian
Germany	2012	german	deutsch	teen
	2013	german	deutsch	teen
France	2012	french	beurette	francaise
	2013	french	francaise	beurette
Italy	2012	italian	sara tommasi	amatoriale
	2013	italian	sara tommasi	amatoriale
Spain	2012	spanish	amateur	mature
	2013	spanish	casting	amateur
Mexico	2012	mexicanas	lisa ann	teen
	2013	mexicana	teen	lisa ann
Brazil	2012	brazilian	anal	teen
	2013	brazilian	novinha	anal
Japan	2012	japanese	japanese wife	hentai
	2013	japanese	japanese wife	japanese milf
World	2012	teen	milf	anal
	2013	teen	milf	compilation

**Figure 4.1. Pornhub.com’s Top 3 Search Terms in Different Countries for 2012 and 2013**

*Note.* Image is used with permission and is © Pornhub. (Pornhub Insights, 2013).

And finally, there is the need to address the idea that porn is “borderless”, with an indistinguishable national origin. If Montreal-based Pornhub<sup>41</sup> statistics are any

<sup>40</sup> A distinction should be made between the International Amateur Adult Video (IAAV) production of *Men of Montreal*, which consists of a single DVD release as part of IAAV’s *Men of* series, and the Men of Montreal’s production of *Men of Montreal*, which is an ongoing series that began in 2013. As both studios’ products are broadcast on Maleflix, the studio name and production year will be used in conjunction with the title to distinguish the single film and the series.

indication, consumers do in fact want pornography that reflects their national identity (Pornhub Insights, 2013).<sup>42</sup> For every country listed in figure 4.1, besides the United States, the language and/or demonym of the country was a top search term two years in a row. Regardless of whether consumers are searching for porn specifically based on ethnicity or nationality, the point is that consumers are actively seeking out porn that reflects their linguistic or cultural identity. What's interesting is that the inclusion of Canada and Australia in Pornhub Insights' "2014 Year in Review" reveals that, like the US, no searches were based on nationality (2015).<sup>43</sup> Perhaps this has to do with the multicultural make-up of Canada, Australia, and the US (with each ethnic group searching for their own identity in pornography), or Anglophones wanting to consume the most popular porn (*i.e.*, American) regardless of the material's ethnic, national, or cultural origin. However, another way to interpret this information — specifically in regards to Canada — is that Anglophone Canadians may be sufficiently satisfied with American pornography because it is not glaringly non-Canadian, especially when it comes to language. Consistent with this interpretation, Quebecers search for "Quebec" more often than "French" (Pornhub Insights, 2014). Because Quebec French is noticeably dissimilar to European French, linguistically, and there are many cultural differences between the two regions, Quebecers overwhelmingly search for pornography that shows more of their representation. This could also be the case for the United Kingdom as their top search was for "British" porn, even though they speak the same language as the US and Canada (Pornhub Insights, 2013). Considering the availability of IAAV's video series such as *Men of Montreal (2002)*, *Men of Toronto (2002)*, and *Men of Vancouver (2003)*, there is clearly a market and desire (to some degree) to see homegrown porn productions — productions which should be protected and broadcast in

<sup>41</sup> Pornhub is a pornographic user-uploaded tube site based in Montreal, Canada. In addition to operating the tube site, the company also operates a blog which records and reports worldwide statistics on the web traffic to their tube site.

<sup>42</sup> Although Pornhub is a tube site and this capstone is looking at commercially produced broadcast pornography, the statistical information found on Pornhub Insights reflects consumers' pornography search trends that directly contradicts Kay, Robinson, Brew, and Taylor.

<sup>43</sup> See <https://www.pornhub.com/insights/wp-content/uploads/2014/12/pornhub-2014-top-5-searches-country.jpg> for a chart of the top five searches by country, including Canada and Australia (2015).

order to foster their growth as a competitive industry, as well as a desirable product. If CanCon regulations are about promoting a Canadian cultural identity, then it is indeed not silly or absurd for the CRTC to continue its regulations of adult video channels.

## 4.2. Is Pornography Harmful?

While most pieces written about the CRTC warning issued to Channel Zero focused on the supposed ridiculousness of the CRTC and ConCon regulations, relatively few sources blatantly address any concerns that pornography was being broadcast over the airwaves in the first place. However, there is the occasional suggestion by journalists and op-ed writers for Canadian porn titles and questioning of what exactly constitutes Canadian pornography. For most op-ed writers, the criticism towards pornography is done in a roundabout way. For example, Kate Taylor writes that pornography doesn't "have much redeeming social value" because — unlike sitcoms and dramas — it has no "meaning that contributes to a social conversation" (2014, para. 5). Taylor never explicitly states what those social values could be or whether this social conversation is one conducted around the "water cooler" or a public discussion of pornography. Either way, Taylor has relegated porn to a realm of taboo, one that does not allow social conversations — in the public discussion sense of the phrase — to be had, even though she acknowledges it may, on some level, be considered a cultural product that contributes to job creation. While this opinion seems progressive to some degree, it still retains the idea that pornography is a topic not worth discussing frankly. This position does not allow for an open and public critique of the material — whether socially determined to be "positive" or "negative" — like other forms of media (e.g., film, television, music). For example, considering the functions pornography plays in the lives of gay men (e.g., normalizing one's sexual identity and body image,<sup>44</sup> as well as providing visual information on sexual performativity), pornography does have some social value. But, one should ask: what body images and standards of beauty is pornography promoting? And, what sort of visual information about sexual performativity

<sup>44</sup> Masculine images in pornography may have contributed to the combatting of "negative" stereotypical impressions that gay men are all effeminate (Clarkson, 2006). However, the consistent portrayal of masculine images in and of itself is a practice worth critiquing.

is it providing? Regardless, taking into account the degree to which people consume porn,<sup>45</sup> as well as the “positive” social effects of pornography laid out in chapter 1, these discussions must be had, because pornography does contribute to social conversations. These conversations might not be ones Taylor and those like her would like to have, but they are conversations worth having nonetheless.

Similar to Kate Taylor, Taylor Berzins (2014) of *The Sputnik* critiques pornography in a roundabout manner. Towards the end of her article, Berzins raises the issue of porn addiction. Though she provides arguments for and against the case of porn addiction, there is a lack of equal treatment for both sides. If Berzins’ goal was to stay neutral, then she should have explicitly stated so. However, the fact that she dedicates more article space to the argument for pornography as an addiction, as well as ending on that note, it conveys the idea that porn addiction may be a real phenomenon after all. This is not to say that the over-consumption of pornography is not a problem for some, but that labeling “excessive” porn consumption (where the idea of excessiveness is inherently subjective) as an addiction only contributes to the social perception that a single source of media is the root cause for a given human behavior and not a factoring influence (Ley, 2012). Still, while Taylor and Berzin “beat around the bush” so to speak, blogger Lou Iacobelli blatantly revisits the anti-porn argument in full force. He argues that the CRTC’s regulation of Canadian content in pornography amounts to the Canadian government’s encouragement and promotion of pornography (2014, para. 7). He continues by highlighting how pornography ruins marriages and other sexual relationships, “removes the procreative reality from the normal and real sexual experience” (*i.e.*, masturbation is wrong), is akin to drug addiction, and alters human conceptions of “sacrifice, chastity, virtue, love, vocation and marriage” (2014, para. 6). Iacobelli argues all of this without providing any hard evidence. Of course porn consumption can ruin some marriages and other sexual relationships, especially if there are relationships in which the consumption of porn is considered wrong. But for others, it has been found to enhance sexual relationships and to contribute to one’s overall wellbeing (Hald *et al*, 2013; Hare *et al.*, 2014). Furthermore, Iacobelli’s statement about

<sup>45</sup> A study conducted at the University of Montreal could not find men in their 20s who had not consumed pornography. See the article “Are the effects of pornography negligible?” (University of Montreal, 2009) by the University of Montreal for more information.

the procreative nature of “normal and real sexual experience” (2014), not only harkens back to anti-masturbation campaigns in the early puritanical history of the US and Canada (Garlick, 2011), but also discards the relationships of sexual minorities (as well as heterosexual couples incapable of conceiving a child) for their inability to procreate. Researchers Christine Kaestle and Katherine Allen argue that there are sexual health benefits to masturbation (both individual and mutual), such as being a form of safe sex, building closer relationships with sexual partners, and aiding in the understanding and familiarity with one’s body (which helps in communicating one’s likes and dislikes to a partner) (2011).

In general, Iacobelli criticizes the Canadian government for supporting a product with which he disagrees. However, the government is not in a position of pleasing everyone, but of balancing freedoms and equality. In the case of pornography, the government attempts to ensure — through regulation — that consumers have access to legal pornography if they so desire. It is a matter of sexual politics, expression, and freedom. Moreover, the CRTC requiring adherence to CanCon regulations of its broadcast pornographic channels is consistent (*i.e.*, equal) to how the CRTC regulates all other Category B channels — thus, no preferential treatment or exemptions are given.

### **4.3. Should Taxpayers’ Money Be Allowed to Indirectly Regulate Pornography?**

Like Iacobelli’s blog post, some op-ed articles were written to appeal to Canadian morals. While Iacobelli condemns pornography and its consumptions outright, others imply that everyday Canadians are indirectly and unwillingly contributing to pornography — mostly through taxes which fund the CRTC. For example, Ian Robinson of the *Calgary Sun*, a newspaper tabloid for working class people, writes “This is what our tax dollars go to, people.” (2014), while a writer for Toronto Sports Media says “As for the government wasting their time on the porn thing . . . Our tax dollars hard at work” (2014). The line of reasoning here is as follows: Canadians pay taxes to the government, the government funds the CRTC, the CRTC regulates Canadian content in pornography, which promotes the domestic porn industry, so ultimately tax-paying Canadians have contributed to the regulation and production of pornography. And considering the social

taboo surrounding pornography, this line of reasoning is supposed to create a sense of unease among the Canadian public — they are funding the production of pornography! After all, if the goal of the CRTC is to promote and safeguard domestic industries from international competition, then the idea of taxpayers' money contributing to pornography extends is even more egregious.

However, the problem with Robinson's rhetoric is, again, one of consistency, as well as a misconception of what it means to regulate. By focusing on Canadians' taxes, the idea here is to suggest that if one has a problem with their money funding the CRTC, which in turn regulates domestic broadcast pornography (and the opinion pieces imply they should), then Canadians should voice their dissatisfaction with the Canadian government. However, the reality is taxpayers often don't get a say in what their taxes fund. Taxpayers are unable to pick and choose what they would like to fund based on their likes and dislikes. Similar to the argument made in section 4.2, this is partly about balancing freedoms and equality, as well as being consistent in this balance. Not all Canadians enjoy watching programs on Bravo, History, or Much, but the CRTC still regulates each channel to adhere to its policies for those who do enjoy watching those channels. Likewise, the same should be said of any adult, religious, or political channel, to name a few types of channels that may invite such divisive responses.

The problem for some with regulating adult channels through taxpayer funds is that it implies that not only does the Canadian government condone pornography consumption and production as acceptable behavior, but so does the taxpayer. In other words, the regulation of pornography is equivalent to condoning it on some level. This idea of regulation being equivalent to condoning seems to be the case for most sex-related issues: sex education, sex work, and same-sex marriage.<sup>46</sup> Specifically regarding pornography, it is not realistic for it to disappear or be completely banned because

<sup>46</sup> Recently, there have been debates over Ontario's new sexual education curriculum because some have interpreted the teaching of sexual consent to children as teaching children to engage in and agree to more sex (Ansari, 2015). Likewise, there is an ongoing debate about the legalization of sex work (legally defined as prostitution) in Canada (Warnica, 2015). But perhaps famously — in terms of social awareness — the idea that same-sex marriage would mean government and public support of such unions, whether or not someone disagreed with it personally.

people will find ways to either produce pornography or consume it no matter how much it is policed or suppressed. An example of such can be found in South Korea where pornography is illegal, yet is found throughout South Korea in love motels<sup>47</sup> and online with the help of Virtual Private Networks (commonly known as VPNs). Writing for Yahoo News, Hyung-Jin Kim writes about *nuri cops* (volunteer Internet police) who scour the Internet in search of pornographic websites to block. One *nuri cop* says, “It’s like shoveling snow in a blizzard” (Kim, 2012). While the two countries (Canada and South Korea) differ in their sexual progressiveness, the fact remains that legally banning pornography does not actually stop pornography. Therefore, one should not view regulation as blind support, but an adherence to the letter of the law, which ensures the production, distribution, and consumption of pornography are legal and safe. Quite simply, it is a matter of the CRTC being consistent in its regulation of pornography — like any other broadcast material — for those who do want to consume and produce it. Moreover, it is about the economic and cultural effects the regulation of broadcast pornography has on Canada.

This chapter has focused on why this issue of the CRTC requiring adherence to CanCon regulations of broadcast pornography channels is to be taken seriously. While moral arguments have surfaced in this situation, the issue is more than these moral arguments. Canadian pornography is an industry like any other that plays a role in the Canadian economy, and it needs to be recognized as such. But the constant sweeping under the rug of pornography only makes the study of it (*e.g.*, its financial and cultural impact on a society) that much harder. In the next chapter, pornography will be argued as a cultural product that is in line with the CRTC and the *Broadcasting Act’s* policy of contributing to Canadian cultural and national identity. Because the definition of Canadian cultural products is intrinsically linked to the flow of money (*i.e.*, economy), the following chapter will, to some degree, approach the argument as such; this will be done through the examination of gay pornography.

<sup>47</sup> Love motels are hotels that allow for short-term stays so that customers can engage in sexual activities.

## Chapter 5.

### Gay Pornography is a Part of Canadian Culture

The growth and development of gay pornography has not existed independent of Canadian history and national development. In fact, it has reflected and interacted with the attitudes of the time. According to Joe Thomas, who writes about the history of gay male pornography in “Gay Male Pornography Since Stonewall”:

As the struggle for gay liberation expanded and gained a higher profile during the 1970s, so did the gay segment of the pornography industry. Similarly, the belated adoption of condom usage in gay films reflected the advent of AIDS in the 1980s. Gay porn also expressed changing gay cultural ideals of masculinity and beauty. Ultimately, because the sexual activity depicted in gay porn represented the basic difference that created the homosexual identity, gay porn’s popularity can be seen as an affirmation of gay life and culture. (2007, p. 67)

Although Thomas is referencing events in the US (after all, the title of his chapter uses the major historical event the Stonewall Riots as the starting point), arguably similar developments were happening in Canada. Moreover, the examples Thomas uses, such as the adoption of condom use in pornography or how gay pornography changes male beauty standards, are more transnational than specifically about the US. Thomas’s observation illustrates that gay pornography can reflect historical trends and events even though he’s not specifically talking about Canada. There are, in fact, specific historical events in Canada that were reflected in contemporaneous perceptions of gay pornography.

As discussed in section 2.3, Canada became the first country in the world to recognize a link between pornography and violence against women through the *R. v. Butler* Supreme Court case. The public perception of pornography leading up to this case was reflected in the anti-porn feminist movement. This case helped to define which

forms of pornography were acceptable and which were not. When Vancouver-based adult bookstore Little Sisters attempted to import gay pornography from the US, customs officials cited the *Butler* case in order to block the importing of gay pornography. However, considering the marginalization of the gay community in the early 1990s, Little Sisters felt the seizure and blocking of gay pornography to be discriminatory against gay content. In 1995, Little Sisters first took their case to the British Columbian courts, eventually continuing the appeals process to the Supreme Court of Canada. It just so happened that a year later, the *Egan v. Canada* case in 1995 determined that sexual orientation was protected under the equality rights law established in section 15 of the *Canadian Charter of Rights and Freedoms* (*Egan v. Canada*, 1995). However, the court decision in *Little Sisters Book and Art Emporium v. Canada* (2000) determined that the *Butler* case did not discriminate against the gay community. This was a blow to those (*i.e.*, the gay community) who felt that it was their sexual right to see their mediated representation — to see their represented bodies collide and interact in a way that was not as publicly permissible as for their heterosexual counterparts.

Although progress was slowly being made towards a public acceptance of the gay community in the 1990s (as seen in the court decision of *Egan v. Canada*), it wasn't until the 2000s that a veritable explosion of gay acceptance occurred within the public sphere. In November of 2004, Sureflix, AOV, Priape, and Channel Zero<sup>48</sup> collectively launched Maleflixxx as “the world’s first 24/7 gay hardcore television channel” — calling the launch of the channel a “uniquely Canadian idea” (Maleflixxx Television - Gay Adult Channel, sec. “About Us”). Gay pornography had gone from a place of being actively blocked from importation — again, a sign of discrimination to some — to being shown round-the-clock on Canadian television — a worldwide first. The launching of Maleflixxx happened to coincide with the legalization of same-sex marriage in Canada, which occurred less than a year later in the summer of 2005. Of course, this is not to say that one caused the other, but that the launching of Maleflixxx and the legalization of same-sex marriage both reflected the public trends and perceptions of homosexuality in Canada at that time. Therefore, if gay pornography doesn't exist in a vacuum outside of

<sup>48</sup> These four companies work through a partnership to supply, distribute, and host gay pornography on Maleflixxx.

Canadian history and development because of how it reflects and interacts with contemporaneous public attitudes, then it is not hard to recognize it as a cultural product with an influence on Canadian identity — both culturally and economically. Moreover, if the launching of Maleflixxx is considered a “uniquely Canadian idea”, then what will the removal of stigma from gay pornography, and all pornography in general, say about Canada and Canadian culture?

## **5.1. Defining Gay Pornography as a Canadian Cultural Product**

The goal of the CRTC is to promote and protect Canadian culture in broadcasting; the CRTC does this through CanCon regulations. But what exactly constitutes a product that reinforces a Canadian identity? One has to look no further than the Canadian Framework for Culture Statistics (CFCS) to find the answer. However, before moving forward in answering those questions and determining if gay pornography fits the CFCS’s definition of a cultural product, the purpose of the CFCS must be explained.

The CFCS is a joint effort by the Culture Statistics Program of Statistics Canada and the Department of Canadian Heritage to define cultural concepts so they may be measured for statistical purposes (Statistics Canada, 2011, p. 11). Because of the broad definition of what constitutes culture, the framework helps to distinguish different concepts of culture — those that can be statistically measured from those that cannot. In theory, everything produced by humans can be defined as culture. Since it is impossible to separate a person from their culture, what they create and produce is imbued, to varying degrees, with influence from their culture. However, the CFCS narrows the scope of culture to that which can be counted and measured. Moreover, the CFCS has rejected the definitions put forth by creative, artistic, and cultural industries on the ground that these definitions are either too narrow (*e.g.*, excluding creative outputs like architecture) or too broad (*e.g.*, including the everyday manufacturing of tools) in scope for what the CFCS wants to define as culture (2011, p.20). According to Statistics Canada, “The 2011 Canadian Framework for Culture Statistics provides a systematic and coherent foundation for data development, gathering, and analysis of the culture

sector across Canada, as well as a means to encourage international comparisons” (2011, p. 11). It is with that said that the CFCS defines culture as: “Creative artistic activity and the goods and services produced by it, and the preservation of heritage” (2011, p. 20).

However, this definition alone does not establish an item or a production as a cultural product. In fact, to be considered a cultural product, the product (*i.e.*, goods or services) must fit the definition above *and* satisfy one of six criteria.<sup>49</sup> Furthermore, it should be noted before applying the CFCS’s definition of a cultural product to gay pornography, that the CFCS attempts to be neutral and therefore “does not evaluate culture according to intellectual, moral, or artistic values” (2011, p. 23). In other words, goods and services are considered cultural products if they satisfy the requirements outlined by the CFCS. So, does gay pornography satisfy these requirements?

Considering that many of the terms used in the CFCS definition of culture are debatable, it is best to examine each one as it applies to gay pornography. Gay pornography is creative in the sense that it is a product that is created by (creative) decision-makers. These decision-makers decide on a variety of items such as the film location, lighting, set design, actors, etc. Likewise, gay pornography is artistic; the fact that something is created makes it art. As the CFCS says, in its attempts to stay neutral, there is no evaluation of the artistic value of the product. In other words, gay pornography is artistic as a type of activity (*i.e.*, art), but no judgement of whether it is considered good or bad art (*i.e.*, artistic value) is made of that activity. “Creative artistic activity” can therefore be interpreted to include the production of gay pornography, which constitutes both a good and a service. The CFCS defines goods as tangible or intangible “entities over which ownership rights can be established, which can be traded, and which can be stored” (2011, p. 24). Gay pornography fits the definition of a tangible good because someone has produced the film and retains ownership of what is created, is able to store the film either digitally or physically, and is able to distribute and broadcast the film (*i.e.*, trade the film for monetary value). The CFCS, citing Hill, defines services

<sup>49</sup> The CFCS outlines the six criteria for goods and services on page 23 of their document “Conceptual Framework for Culture Statistics 2011” (2011). However, this capstone only looks at the first two criteria, as the other criteria are not application to gay pornography.

as “relationships between producers and consumers, in that a service must be provided to another economic unit” (as cited in CFCS, 2011, p. 24). In this sense, services can be seen as the action of exchanging goods, whether tangible or intangible, for money. Producers supply gay pornography to consumers who, in return, purchase the product. Finally, there is the notion of preserving heritage. Considering that gay pornographic films are stored (either digitally or physically), they act as cultural snapshots in a sense. In gay porn, there are depictions of what’s considered contemporaneously fashionable and attractive. There’s information about gender roles and gender norms, which is not immediately evident at that time. However, if one looks at gay porn from the 1970s, for example, then one becomes more aware of the differences of the filmic depictions of past and present gay pornography — for example, the different sex acts, appearances of the actors, and style of dress, to name a few. One can glean a lot of information about sexual norms and gender roles from these momentary snapshots.

In addition to the CFCS definition of culture, gay pornography must also satisfy at least one of six criteria in order to be viewed as a cultural product. One of the criteria reads: “It has the potential of being protected by copyright legislation, or in other words, be ‘copyrightable’” (2011, p. 23). Gay pornography does have the potential to be copyrighted. In fact, all of the videos broadcast on Maleflicxxx are protected by copyright. Unlike patents or trademarks, copyrights legally protect the intellectual property of the product’s creator. Of course in the case of gay pornography, the creator can be the producer, director, or even the studio. Maleflicxxx itself even satisfies one of the criteria by supporting “the creation, production, dissemination or preservation of culture products” (2011, p.23). In other words, because Maleflicxxx disseminates (*i.e.*, broadcasts) and preserves (*i.e.*, stores) gay pornography, it satisfies one of the criteria for a cultural product.

Overall, it should be recognized that gay pornography does in fact constitute a cultural product as defined by the Canadian government under the CFCS, regardless of whether or not people see the cultural or social value in gay pornography. While gay pornography constitutes a cultural product, in order to be broadcast on television as a Canadian product, it must first be certified “Canadian”. This certification process is done through the CRTC Canadian Program Certification Application Process. By certifying a

gay pornographic film as being Canadian, one can view the actions of the CRTC in 2014 against Channel Zero as being consistent with upholding its policy goal of promoting Canadian culture and identity, regardless of the channels' content. However, as will be shown, the CRTC's goal is not merely culturally in nature, but also economic.

## 5.2. Creating Gay Canadian Pornographic Content

By protecting and promoting Canadian culture and identity, the mission of the CRTC ensures that Canadian producers and artists are fairly represented in the cultural production arena of broadcast television. In order to achieve its goal, the CRTC enforces CanCon regulations that require all broadcast licensees to show a certain percentage of Canadian content — a percentage that differs between channel categories (e.g., conventional, specialty, etc.). Licensees must provide the CRTC with a list of all registered Canadian programs broadcast over the previous month. The CRTC then monitors this list to ensure a compliance with CanCon regulations. However, in order for a broadcast program to be considered Canadian, the program must satisfy four criteria. This section of the capstone examines each criterion individually in order to discuss the cultural and economic implications it has for Canadian society.<sup>50</sup>

The first criterion is that “the producer is Canadian, controls and is the central decision-maker of the production from beginning to end and any person fulfilling a producer-related function is Canadian” (CRTC, “Guide to the CRTC”, sec. 2).<sup>51</sup> That this requirement concerns creative decision-makers implies a more cultural intent than an

<sup>50</sup> Because of the difficulty in determining the citizenship of producers, actors, directors, etc., the criteria are examined in broad terms and implications. However, the following website allows one to check if a program has been certified “Canadian”: <https://services.crtc.gc.ca/pub/CanrecList/Report04-Rapport04.aspx>. The website provides the program title, certification number, points achieved, logging category, duration of the program, time credit percent, and the certification date (CRTC, “List of Canadian Program Recognition Numbers”).

<sup>51</sup> The “Guide to the CRTC Canadian Program Certification Application Process” defines an individual as Canadian through the *Citizenship Act* (CRTC, “Guide to the CRTC”, sec. 9) — in other words, the individual must be a Canadian citizen. Moreover, the individual must be Canadian at all times during the production of the program from conception to completion.

economic one. This is not to say that an economic implication does not exist in this criterion, but that the cultural one far outweighs the economic implication. As for the cultural intent of this criterion, the implicit assumption is that if a Canadian makes all the creative decisions, then the end product will inevitably reflect Canadian culture to some extent. This makes the assumption that it's impossible to completely separate a person from his or her cultural upbringing. For example, an American can produce a broadcast program that appears Canadian in content based on stereotypical perceptions of Canada (including, for example, maple syrup, *ehs*, and beavers, to name a few), but it doesn't necessarily reflect nuanced information about Canadian daily life, the education or political system, and whatever else it is that one is intimately familiar with as a Canadian. In other words, these intimate familiarities of day-to-day cultural happenings are more recognizable to Canadians than non-Canadians. The first criterion also assumes, for example, that Canadian producers may be more inclined to reflect Canada's multiculturalism, bilingualism, or slangs (to name a few) not widely known outside of Canada. Regarding the economic implication, this criterion suggests that because the producer is Canadian, he or she may make economic decisions in the best interest of other Canadians. It also guarantees at least one high-level (and presumably well-paying) job is filled by a Canadian. This is especially true considering the second criterion.

The second criterion reads: "the production earns a minimum of 6 points (out of a possible 10) based on the key creative functions being performed by Canadians, with at least one of the director or screenwriter positions and at least one of the two lead performers being Canadian" (CRTC, "Guide to the CRTC", sec. 2). Although this criterion is conceptually an extension of the previous one, it has more of an economic element than the first criterion. Of course, this criterion is still specifying that the creative elements be performed and decided by Canadians (like the first criterion), but this one is more about reserving higher paying positions for Canadians. By requiring Canadians in these higher paid positions, it provides opportunities for Canadians to not only fulfill these roles (*i.e.*, the economic intent), but to be seen and heard by other Canadians (*i.e.*, the cultural intent). In other words, this criterion provides an avenue for Canadian workers to receive exposure in a number of capacities: performance, direction, and production of a broadcast program. Of course, like the first criterion, the cultural

implication is that a sense of “Canadian-ness” will emerge in the final product — after all, Canadians will be performing, directing, and producing the cultural product. This again is based on the belief that it’s impossible to separate a person from his or her culture. According to the CRTC, this criterion “ensures that Canadians from coast-to-coast have the opportunity to see, hear and share their experiences, stories and values with other Canadians through the medium of television” (“Guide to the CRTC”, sec. 2), which is ultimately the main cultural goal of the CRTC.

Unlike the first two criteria, the final two criteria appear to lack any obvious cultural implications. Criterion three requires “a minimum of 75% of the production’s services costs incurred to produce the production are paid to Canadians”, while criterion four says “at least 75% of the production’s post-production and laboratory costs are paid for services provided in Canada by Canadians or Canadian companies” (CRTC, “Guide to the CRTC”, sec. 2). These two criteria are purely economic as they are about making sure jobs are given to Canadians. There are no references or implications to the creative decision-making process of the production, which would arguably see a sense of “Canadian-ness” reveal itself in the final product. For example, Canadians who do the lighting or sound for a production don’t ultimately change the product from the consumer’s perspective — *i.e.*, the product will not appear more Canadian because of these activities. Therefore, these two criteria should be seen for what they are: economic incentives. After all, there’s value in having Canadians take part in the domestic economy.

What sets the Canadian criteria apart from those of other countries are these underlying economic motivations: these motivations encourage Canadians to participate in lucrative businesses like pornography production and distribution. Other countries, such as Australia, focus more on culture than they do on economics. For example, sexualized media researcher Alan McKee examines gay pornography within Australia’s content criteria in his article, “Australian Gay Porn Videos: the National Identity of Despised Cultural Objects”. McKee ultimately determines that the films only need to persuade the audience into thinking the product is Australian; the films do not

necessarily have to be produced by an Australian (1999).<sup>52</sup> McKee uses a few pornographic films directed by Kristen Bjorn, a British director who often creates films in distinct locales, but relies on portraying a particular country and its people through overt stereotypical images. In essence, Bjorn exoticizes the country. In addition to utilizing an Australian motif, Bjorn has also created a film that relies on overt Canadian stereotypes, *Call of the Wild* (1992). Although *Call of the Wild* uses Canadian actors, the film ultimately doesn't constitute a Canadian product because of the nationality of the director, Kristen Bjorn. The flow of money is not circulated primarily among Canadians. This is interesting considering that *Men of Montreal's* (2013) studio (Men of Montreal) is controlled by a Dutch subsidiary — in other words, Men of Montreal's parent company is not Canadian. However, because Canadians in Canada make most of the creative decisions (e.g., producers, actors, directors, etc.) in the *Men of Montreal* (2013) series, the end product fulfills the Canadian content criteria. Ultimately in the case of Canada, unlike Australia, whether or not a product appears Canadian doesn't really influence its ability to be classified as a Canadian cultural product with Canadian "content"; what matters more is *who* is creating the product. It seems, then, that Canada's certification criteria have more economic leanings than one might imagine. This is not to say that culture does not play a role in the certification process. In fact, it is better to view Canadian culture and economy to be deeply integrated — that it is Canadian culture to participate in the creation of cultural products for the economic benefit of Canadians. This is especially true in a global world where international travel and collaboration makes it easy to rely on labor and creative talent from other countries.

### **5.3. Gay Canadian Porn in a Global World**

The promotion of Canadian culture — and by extension, its economy — is at the center of building and maintaining a Canadian identity. Canadian culture creates both a sovereign identity and a cohesive community of like-minded individuals, while Canadian cultural expressions allow Canadians to see their representation through various media: film, television, music, etc. Not only do these cultural industries provide an avenue for

<sup>52</sup> See pages 182 and 183 in Alan McKee's article for the four criteria of Australian content.

Canadians to see, hear, and understand each other, but they also provide job opportunities for Canadians — which are guaranteed, to some degree, by various protectionist measures enacted by the Canadian government, of which CanCon regulations are one. According to the Department of Foreign Affairs, Trade and Development (DFATD), the “Canadian government uses a combination of financial incentives, Canadian content requirements, tax measures, rules on foreign investments and intellectual property tools to promote Canadian culture” (1999, sec. “Executive Summary”). In describing culture, the DFATD says:

Culture is also a critical tool in the task of nation building. Canadian culture represents the values that make us unique from other nations. The Canadian government, like governments in other countries, recognizes that cultural diversity, like biodiversity, must be preserved and nurtured. As the world becomes more economically integrated, countries need strong local cultures and cultural expression to maintain their sovereignty and sense of belonging. (DFATD, 1999, sec. “Promoting Canadian Culture”)

In other words, because of economic integration through globalization, countries must retain a sense of sovereign cultural and national identity — one way of achieving that goal is through the promotion of domestic cultural products.

In the case of gay pornography, other countries seem to rely on creating products that reinforce stereotypes and persuade an audience that the porn is from said country. This has been the case for many of Kristen Bjorn’s gay pornographic films in which the construction of national identities — be they Australian, Canadian, Brazilian, or Israeli — relies on a sense of otherness, or alterity, that’s not far removed from the North American palette (Westscott, 2004). Put another way, Kristen Bjorn’s productions exoticize various locales and its people for a North American audience, without being too different from what a North American audience would expect from a North American product. On one hand, Kristen Bjorn’s productions allow the country on display to see itself represented on film because Bjorn often uses actors from that particular country. In this way, Bjorn’s productions contribute to cultural and national identity formation. On the other hand, Bjorn’s productions do not often rely on domestic labor (*i.e.*, labor from the country being filmed) to actively participate in other creative aspects of the filmmaking process — besides having their bodies on screen. Thus, there may be a lack of

economic participation by domestic labor. The Canadian certification criteria at least guarantee a significant percentage of the jobs are held by Canadians.

In contrast to Bjorn's productions, there are pornographic films produced in countries by citizens of those countries — for example, gay pornography in Mexico and the Czech Republic. Queer sexual cultures researcher Gustavo Subero writes that the Mexican gay pornography industry taps into both the national and international conception of Mexico in creating images that construct a national identity in Mexico (Subero, 2010b). The use of national and international conceptions of Mexico allows these Mexican productions to be marketable to both a domestic and global audience — *i.e.*, consumers will be able to relate to one or both of the visual conceptions of Mexico. In fostering a national identity, Mexican gay pornography is used in deconstructing a postcolonial identity to boost a sense of pride among the Mexican people (Subero, 2010a). Like Canada, Mexico has a domestic pornography industry that uses local talent and labor. But unlike Canada, the content of the films is distinct. Of course, this is difficult for Canada when its closest neighbor — the US — shares similar linguistic and cultural characteristics, while having more marketable, prolific, and widely consumed gay pornography. To challenge the dominance of American gay pornography, Canada should use its cultural protectionist and promotion policies to its advantage. That is, if the US is recognized as being sexually repressive in the public sphere — considering, for example, its abstinence-only sex education curriculum in some states and the fact that the production and consumption of pornography is stigmatized despite it serving as the main production location of many pornography studios — then Canada should foster the cultural identity of being a sexually progressive country. This can be done, on the one hand, by recognizing the production of gay pornography in Canada as a cultural product without stigmatization or concealment of the industry, and on the other hand, by promoting and fostering the domestic pornography industry. Not only does this reinforce a national and cultural identity for Canadians, but it also broadcasts that identity worldwide. Turning to the Czech Republic as an example, one can see how this can potentially play out.

After the fall of the Cold War and the rise of neoliberalism in the Czech Republic, a number of factors<sup>53</sup> contributed to the rise of the Czech gay porn industry. The gay porn industry of the Czech Republic now ranks second behind the US, despite having a significantly smaller population (Sikes, 2010, p. 373). What's more interesting is that the Czech gay porn industry produces and sells more videos than its heterosexual or lesbian counterparts (Sikes, 2010, p. 380). Theater history professor, Alan Sikes, offers three reasons for why Czech men decide to perform in gay porn: money (*i.e.*, it's easy for performers to make money quickly), a relaxed legal code regarding sex and pornography (especially compared to other Eastern European countries), and — most importantly — a capitalization on an image of sexual progressiveness (2010, p. 381-382). This last point is especially interesting considering no other former Eastern Bloc countries emerged from behind the Iron Curtain with an image of sexual progressiveness like the Czech Republic; this image was constructed. According to Sikes, this image lends “the country an erotic allure . . . granting Prague the status of a new Amsterdam”; he continues, “the eroticized vision of the Czech nation influences Western perceptions of the Czech people” (2010, p. 382).

Like the Czech Republic, the recognition of the gay porn industry in Canada, as well as the fostering of its productions as cultural products may help create (for some) or maintain (for others) the perception among gay men abroad that Canada is accepting and sexually progressive. Although Canada is not making gay porn with overt Canadian stereotypes, it is making its presence known in other ways: titles, nuanced cultural information, and — most actively — in the currently trending gonzo-style of pornography.<sup>54</sup> Often, the performers in gonzo porn inform the audience of their hometown or country of origin in the pre-sex interview. This little bit of information can be important in the construction of cultural identity: Canadians see themselves represented, while non-Canadians see Canadians represented on screen. Additionally, the

<sup>53</sup> Alan Sikes outlines the major reasons for the rise of the gay pornography industry in the Czech Republic in his article, “Politics and Pornography: Czech Performances in the International Arena” (2010), but acknowledges that the growth of the industry is much more complex.

<sup>54</sup> Gonzo porn attempts to break the fourth-wall by introducing performers with an interview before the inevitable sex scene. Gonzo porn has, for the most part, removed the plot, costume, setup, etc. of traditional porn to instead focus on introducing the performers. Gonzo porn often works under the guise of being amateur or reality-based.

recognizing and encouraging of the domestic gay porn industry may create a positive association with Canada, like Czech gay porn films have done for the Czech Republic. Ultimately, this suggestion of recognizing gay pornography as Canadian culture depends on how Canada wants to position itself in the global world. Canada has proven to be much more progressive than the US when it comes to issues of sexuality and gender — after all, Canada legalized same-sex marriage ten years prior to the US. And Canada can perpetuate this image by taking a progressive attitude towards the production and distribution of pornography.

## Chapter 6.

### Conclusion

It is undeniable that the pornography industry is both massive and complex. Combined with the general social stigma against consuming and discussing pornography, it is not surprising that accurate information about the industry is scarce. A search for annual worldwide revenue figures of the porn industry brings up conflicting reports, ranging from \$6 billion to \$97 billion USD (Maxwell, 2010). Moreover, it is unclear what proportion of either of those figures is Canadian. For a product that is widely consumed and produced, information regarding the industry is difficult to obtain. The current state of knowledge of the Canadian pornography industry is best summarized by Dr. Rebecca Sullivan in the following quote:

We know even less about the Canadian pornography industry than we know about its consumers, other than that Montreal has a reputation as Canada's "porn capital," and that many Canadian producers specialize in so-called amateur and docuporn. The industry and its workers remain marginalized and misunderstood. (Sullivan, 2014, para. 6)

While it's clear that an industry exists in Canada (as evident by the CRTC's warning to Channel Zero for failing to broadcast a certain percentage of Canadian content), there's so much stigma and shame surrounding pornography that most people choose to ignore it. And therein lies the crux of the problem: Canadians must first recognize pornography as being part of Canadian culture (in terms of visually promoting and reinforcing an identity, as well as providing jobs to Canadians) before any discussions of pornography can be had. This is no longer an issue of being for or against pornography, as pornography and its industry already exist in Canada. The pressing issue is about regulating pornography so that it is legal, safe, and consensual for the producers, distributors, and consumers who want to produce, distribute, and consume

such products, respectively. Moreover, it is necessary to remove the shame and stigma associated with pornography, its production, and its workers, in order to recognize pornography like any other form of communication — one deserving to be critiqued and studied, not hidden and ignored.

Although this capstone focuses on gay pornography, the main argument is applicable to all forms of legal, safe, and consensual porn (whether the porn is heterosexual, bisexual, lesbian, kink, feminist, etc.): pornography is a part of Canadian culture. This has been established by the DFTAD definition for ‘cultural product’, as well as the CRTC’s Canadian certification criteria.<sup>55</sup> Furthermore, as culture is seen by the Canadian government as one way to encourage building a national identity, it has been argued that protecting and promoting the domestic pornography industry reinforces this nation-building. Additionally, it has been argued that Canada’s recognition of pornography as Canadian culture could have implications for how other countries view Canada: as sexually progressive.

In the end, the goal of this capstone is to advocate for the removal of shame and stigma towards pornography — its production and its consumption — by arguing its place in Canadian society and culture. It is a form of mediated communication like any other film, television program, or work of literature, and should be treated as such. Judging from the public response to the CRTC’s notice to Channel Zero in 2014 (that it was ridiculous for the CRTC to require pornographic channels to abide by CanCon regulations, in effect treating pornography differently than other mediated products), pornography is not yet seen as being on the same level as other mediated communications. The public discourse on pornography has mostly centered on its supposed harms. While repeated studies on the effects of pornography are helpful and needed, in order to produce more conclusive evidence on the effects of pornography, other questions should be asked that look at the industry, the consumers, and the workers. Of course, before we get to those questions, the first order of business is accepting pornography as a part of Canadian culture.

<sup>55</sup> Of course, non-Canadian-produced pornographic films are considered a part of Canadian culture, to some degree, but are not the focus of this capstone.

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