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Motion Picture Production: To Run or Stay Made in the U.S.A.

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MOTION PICTURE PRODUCTION: TO RUN OR STAY MADE IN THE U.S.A.

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"Bye, Bye Miss American pic,
drove my Daimler to the movies to see a foreign-made flic;
And good old actors were drinking whiskey and beer,
singing this is the day we're unemployed here,
this will be the day we're unemployed here."

I. INTRODUCTION

Globalization profoundly impacts traditional ways of conducting business, and the entertainment industry is not immune from the new economics drastically changing the world. Could Hollywood become "Hollyhasbeen"? Will television and theatrical motion pictures shot in the United States go the way of the American car and American-made clothing?

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Runaway production has caused serious labor issues, including the dislocation of thousands of workers and jobs.[1] In 1998, twenty-seven percent of films released in the United States were produced abroad,[2] and an estimated 20,000 jobs were lost to foreign countries.[3] Lower exchange rates, direct government subsidies and lower labor wages enticed American production companies to film in foreign locales. In 1998, the direct economic loss of runaway production was $2.8 billion.[4] When coupled with the loss of ancillary business, the losses likely totaled $10.3 billion for 1998 alone.[5] These loses juxtapose with the issues of free trade versus fair trade in an uneasy balance.

This Article considers why many television and theatrical motion pictures targeted primarily at U.S. audiences are not made in America. It also examines the economic impact resulting from the flight of such productions. Finally, it considers possible solutions in an effort to reverse the trend.

II. THE HISTORY OF "RUNAWAY PRODUCTION"

Runaway production is not a new phenomenon. In December 1957, the Hollywood American Federation of Labor ("AFL") Film Council, an organization of twenty-eight AFL-CIO unions,[6] prepared a report entitled

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1. *See e.g.*, Sharon Waxman, *Location, Location: Hollywood Loses Films to Cheaper Clones*, WASH. POST, June 25, 1999, at C01. During his tenure as SAG President, Richard Masur recently stated, "People are losing jobs all over the country because we are not competing on a level playing field, because other countries are aggressively wooing our productions." *Id.*

2. *Id.*

3. *Monitor Company, The Economic Impact of U.S. Film and Television Runaway Production*, SCREEN ACTORS GUILD AND DIRECTORS GUILD OF AMERICA, at 3 (June 1999) [hereinafter MONITOR REPORT].

4. *Id.*

5. Waxman, *supra* note 1.

6. The affiliated locals involved in the Hollywood AFL Film Council included: Screen Actors Guild; Screen Extras Guild; International Brotherhood of Electrical Workers ("I.B.E.W.") LOCAL 40; Affiliated Property Craftsmen, International Alliance of Theatrical Stage Employees ("IATSE"), LOCAL 44; Musicians Mutual Protective Association, American Federation of Musicians ("A.F. of M."), LOCAL 47; Motion Picture Studio Grips, IATSE, LOCAL 80; Motion Picture Studio Projectionists, IATSE, LOCAL 165; Office Employees International Union, LOCAL 174; Building Service Employees International Union, LOCAL 278; Studio Transportation Drivers, LOCAL 399; Waitresses and Cafeteria Workers, LOCAL 639; International Photographer of the Motion Picture Industries, IATSE, LOCAL 659; Film Technicians, IATSE, LOCAL 683; International Sound Technicians, IATSE, LOCAL 695; Motion Picture Costumers, IATSE, LOCAL 705; Motion Picture Make-up Artists and Hair Stylists, IATSE, LOCAL 706; Studio Utility Employees, LOCAL 724; Motion Picture Laborers and Utility Workers, IATSE, LOCAL 727; Motion Picture Studio Electrical Technicians, IATSE, LOCAL 728; Motion Picture Set Painters, IATSE, LOCAL 729; Ornamental Plasterers and Cement Finishers, LOCAL 755; Motion Picture First Aid Employees, IATSE, LOCAL 767;

"Hollywood at the Crossroads: An Economic Study of the Motion Picture Industry."[7] This report addressed runaway production and indicated that prior to 1949, there were an "insignificant" number of American-interest features made abroad.[8] However, the report indicated a drastic increase in productions shot abroad between 1949 and 1957.[9] At that time four major studios—Columbia Pictures, Inc. ("Columbia"), Twentieth-Century Fox, Inc. ("Fox"), Metro-Goldwyn-Mayer ("MGM") and United Artists, Inc. ("United Artists")—produced 314 films.[10] Of these films, 159, or 50.6 percent, were shot outside the United States.[11] It also revealed runaway films were shot primarily in the United Kingdom, Italy, Mexico, France and Germany.[12] The report further identified factors that led producers to shoot abroad: 1) authentic locale; 2) lower labor costs; 3) blocked currencies; 4) tax advantages and 5) easy money and/or subsidies.[13]

On December 1, 1961, H. O'Neil Shanks, John Lehners and Robert Gilbert of the Hollywood AFL Film Council testified regarding runaway productions before the Education and Labor Subcommittee on the Impact of Imports and Exports on American Employment.[14] Shanks explained to the subcommittee:

> Apart from the fact that thousands of job opportunities for motion picture technicians, musicians, and players are being "exported" to other countries at the expense of American citizens residing in the State of California, the State of New York, and in other States because of runaway production this unfortunate trend . . . threatens to destroy a valuable national asset in the field of world-wide mass communications, which

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Motion Picture Film Editors, IATSE, LOCAL 776; Motion Picture Cine Technicians, IATSE, LOCAL 789; Scenic Artists, IATSE, LOCAL 816; Publicists, IATSE, LOCAL 818; Motion Picture Screen Cartoonists, IATSE, LOCAL 839; Story Analysts, IATSE, LOCAL 854. Irving Bernstein, *Hollywood at the Crossroads: An Economic Study of the Motion Picture Industry*, HOLLYWOOD AFL FILM COUNCIL REPORT (1957).

7. *Id.*

8. *Id.* at 49.

9. *Id.* at 50.

10. *Id.* at 53.

11. *Id.* at 53.

12. Bernstein, *supra* note 6, at 56.

13. *Id.* at 65.

14. *Impact of Imports and Exports on Employment (Agricultural Products, Chemicals, Oil, Machinery, Motion Pictures, Transportation, and Other Industries): Hearings Before the Subcommittee on the Impact of Imports and Exports on American Employment of the House Committee on Education and Labor,* 87th Cong. 497–550 (1961) [hereinafter Hearings] (statements of H. O'Neil Shanks, Executive Secretary, Screen Actors Guild & Chairman, Foreign Film Committee, AFL Film Committee; John W. Lehners, Business Representative, IATSE Film Editors and Robert Gilbert, Counsel, Screen Extras Guild).

> is vital to our national interest and security. If Hollywood is thus permitted to become "obsolete as a production center" and the United States voluntarily surrenders its position of world leadership in the field of theatrical motion pictures, the chance to present a more favorable American image on the movie screens of non-Communist countries in reply to the cold war attacks of our Soviet adversaries will be lost forever.[15]

John "Jack" L. Dales, Executive Secretary of the Screen Actors Guild ("SAG"), and actor Charlton Heston also testified before this subcommittee.[16] Dales stated:

> We examined and laid out, without evasion, all the causes [of runaway production] we knew. Included as impelling foreign production were foreign financial subsidies, tax avoidance, lower production costs, popularity of authentic locale, frozen funds—all complex reasons. We urged Congressional action in two primary areas: 1) fight subsidy with subsidy. Use the present 10 percent admissions tax to create a domestic subsidy; 2) taxes . . . . [W]e proposed consideration of a spread of five or seven years over which tax would be paid on the *average*, not on the highest, income for those years.[17]

Despite these impassioned pleas, runaway production has continued to grow in importance, scope and visibility. Today it ranks among the most critical issues confronting the entertainment industry. The issue received increased attention in June 1999, when SAG and the Directors Guild of America ("DGA") commissioned a Monitor Company report, "The Economic Impact of U.S. Film and Television Runaway Production" ("*Monitor Report*"), that analyzed the quantity of motion pictures shot abroad and resulting losses to the American economy.[18] In January 2001, concerns over runaway production were addressed in a report prepared by the United States Department of Commerce. The eighty-eight page document ("*Department of Commerce Report*") was produced at the request of a bipartisan congressional group.[19] Like the *Monitor Report*, the *Department of Commerce Report* acknowledged the "flight of U.S.

15. *Id.* at 498 (statement of H. O'Neil Shanks, Executive Secretary, Screen Actors Guild & Chairman, Foreign Film Committee, AFL Film Committee).

16. *Id.* at 610–32 (statements of John L. Dales, National Executive Secretary, Screen Actors Guild and Charlton Heston, Third Vice President, Screen Actors Guild).

17. John L. Dales, *Runaway Production Report*, SCREEN ACTOR, Jan.–Feb. 1962, at 15 (emphasis in original) (on file with *Loyola of Los Angeles Entertainment Law Review*).

18. MONITOR REPORT, *supra* note 3.

19. U.S. DEPT. OF COMMERCE, THE MIGRATION OF U.S. FILM AND TELEVISION PRODUCTION (Jan. 2001) [hereinafter DEPT. OF COMMERCE REPORT].

television and cinematic film production to foreign shores."[20] Both reports quantify the nature and depth of the problem and warn of further proliferation if left unchecked.[21]

Additionally, the media is bringing the issue of runaway production to the attention of the general public. Numerous newspaper articles have focused on the concerns cited in the *Monitor Report*.[22] For example, in *The Washington Post*, Lorenzo di Bonaventura, Warner Bros. president of production, explained the runaway production issue as follows:

> For studios, the economics of moving production overseas are tempting. *The Matrix*[23] cost us 30 percent less than it would have if we shot in the United States. . . . The rate of exchange is 62 cents on the dollar. Labor costs, construction materials are all lower. And they want us more. They are very embracing when we come to them.[24]

Di Bonaventura indicated Warner Bros. received $12 million in tax incentives for filming *The Matrix* in Australia.[25] This is a significant savings for a film that cost approximately $62 million to produce.[26]

III. CAUSES OF RUNAWAY PRODUCTION

In the *Department of Commerce Report*, the government delineated factors leading to runaway film and television production. These factors have contributed to the "substantial transformation of what used to be a traditional and quintessentially American industry into an increasingly dispersed global industry."[27]

A. Vertical Integration: Globalization

Vertical integration is defined by the International Monetary Fund as "the increasing integration of economies around the world, particularly through trade and financial flows."[28] The term may also refer to "the

20. *Id.* at i.
21. *See generally* MONITOR REPORT, *supra* note 3; DEPT. OF COMMERCE REPORT, *supra* note 19.
22. *See, e.g.*, Waxman, *supra* note 1.
23. THE MATRIX (Warner Bros. 1999).
24. *Id.*
25. *Id.*
26. *Id.*
27. DEPT. OF COMMERCE REPORT, *supra* note 19, at 84.
28. *Id.* at 56.

movement of people (labor) and knowledge (technology) across international borders."[29]

Consequently, companies must now be productive and international in order to profit. Because companies are generally more interested in profits than in people, companies are often not loyal to communities in which they have flourished. Instead, they solely consider the bottom line in the process of making business decisions.

Columbia is an excellent example of the conversion from a traditional U.S.-based company to a global enterprise. Columbia began in 1918 when independent producer Harry Cohn, his brother Jack and their associate Joe Brandt, started the company with a $100,000 loan.[30] In 1926, Columbia purchased a small lot on Gower Street in Hollywood, California, with just two sound stages and a small office building.[31] In 1929, Columbia's success began when it produced its first "talkie" feature, *The Donovan Affair*,[32] directed by Frank Capra, who would become an important asset to Columbia.[33] Capra went on to produce other box office successes for Columbia such as *You Can't Take It With You*[34] and *Mr. Smith Goes to Washington*.[35]

In 1966, Columbia faced a takeover attempt by the Banque de Paris et de Pays-Bas, owner of twenty percent of Columbia, and Maurice Clairmont, a well-known corporate raider.[36] The Communications Act of 1934[37] prohibited foreign ownership of more than one-fifth of an American company with broadcast holdings.[38] The Banque de Paris could not legally take over Columbia because one of Columbia's subsidiaries, Screen Gems, held a number of television stations.[39] In 1982, the Coca-Cola Company purchased Columbia.[40]

In 1988, Columbia's share of domestic box office receipts fell to 3.5 percent and Columbia registered a $104 million loss.[41] In late 1989,

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29. *Id.*

30. INTERNATIONAL DIRECTORY OF COMPANY HISTORIES 135 (Lisa Mirabile ed., St. James Press 1990).

31. *Id.*

32. THE DONOVAN AFFAIR (Columbia Pictures 1929).

33. *Id.*

34. YOU CAN'T TAKE IT WITH YOU (Columbia Pictures 1938).

35. MR. SMITH GOES TO WASHINGTON (Columbia Pictures 1939).

36. INTERNATIONAL DIRECTORY OF COMPANY HISTORIES, *supra* note 30, at 136.

37. 48 Stat. 1064 (current version at 47 U.S.C. § 310 (1994 & Supp. IV 1999)).

38. *Id.*

39. INTERNATIONAL DIRECTORY OF COMPANY HISTORIES, *supra* note 30, at 136.

40. *Id.*

41. *Id.* at 137.

Columbia entered into an agreement with Sony USA, Inc., a subsidiary of Japan's Sony Corporation, for the purchase of all of Columbia's outstanding stock.[42] This acquisition apparently did not violate the amended Communications Act.[43]

Following in Columbia's footsteps, other studios have globalized through foreign ownership. Universal Studios, Inc. ("Universal"), previously the Music Corporation of America, was acquired by the Japanese electronics company Matsushita in 1991, and four years later was purchased by Seagram, a Canadian company headquartered in Montreal.[44] In 1985, Australian media mogul Rupert Murdoch acquired a controlling interest in Fox,[45] and Time, Inc., a publishing and cable television giant, acquired Warner Bros. in 1989.[46]

As studios become multinational, their loyalty to the community or country in which they were born wanes. The international corporations are no longer concerned with the ramifications of moving production outside of their community or country; they are instead concerned only with bottom-line profits. Columbia exemplifies globalization. Columbia no longer owns a studio lot, let alone its humble beginnings on Gower Street. The Studio simply rents office space in a building in Culver City, California. Not surprisingly, global corporations think globally, not locally. Shooting abroad is not only acceptable, but preferable to companies who are not loyal to any one country.

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42. *Id.*

43. *See* 47 U.S.C. §310. As amended, the statute provides:

> Grant to or holding by alien or representative, foreign corporation, etc. No Broadcast of common carrier . . . shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

Id. § 310(b)(4). *See generally* Adis M. Vila, *Legal Aspects of Foreign Direct Investments in the United States*, 26 INT'L LAW. 1 (Winter 1982) (stating the Communications Act "forbids the issuance of a license to a corporation *controlled by* a corporation owned by aliens *but only if* the Federal Communications Commission (FCC) finds the public interest will be served by the refusal or revocation of the license) (emphasis added).

44. Gord McLaughlin, *Bronfman, Schwartz, Seek Sparkle in Stardust*, THE FINANCIAL POST (Toronto), Dec. 30, 1995, Section 2, at 1996 Outlook, at 25; *Gerson Appointed to New Washington Public Policy Post*, BUSINESS WIRE, Oct. 10, 1995.

45. INTERNATIONAL DIRECTORY OF COMPANY HISTORIES, *supra* note 30, at 171.

46. Randall Rothenberg, *The Media Business: Time Warner's Merger Payoff*, N.Y. TIMES, Dec. 31, 1998, at Section 1, at 29.

B. Rising Production and Distribution Costs and Decreasing Profits

By the end of the 1990s, studio executives began to alter their business methods. Despite aggressive cost-cutting, layoffs, strategic joint ventures[47] and movement of production to foreign shores,[48] rising production and distribution costs have consumed profits over the last decade.[49] Production costs rose from an average of $26.8 million to $51.5 million.[50] Distribution costs for new feature films more than doubled. In 1990, the average motion picture cost $11.97 million to distribute, and by 1999, the costs rose to $24.53 million.[51] At the same time, profit margins dropped. For example, Disney Studio's profits decreased from 25 percent in 1987 to 19 percent in 1997, and Viacom's profits dropped from 13 percent in 1987 to less than 6.5 percent in 1997.[52] Additionally, both Time Warner and News Corporation, parent of Fox, showed declining profits as well.[53]

C. Technological Advances

According to the *Department of Commerce Report*, "[N]ew technologies and tools may well be contributing to the increase in the amount of foreign production of U.S. entertainment programming."[54] Ten years ago, even if a foreign country had lower labor costs, it would have been prohibitively expensive to transport equipment and qualified technicians to produce a quality picture abroad.[55] However, new technology is defeating that obstacle. Scenes shot on film must be transferred or scanned into a videotape format; this process creates what is referred to as dailies.[56] However, many foreign production centers are unable to instantaneously produce dailies from film.[57] Nevertheless, technological advancement has led to the creation of high definition video, which, like dailies, offers immediate viewing capabilities approximating

47. For example, in 1997, Fox and Paramount collaborated to produce *Titanic*.

48. DEPT. OF COMMERCE REPORT, *supra* note 19, at 60.

49. For example, the costs incurred in the acquisition and production prior to release. *See id.*

50. *Id.* at 59.

51. *Id.* at 59–60.

52. *Id.* at 60.

53. *Id.* (citing Elizabeth Lesly Stevens & Ronald Grover, "The Entertainment Glut," BUSINESS WEEK, February 16, 1998).

54. DEPT. OF COMMERCE REPORT, *supra* note 19, at 62.

55. *Id.*

56. *Id.* at 65–66.

57. *Id.*

the visual quality of film.[58] As the quality of high definition video continues to improve, producers will be free to shoot abroad regardless of whether the country offers film processing centers.[59]

D. Government Sweeteners

Canada is extremely aggressive in its application of both Federal and provincial subsidies to entice production north of the border:[60]

> At the federal level, the Canadian government offers tax credits to compensate for salary and wages, provides funding for equity investment, and provides working capital loans. At the provincial level, similar tax credits are offered, as well as incentives through the waiving of fees for parking, permits, location, and other local costs.[61]

These enticements equal a sizeable economic benefit. According to the *Monitor Report*, "U.S.-developed productions located in Canada have been able to realize total savings, including incentives and other cost reducing characteristics of producing in Canada, of up to twenty-six percent."[62] The *Department of Commerce Report* carefully delineates a plethora of incentives employed by a host of countries.[63] It concludes the undeniable impact of these programs is to weaken the market position of the U.S. film-making industry and those who depend on the industry for employment.[64]

E. Exchange Rates

Because the U.S. dollar is stronger than Canadian, Australian and U.K. currencies, American producers have more purchase power when they opt to film abroad.[65] As a result, producers are tempted to locate where the dollar has the most value. The Canadian, Australian and U.K. currencies have all declined by fifteen to twenty-three percent, relative to the U.S. dollar, since 1990.[66]

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58. *Id.* at 66.
59. *Id.*
60. DEPT. OF COMMERCE REPORT, *supra* note 19, at 69.
61. *Id.* at 70.
62. *Id.* at 69 (quoting MONITOR REPORT, *supra* note 3, at 22–23).
63. *Id.* at 84.
64. *Id.*
65. MONITOR REPORT, *supra* note 3, at 4.
66. *Id.*

IV. THE IMPACT OF RUNAWAY PRODUCTION

A. The Economic Impact

In total, U.S. workers and the government lost $10.3 billion to economic runaways in 1998.[67] According to the *Monitor Report*, "$2.8 billion in direct expenditures were lost to the United States in 1998 from both theatrical films and television economic runaways."[68] For example, if a theatrical picture is shot in New York, then carpenters are employed to make the set, caterers are employed to prepare and serve food, and costume designers are hired to provide wardrobe. As the *Department of Commerce Report* explains, "[B]ehind the polished, finished film product there are tens of thousands of technicians, less well-known actors, assistant directors and unit production managers, artists, specialists, post-production workers, set movers, extras, construction workers, and other workers in fields too numerous to mention."[69]

This fiscal loss ripples through the economy affecting peripheral industries. In addition to the direct economic loss discussed above, the Monitor Report calculated an additional $5.6 billion lost in indirect expenditures.[70] Indirect expenditures include real estate, restaurants, clothing and hotel revenues, which are not realized.[71] In addition to these private industry losses, the government lost $1.9 billion in taxes to runaway production.[72] As opposed to the $10.3 billion lost in 1998, the study estimated those figures will be between $13 and $15 billion in 2001.[73]

B. The U.S. Production Drought

The *Monitor Report* stated that between 1990 and 1998, U.S. film production growth fell sharply behind the growth occurring in the top U.S. runaway production locations of Canada, Australia and the U.K.[74] It stated that Australia "is growing 26.4 percent annually in production of U.S.-

67. *Id.*, at 12; DEPT. OF COMMERCE REPORT, *supra* note 19, at 29.

68. MONITOR REPORT, *supra* note 3, at 12.

69. DEPT. OF COMMERCE REPORT, *supra* note 19, at 9.

70. MONITOR REPORT, *supra* note 3, at 12; DEPT. OF COMMERCE REPORT, *supra* note 19, at 29.

71. Waxman, *supra* note 1.

72. MONITOR REPORT, *supra* note 3, at 12; DEPT. OF COMMERCE REPORT, *supra* note 19, at 29.

73. MONITOR REPORT, *supra* note 3, at 3–4.

74. *Id.* at 10.

developed feature films, or more than three times the U.S. growth rate."[75] Similarly, "Canada is growing at 18.2 percent annually in production of U.S.-developed television projects, more than double the U.S. rate."[76] During the same period, annual growth rates in the United States were 8.2 percent for feature films, and 2.6 percent for television.[77]

C. Job Loss

Runaway production also impacts the U.S. labor market. It is estimated there are 270,000 jobs directly tied to film production.[78] It is further estimated that 20,000 jobs were lost in 1998 alone due to runaway production.[79] However, these statistics do not fully reflect the impact of economic runaway production on employment. They fail to account for spin-off employment[80] that accompanies film production. It is estimated by the Commerce Department that the ripple effect of secondary and tertiary jobs associated with the industry might easily double or triple the number of jobs dependent upon the industry.[81]

Regardless of the understated nature of the economic impact, the Commerce Department acknowledges that at least $18 billion in direct and indirect export revenues and $20 billion in economic activity are generated by the industry annually.[82]

D. Loss of Pension and Health Benefits

Performers and others who work on foreign productions may lose valuable pension and health benefits. As provided in the SAG collective bargaining agreements, performers are entitled to receive pension and health contributions made to the plans on behalf of performers when they work on productions.[83] Although SAG does allow for some pension and health reciprocity with the Canadian performers union, performers must negotiate this term into their contracts. More often than not, performers are unable to negotiate this benefit for work performed in Canada.

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75. *Id.*

76. *Id.*

77. *Id.* at 9.

78. DEPT. OF COMMERCE REPORT, *supra* note 19, at 5.

79. *See* Waxman, supra note 1.

80. For example, caterers, equipment rental companies, electricians, construction workers and others who benefit directly from a film project. *See* Waxman, *supra* note 1.

81. DEPT. OF COMMERCE REPORT, *supra* note 19, at 25.

82. *Id.* at 5.

83. *See* PRODUCER SCREEN ACTORS GUILD CODIFIED BASIC AGREEMENT OF 1995 § 34 (1995).

E. Cultural Identity

In 1961, Congress was warned that the trend of runaway production threatened to destroy a valuable "national asset" in the field of worldwide mass communications.[84] As H. O'Neil Shanks, John Lehners and Robert Gilbert of the Hollywood AFL Film Council testified in 1961, if Hollywood became "obsolete as a production center" and the United States voluntarily surrendered its position of leadership in the field of theatrical motion pictures, the chance to present a more favorable American image on the movie screen would be forever lost.[85] Although the Cold War is no longer a reason to protect cultural identity, today U.S.-produced pictures are still a conduit through which our values, such as democracy and freedom, are promoted.

V. SOLUTIONS

A. The Film California First Program

California remains a leading force in the industry, and last year took a legislative step to remedy the problem of runaway production.[86] The state passed a three-year, $45 million program aimed at reimbursing film costs incurred on public property.[87] The Film California First ("FCF") program is specifically geared toward increasing the state's competitive edge in attracting and retaining film projects.[88] To accomplish this goal, the legislation provides various subsidies to production companies for filming in California, including offering property leases at below-market rates.[89] This legislation should serve as a model for other states, as they too struggle with an issue of increasing economic importance.

B. Wage-Based Tax Credit

A possible solution could be patterned after a legislative proposal offered, but never advanced, in the 106th Congress.[90] Specifically, this proposal called for a wage-based tax credit for targeted productions and

84. Hearings, *supra* note 14, at 498 (statement of H. O'Neil Shanks, Executive Secretary, Screen Actors Guild & Chairman, Foreign Film Committee, AFL Film Committee).

85. *Id.*

86. *See* CAL. GOV. CODE §§ 15363.70–15363.75 (West Supp. 2001).

87. *Id.* § 15363.71(b).

88. *Id.* § 15363.71(a)(3).

89. *Id.* § 15363.71(a)(4).

90. 146 CONG. REC. E1997 (daily ed. Oct. 28, 2000) (statement of Hon. Jerry Weller).

provided: 1) a general business tax credit that would be a dollar-for-dollar offset against any federal income tax liability; 2) a credit cap at twenty-five percent of the first $25,000 in wages and salaries paid to any employee whose work is in connection with a film or television program substantially produced in the United States and 3) availability of credit only to targeted film and television productions with costs of more than $500,000 and less than $10 million.[91]

C. *Future Solutions*

To rectify the problems of runaway productions, legislation at the local, state and federal levels is paramount. Over the past thirty years, the film industry has expanded beyond California to become a major engine of economic growth in states such as New York, Texas, Florida, Illinois and North Carolina.[92] To achieve effective legislative remedies, it is critical to examine the successful programs implemented by other nations.

Maybe it is the inexorable result of a changing world. Regardless, the proliferation of foreign subsidies for U.S. film production, which is occurring at an increasing rate worldwide, raises troubling questions of fairness and equity. From a competitive standpoint, it appears as though the deck is stacked against a class of workers who seek to derive their livelihood from this industry but find their jobs have moved overseas. It is understandable that producers will take the opportunity to film abroad when the reduction in costs is as much as twenty-five percent. Consequently, the only remedy for America's workforce is to pass legislation that provides commensurate benefits in the United States.

It is apparent that a laissez-faire, market-oriented approach has failed the American worker. Unemployment is extraordinarily high within the creative community, leading to seventy percent of SAG's 100,000 plus members earning less than $7,500 annually.[93] This economic hardship is exacerbated by runaway production. Thus, it is abundantly clear that legislative remedies attempting to more adequately level the playing field must be pursued. Amid encouraging signs that a tax bill of significant consequence is likely to pass Congress in the coming months, it is imperative that the creative community take a proactive position to ensure that the tax bill provides incentives for domestic film production. It must

91. *Id.*

92. DEPT. OF COMMERCE REPORT, *supra* note 19, at 31.

93. Lynda Gorov, *Labor Talks Cast Shadow over Star-Studded L.A.*, THE BOSTON GLOBE, Feb. 12, 2001, at A1; Dave McNary, *Keep the Faith, Strikers Urged,* DAILY VARIETY, Aug. 31, 2001, at 1.

use all resources to cure the concerns presented in the two reports outlined in this Article. Organizations, such as SAG, must work with Congress to develop a proposal that is acceptable in terms of cost and other political considerations.

While it seems unlikely that there is the political will or desire to match the incentives offered by many of our competitors, it is conceivable to the authors that an effective approach can be designed to substantially close the gap on cost savings without eliminating them. Thus, the approach advocated involves identifying the level where cost savings of filming abroad are minimized so as not to be the determinative location factor. An appropriate level may be in the range of ten percent cost savings versus the twenty-six percent cost savings now common in some Canadian locations.

It is important to note the strategy used to fashion a remedy is just as important as the relief sought. The industry should be willing to approach the tax-writing committee staff with the afore-mentioned concept and work closely with them in designing a legislative remedy. This strategy represents a holistic approach to a global problem. It is important to remember the United States risks losing its economic advantage in a vital industry which carries with it enormous economic consequences. As noted in the *Department of Commerce Report*:

> If the most rapid growth in the most dynamic area of film production is occurring outside the United States, then employment, infrastructure, and technical skills will also grow more rapidly outside the United States, and the country could lose its competitive edge in important segments of the film industry.[94]

VI. CONCLUSION

Politics represents the art of the possible. The approach advocated in this Article should find a receptive ear in the halls of Congress if for nothing else than its simplicity. Timing is crucial. Left unchecked, the only certainty is continuing runaway production with the attendant economic costs, lost jobs, and diminished tax revenues at all levels of government. In a time of waning economic growth and warning signs of dwindling surpluses and future economic weakness, including production incentives into any upcoming tax relief is essential to preserving the U.S. workforce in the American entertainment industry.

94. DEPT. OF COMMERCE REPORT, *supra* note 19, at 2.