

ACCESSIBILITY OF BROADCAST ARCHIVES IN CANADA

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ABSTRACT

Canada's broadcasting industry has a rich history and yet by their own admission, Canadian archivists once overlooked the value of broadcast documentation. This thesis explores the many issues which govern the acquisition, appraisal and description of broadcast records and the relevance of these issues to access and use. Because archivists have frequently discussed access to textual material, this exposition focuses on the special media records produced by the broadcasting industry: film, videotape and sound recordings.

This discussion reviews the problems associated with the development of an acquisition strategy for these records and outlines the development of appraisal criteria which recognize their intellectual, artistic and sociological content. The descriptive practices preferred by archivists working with broadcast material are evaluated to determine whether they actually respond to users needs. The physical characteristics which influence access and use are also reviewed. The proposed revisions to Canada's Copyright Act are examined and the implications for access and use are noted. Finally, throughout this exposition attention is given to the financial obligations associated with the preservation and use of these records.

This study is based on an examination of Canadian, American

and European archival literature and the discussion of each archival function incorporates the theoretical views and practical experiences of various archival institutions. The study concludes that to facilitate accessibility and use, repositories should more thoroughly investigate the requirements of broadcast records and agree to participate in preserving these documents based on a sound assessment of the impact such involvement has on operational resources.

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INTRODUCTION

Many factors affect access to material in Canadian archives. Examples include issues of confidentiality, government security, restrictions requested by donors of private papers, arbitrary limits imposed by staff to favour particular researchers and the problems associated with the bulk of unprocessed or poorly described records which reside in an archival institution but cannot be located.¹ This thesis explores the conditions affecting access to, and use of, broadcast material. Central to this exposition is the view that access and use are crucial to underscoring the value of any archival record.

In broadcasting archives, as in repositories chiefly responsible for textual records, crucial developments in recent decades have influenced the way in which archivists respond to access demands from the public. For example, while foreseeing the impending transfer of huge volumes of 20th century documentation, archivists scarcely imagined the enormous impact such a consignment would place on the resources of their

1. Jean Tener, "Accessibility and Archives," Archivaria 6 (Summer 1978): 16-31.

institutions. More successfully, archivists accepted the advice of W. Kaye Lamb and altered their assumptions about researchers to match the persona of the modern user.² Different expectations in the historical community arose from historiographical developments, such as the emergence of the new social history, and other scholastic undertakings have introduced additional clientele to archives: educators, sociologists, legal professionals, art, music, theatre and film historians, scientists and genealogists. An emerging familiarity with special media documents is also partly responsible for encouraging these professionals to use the resources available in broadcasting archives.

Technological innovations have also been important to archives. In particular, they have created an entirely new body of documentation to be considered for permanent preservation; broadcast records are but one example. The physical characteristics of these documents warrant attention, because the technology can pose problems for access and use. Copying services, which cannot be provided without understanding the limitations of technology and the donor and copyright restrictions which govern reproduction, are more frequently required by users, particularly in countries as large as the United States or Canada where it is common to find collections pertaining to a single subject dispersed nationwide among various

2. W. Kaye Lamb, "Keeping the Past up to Date," Journal of the Society of Archivists 2 (1961):287.

institutions. (Archivists and historians warn that Canadian historiography could suffer if these relevant sources were overlooked due to prohibitive travel costs suffered by researchers.)

Lastly, copyright considerations are intimately linked with the question of access. The provisions of the Canadian Copyright Act specify conditions of use applicable to the staff and users of archives. Moreover, while archivists are concerned both with the protection of rights for creators and with the public's right to access archival holdings, these two disparate aims often are incompatible.

This thesis will explore the many "variables existing between the reader and the information"³ contained in broadcast records, including the issues governing the acquisition, appraisal, description and dissemination of special media documents. And because archivists have treated questions of access to textual records, this exposition will focus mainly on the by-product of the broadcasting industry: film, videotape and sound recordings. These documents have been termed "broadcast records" to differentiate them from the more encompassing body of broadcasting archives which include media and textual material.

Where appropriate, general archival principles and theories will be reviewed as background to developments in the acquisition and maintenance of broadcast records and to their subsequent use

3. Bernard Vavrek, "A Theory of Reference Service," College and Research Libraries 29 (1968):508.

for research purposes. The experiences of American and European repositories caring for these documents will be recounted since these institutions have long recognized the historical value of broadcast records and have demonstrated a commitment not only to their preservation, but to the study of the ubiquitous cultural impact of this 20th century communication medium.

CHAPTER ONE

ACQUISITION

David Lance, Sound Archivist with the British Imperial War Museum, portrayed the relationship existing between acquisition, arrangement, description and access as follows:

Access and use seem to me to represent the *raison d'être* of an archive. The various other tasks with which sound archivists are concerned - such as acquisition, organization and preservation - are not ends in themselves, but processes directed mainly towards the dissemination and exploitation of recorded sound collections. Archives exist to be used and, I believe, should be used in order to justify their existence.¹

An established and actively implemented acquisition policy, whether within a public or private archives, profoundly affects access and use within the institution by assuring that the records themselves are preserved for future use. The primary purpose of any acquisition strategy is to identify, locate and acquire the records which repositories are responsible for collecting. The mandate of these institutions will largely determine the scope of their acquisition policy.

¹. David Lance, "Dissemination of Audio Resource Materials - Access and Use in a Museum," Phonographic Bulletin, no. 22 (December 1978), p. 29.

This chapter will identify the problems and issues associated with the development of acquisition policies for broadcast material. These concerns can be categorized in general terms. The first relates to the primary question of jurisdiction. Various types of institutions assume responsibility for broadcast documentation including public archives, museums, broadcasting organizations, libraries and universities. There are no firm guidelines governing the creation of mandates which will be subsequently observed when a repository acquires broadcast material and as archivist Josephine Langham declared, "Canadian archivists have been lax both in recognizing the value and significance of broadcast documentation and in ensuring its preservation."²

The second category encompasses the attitudes and requirements of broadcasters. The broadcasting industry itself has not yet fostered an historical appreciation for the records it creates. More importantly, because both large networks and independent stations operate primarily as business ventures, they face the dichotomy of generating a product which is a cultural resource while striving to earn a profit for shareholders. In instances where a broadcasting agency has designated a public institution as an official repository for its records, conflicts often arise between the needs of the agency and the operational limitations of the archives.

2. Josephine Langham, "Tuning In: Canadian Radio Resources," Archivaria 9 (Winter 1979-80), p. 105.

Last, a crucial factor influencing the development of acquisition policies has been the high cost associated with the physical and intellectual care of these records. Financial restraints have prohibited many archives from accepting material which belongs within their jurisdiction. Because of such considerations many broadcasting organizations have decided not to maintain their archival records.

In this discussion of acquisition British, American and Canadian efforts to preserve broadcast archives will be highlighted. The essential differences between collections preserved as a corporate resource versus broadcast archives with a broader cultural purpose will also be discussed. Throughout this chapter the bond between acquisition and access will be examined.

Organizations which maintain broadcast records in the United Kingdom, Europe and North America include sound archives, broadcasting archives, record manufacturers, film studios, private collectors, business archives, museums and libraries. The origins of these archives are varied. For example, "broadcasting sound archives came naturally into being because of the need for highly developed storehouses of recordings for use in radio programmes."³ In this instance practical business needs were an incentive for the preservation of the documents. Private

3. Rolf Schuurisma, "National Research Sound Archives: Some Thoughts for Discussion," Phonographic Bulletin, no. 14 (May 1976), p. 15.

repositories such as these do not emphasize the provision of public access for research purposes. Conversely, other creators recognize that their collections are also of cultural value and that some public access and scholarly use is obligatory.

The British Broadcasting Company is an example of such an organization. Established in 1922, the Company became a public body and was reformed in 1927 as the British Broadcasting Corporation. Since that time, almost every major figure in British national life has been linked in some way with the BBC. Many have appeared on BBC programmes, others have served on the board of governors or as participants on advisory councils and committees. It is not surprising therefore that the BBC has a highly developed sense of its historical place in British social and political life and consequently a well developed archival programme.

Sir Asa Briggs stated that perhaps the most important by-product of the four volume history he prepared on the BBC was that the organization finally began to put its own archives into order, in appreciation of the national as well as institutional importance of its records.⁴ After completing the project, Briggs chaired the newly created BBC Archives Advisory Committee whose mandate was to counsel the archives on how best to preserve visual, audio and written records, compare BBC storage and retrieval procedures to those of other agencies and advise as to

⁴. Sir Asa Briggs, "Problems and Possibilities in the Writing of Broadcasting History," Media, Culture and Society 2 (1980):9.

how the archives might be "best exploited in the BBC's and the national interest, whether by research, publication or sale."⁵ Their final recommendations recognize the dichotomy of purpose within the BBC for it is perceived as both a broadcasting organization, responsible to advertisers and viewers, and the creator of a vital cultural heritage. The committee identified the historical as well as operational value of the records and expressed regret on account of the "restrictive terms of reference." Not unreasonably perhaps, the BBC, in keeping with Jenkinson's classic definition of archives, retain their records for their own information, in their own custody. The principal users are administrators and programme developers. The BBC derives its income from license revenue and although permitting some public access, it is BBC policy that its services to the public should not be paid for by either the Corporation or by government tax dollars. The Archives is not considered to have a mandate to collect on a larger scale and their primary purpose is to serve future programme needs by preserving material with re-use potential. To quote Lawrence Stapley, "that is what the money is allocated for."⁶ The BBC's archives are therefore principally a corporate resource and the first priority is to serve the network's administrative and production needs.

⁵. Report of the Advisory Committee on Archives, by Lord Asa Briggs, Chairman (London: British Broadcasting Corporation, 1979).

⁶. Lawrence Stapley, "BBC Archive Material for Other Than Broadcasting Purposes," Phonographic Bulletin, no. 17 (December 1978), p. 25.

Interestingly, this reasoning led to the implementation of a modest service fee for external users. Researchers are charged on an hourly basis plus any costs incurred on their behalf.⁷ Thus, acknowledging the value of its holdings to outside researchers, the BBC has permitted access to some of its holdings, principally those in what it terms its "Written Archives."

The Written Archives contain those surviving textual records which document the underlying business of running the BBC such as staff appointments, union relations, programme planning and policy formation. Included in the holdings is correspondence with artists, internal memorandums, material from writers, programme files, collections of scripts and various groups of policy files documenting educational broadcasting, the relationship between the BBC in London and its regional centers and offices, political broadcasting, news editorial policy and the reflection of minority interests in programme schedules. The collection of newspaper clippings maintained by the News Information Service is one of the largest of its type in Europe. Another clippings collection, covering 1922 to 1954, amounts to over a half a million items grouped by subject and it is also stored in the Written Archives. The purpose of the latter is to record instant public and editorial reactions to the BBC and its

7. The rates are as follows: £5 if under one hour; £3 if over one hour but under one day; £2.50 for the second and subsequent hours. R.D. Hewlett, "The BBC's Written Archives," ASLIB Proceedings 27 (1975):421.

broadcasts. All BBC publications, such as "Radio Times", "Listener" and pamphlets for BBC School and Further Education broadcasts are retained as well.

The administration of the Written Archives has proven to be somewhat erratic. In 1975 the Head of Reference, R.D. Hewlett admitted:

There have been, I am sorry to say, a number of difficult and at times conflicting, policies for the retention and destruction of paper. The result is that there is a superfluity of less important papers in some subject areas and there are gaps of some substance in others.⁸

Initially little consideration was given to the long term value of such documents. It was not until 1927 that a uniform filing system was established among all the branches of the BBC's offices. This registry system helped control the disposition of records and was the foundation for the entire BBC Archival program. In 1970 the Archives was detached from the Central Registry administratively and physically.⁹ While Hewlett does not explain the reasons for this, one supposes it was due to the realization that the control of active files differed greatly from the intellectual and physical control of archival records.

Another British institution famed for its involvement in the collection of broadcasting records is the National Film Archives of the United Kingdom. It acquires television broadcasts produced by both the BBC and those independent

⁸. Ibid., p. 418.

⁹. The BBC Archives is now located in Caversham rather than London.

private production companies which are regulated by the Independent Broadcasting Authority. These independent companies have designated the NFA as their official archives and are under contract to provide direct financial support as well as regularly deposit broadcasts for preservation. The BBC responds to requests for copies of its' material from both the NFA and the British Institute of Recorded Sound, and negotiates copyright restrictions where applicable. The BBC cooperates with these organizations in order to accommodate public access requirements which cannot be met under its' budget constraints.¹⁰ The Imperial War Museum also collects recordings and film relating to both World Wars. World War II recordings have no copyright restrictions and so can be given to the Museum, universities and other institutions for research purposes.

The preservation of textual and special media records by the BBC archives aims primarily to fulfill the Corporation's operational needs. However, a strong tradition of public access has arisen to supplement this main mandate. Cooperation with organizations such as the NFA helps the BBC surmount financial limitations by allowing other institutions to acquire BBC records and make them available to the public. Thus, a coordinated acquisition strategy has facilitated greater public access and use.

In the United States, a number of institutions have taken

¹⁰. The formal arrangements between the BBC and these organizations are not described. Stapley, "BBC Archive material," 26-27.

responsibility for the preservation of broadcast archives. The principal ones are the Library of Congress, the National Archives and Records Service (NARS), the Museum of Broadcasting in New York, various broadcasting organizations and several universities such as the Vanderbilt Television News Archives which was founded in 1968 and is supported by individual and private foundations. Another prominent collection of broadcast material is located at the University of California at Los Angeles. This archives was founded in conjunction with the Academy of Television Arts and Sciences in 1965.

The Library of Congress collects private and commercial films. It is important to note that the 1972 U.S. Copyright Law requires a copy of any recording be sent to the Library of Congress when application is being made for the registration of copyright. The Library's collection has also been supplemented by generous gifts from individuals involved in early broadcasting. Their contributions are made more valuable by the fact that radio programming is not acquired by mandatory deposit as part of the copyright process and so the Library is largely dependent upon the historical awareness of private donors.

To assist in the identification and preservation of surviving broadcasting records, the American Television and Radio Archives (ATRA) was created in 1976 under the auspices of the Library of Congress' Motion Picture, Broadcasting and Recorded Sound Division. By 1978 ATRA asserted itself in efforts to acquire programming which is ineligible for copyright

protection and which consequently is not acquired by the Library under mandatory deposit regulations. This applies to material such as "live", unfixed programmes which are not recorded on a tape or film and consequently are not considered to be "published" and protected by copyright. Prior to the creation of ATRA, much of the early live programming was lost. This dilemma has been rectified somewhat by the addition of an "ATRA Section" in the legislation compelling the registration of broadcast items. The Section permits the Archives to acquire those live programmes which might not be "published" at a later date, such as "Live from the Met", "Johnny Carson" and the "Superbowl."

In this effort ATRA has had an enviable working relationship with broadcasting organizations as well as other broadcasting archives. At hearings held by the U.S. Copyright Office in March 1982, the opinions of television broadcasters and others were sought regarding rules proposed by the Copyright Office by which a mechanism would be provided for the off-the-air taping of such programme types as documentaries, news and feature items.¹¹ This mechanism gave ATRA the authority to demand copies of unpublished television programmes. Both the Public Broadcasting Service (PBS) and the Motion Picture Association of America endorsed this arrangement. Moreover, PBS assisted the archives in developing selection criteria for television records. The registration procedure combined with this beneficial clause has proven to be

11. Susan Robinson, "Paul Spehr Discusses ATRA - The American Television and Radio Archives," Library of Congress Information Bulletin 41 (May 7, 1982): 135.

an efficient acquisitions tool, saving much important broadcasting material in the United States.

To avoid duplication and to ensure standards of service for both the record and the public, the Library of Congress coordinates its efforts with the National Archives, whose mandate is to preserve film and broadcast material produced by the government, and Vanderbilt University, an institution primarily interested in collecting news broadcasts.

Like the Library of Congress, the National Archives in Washington is concerned with the preservation and use of broadcast documents. Its Motion Picture and Sound Recording Branch acquires news, documentary, public affairs and special broadcasts. Agreements with CBS, NBC, and ABC allow NARS to tape news programmes off-the-air. The license granted by CBS was on a non-exclusive, royalty free basis. Copies may be made available for use in NARS, its branches and all presidential libraries. Scholars, researchers and others "meeting the requirements set by the National Archives (not CBS)...[are permitted] access."¹²

The Museum of Broadcasting in New York and other non-government agencies collect material under contract with the networks and independent donors such as radio or television personalities, producers and so on. Combining the philosophies of both a museum and an archives, the Museum of Broadcasting offers education programmes, study facilities, exhibitions and

12. "CBS License to National Archives," College and Research Library News 34-35 (1973-1974):125.

film festivals. It is a non-profit organization sustained by the television networks, public foundations, various corporations and membership fees. The Museum was founded in 1975 by William S. Paley, the founding chairman of CBS. The radio and television programmes are accessible to the general public; however, no programme is available for loan or copy. Programming is regularly received from CBS, NBC, ABC, PBS, independent foreign and domestic producers and assorted individuals. A notable example from their collection is the 175,000 recordings of radio programmes and events broadcast on NBC radio between 1933 and 1970. The collection consists of comedy and drama productions, popular and classical music concerts broadcast live by the network and a wide array of political conventions, campaigns, debates and other news items. Among the latter are Edward R. Murrow's "This...Is London" series, World War II radio broadcasts, a portion of Franklin Roosevelt's so-called "Fireside Chats", and entertainment features such as "Marty" and "Requiem for a Heavyweight." The work of entertainers such as Sid Caesar, Lucille Ball and Ed Sullivan, amongst others, is also well represented. The Library of Congress has assisted in the preservation and storage of this extensive quantity of material. Given that the financial burden of caring for a large collection often influences the acquisition decision of any archives, this kind of inter-institutional support sets an interesting example for those organizations which are seeking ways of maintaining expensive collections. In return for their assistance, "the

Library of Congress...[has]custody of all the original recordings and [makes] copies available for research use."¹³ An initial 2,000 programmes (1933 to 1936) were transferred to cassette tape for public use on the museum premises in New York and efforts to convert the remainder of the collection for public use continue.

In addition to the large repositories, several smaller institutions have also taken a significant role in preserving broadcast material. An example is the Buffalo and Erie County Historical Society in Buffalo, New York. As part of an agreement with local commercial stations, the society had collected, as of 1977, nearly 8,000 reels of film consisting of ten years of news broadcasts. Both the stations and the general public profit because rights of public access co-exist with controlled cataloguing and retrieval systems.

In the United States the acquisition of broadcasting records is facilitated by mandatory deposit and off-the-air recording. These provisions have helped guarantee public rights of access to valuable material by ensuring its preservation. The copyright registration process has also assisted archival description and reference service by documenting many of the productions of American filmmakers and broadcasters. Also, the benefits of good relationships between creators and curators are demonstrated by the commitment made by the over 80 members of the Film and Television Archives Advisory Committee and the cooperative

¹³. "Museum of Broadcasting Receives NBC Radio Archives," Library of Congress Information Bulletin 38 (1979):207.

efforts orchestrated by these members, which include the Library of Congress, the University of Los Angeles, Vanderbilt University, the Museum of Broadcasting, the National Archives, PBS, CBS, ABC and NBC, among many others, who meet regularly to exchange views and practical information, discuss issues and promote communication and cooperation. These factors have promoted and facilitated public access in the many institutions caring for broadcasting material in America.

The legacy of the Canadian broadcasting industry may not be equivalent to its American counterpart, but despite the handicaps of a smaller audience and more limited funding, Canadian broadcasting over the past thirty years is responsible for some of the world's finest programming, and if there is a tendency to ignore local accomplishments, worldwide acclaim has reminded Canadians of the contributions of this communications medium.

Canadian archives interested in broadcast records functioned in an environment of obscure institutional jurisdictions, confused mandates and high costs. Public repositories, more often than not, acquired material which was threatened with immediate destruction and this approach to acquisition led to the random physical placement of collections in any institution which was prepared to accept them. There was little time left to proceed with a planned and orderly transfer of records in this recurring crisis situation.

The structure of the Canadian broadcasting industry itself

may have contributed to this state of affairs. The Canadian Broadcasting Corporation is a public, government funded organization, but it co-exists with private networks and independent stations. The regulating body known as the Canadian Radio and Telecommunications Commission (CRTC) administers the Broadcasting Act and is primarily concerned with issuing one of the licenses required by a broadcasting station, cable system or network. (The other licence is more technical in nature and is issued by the federal Department of Communications.) The Commission may attach conditions to the licence and its regulatory powers extend to such matters as the allocation of broadcasting time to ensure varied and comprehensive programming, the use of Canadian creative and other talents, the regulation of advertising and the amount of time devoted to it, as well as the reservation of broadcasting time for network programs by any station affiliated to a network. Its authority does not extend to regulating the disposition of records, textual or otherwise, nor is there other government legislation to do so.¹⁴

Given that the CBC is a major source of broadcast documentation in Canada, it is not surprising that a very contentious issue among archival institutions is determining

¹⁴. The new National Archives Act was passed while this thesis was in progress. Incorporated in the legislation is the stipulation that the producer or distributor of a recording must provide a copy to the National Archives within six months of receiving a written request from the Archives. However, the responsibility for identifying, appraising the archival value (and paying for copying costs) of the programmes rests with the Archives, not the creator. The textual records of the CBC are not subject to any of the provisions of this Act (C-1, s.2).

precisely which repositories should assume responsibility for CBC material. Opinion differs between those who feel the CBC should be responsible for the maintenance of its own archives and others who see the National Archives and/or its provincial equivalents as the best custodian. The main arguments centre on the specialized care these records require and the financial commitment which must be pledged by the agency or institution designated to preserve such documents.

Robin Woods, former CBC Program Archivist, provided the impetus for the CBC's internal endeavours. He accepted the obligation to preserve their records "by default."¹⁵ Echoing the BBC tradition, Woods believed that the best curator is the creator. Being the predominant user and benefactor, curatorship seemed a natural extension of production. Moreover, it seemed that the creator was in the best position to evaluate the long-term value of the records he produced. Why then has the CBC been reluctant to provide adequately for the proper safekeeping of its archival material?

The conditions under which a programme is produced may be indirectly at fault. Enormous production costs plus the need for sophisticated technology and skilled support staff contribute to the organization's desire to facilitate the production process by eliminating all unnecessary operations and overhead. Drastic

¹⁵. An Account of the Development of Program Archives in the English Language Services The Canadian Broadcasting Corporation quoted in Appendix L of John Twomey, Canadian Broadcasting History Resources in Canada- Critical Mass or Mess? (Toronto: Ryerson Polytechnical Institute, 1978), p. 18.

budget cuts have heightened the need to manage finances. Broadcasters regularly reuse videotape as a cost saving measure. Not surprisingly, the natural inclination to treat the archives principally as a corporate resource base has amplified. If a programme is to be retained, future operational use must be clearly envisioned. Space and staff constraints also plague internal efforts to preserve archival material.

In response to these constrictions the CBC's Program Archives has attempted to minimize the loss of valuable material by establishing certain priorities and by sacrificing efforts in less pre-eminent areas. For example, when it was established in 1957 the archives contained a large collection of records which were virtually inaccessible because of ineffective controls. The records were not only stored in poor physical condition but were scattered throughout a number of locations. No collection or preservation policy had been designed or implemented. Faced with this situation, efforts were geared toward the care of radio programmes rather than television because the former requires fewer financial resources to maintain. The older radio programmes, mainly those from the 1950's, were passed over in favour of current acquisitions -- again in response to the organization's use of the archives as a resource base.¹⁶ Neither the News Library nor the CBC's Program Resources facility form part of the Archives. Although the News Library exerts competent intellectual control over the news footage, it does not provide

16. Ibid., pp. 7-12.

service to the public or operate as an archives. Both departments are strictly for internal reference.

Like other businesses, broadcasting organizations, whether public or private, are concerned with producing a commercially successful product. Cost overheads and profitability are as important to this industry as to any other. As Howard Fink explains, the purpose of the CBC is to act as a production facility and not a "repository of culture."¹⁷ Broadcasters are not endowed with any special appreciation of history nor should they be expected to be, but many have apparently relinquished all responsibility for their records citing budget restraints as the reason. In answer then to the question of why the CBC does not support a large archival program, it appears that like so many other "business archives" they cannot demonstrate a corporate need for an extensive archival collection nor do they feel responsible for maintaining such a collection for cultural purposes. The strengths of that same collection however, cannot be measured solely in terms of corporate efficiency. The CBC is one of Canada's most prominent cultural agencies, and as such the scope of the records which should be preserved far exceeds the mandate of an internal facility. Under these circumstances the CBC has elected to transfer a large percentage of their records to archival repositories whose mandate, resources and skills are dedicated to the protection of Canada's cultural heritage.

17. Howard Fink, "The CBC Radio Drama Project and its Background", Canadian Oral History Association Journal (1976-1977):54.

The chief agents are large public institutions, namely the National Archives of Canada and the various provincial counterparts. At present the Moving Image and Sound Archives, MISA, (formerly the National Film, Television and Sound Archives) of the National Archives of Canada is the largest repository for broadcast records in Canada. It houses an extensive collection of CBC radio and television broadcasts as well as smaller collections from the Canadian Television network (CTV), independent stations, individuals and various related organizations.

The development of this division offers a classic example of how such archival collections often evolve. Although the National Archives acquired its first historical sound recordings in 1939, no specific division was created to acquire, preserve and make available these records until 1967 when the Historical Sound Recordings Unit was established.¹⁸ Between 1967 and 1975, 20,000 hours of sound recordings were collected - a significant increase from the 200 hours of recordings acquired from 1939 to 1967.

The first priority of the new unit was to collect recordings that were endangered either by natural deterioration or pre-planned destruction. Emphasis was admittedly on acquisition, with little attention being paid to documenting provenance or making the material accessible to the public. As the staff grew

18. Leo LaClare, "The Sound Archives of the Public Archives of Canada," Phonographic Bulletin, no. 14 (May 1976), p. 9.

in size and the division matured, more equity was sought between the various archival functions of acquisition, description and dissemination.

In 1975 an agreement was reached between the Public Archives of Canada (renamed the National Archives in 1987) and the CBC to permit the acquisition and preservation of CBC programming.¹⁹ The audiovisual records became the responsibility of the National Film, Television and Sound Archives (renamed the Moving Image and Sound Archives in 1987) and the textual records were transferred to the Public Records and Manuscript Divisions of the Archives. However, under this agreement, the CBC is the clear beneficiary as the Archives offers unparalleled service for the privilege of preserving the cultural heritage hereto forsaken by the Corporation. For example, the CBC retains the rights to all programmes transferred. This causes enormous difficulties for access purposes although it is not wholly avoidable as a succeeding chapter of this thesis on copyright seeks to explain. When the CBC requires a copy of a programme, a copy is made at the Archives' expense, which, given the current cost of tape is considerable. The CBC is not precluded from making arrangements for archival transfers with other repositories, although the Archives is given first consideration in the case of original materials. The CBC also has the right to approve equipment and maintenance procedures for the safeguarding of its programme

19. Canadian Broadcasting Corporation/Public Archives of Canada Agreement November 27, 1981. Courtesy of the Moving Image and Sound Archives, National Archives of Canada.

materials.²⁰ There is an unresolved dispute between the CBC and the Archives over the standards to be observed when reproducing archival holdings for broadcast. The CBC insists upon broadcast standards which have never been precisely defined and this issue continues to be addressed. Despite complaints from broadcasters, archivists insist that the standards they maintain meet all requirements and in fact, conservators in this field are critical of the industry conversion to half inch videotape. As the "standards" constantly evolve there must be a mutual agreement to establish a measurement which will satisfy everyone's needs and concerns.

There are several benefits from this arrangement between the CBC and the National Archives. First, a large collection of valuable material is secure and public and corporate use is facilitated. Also, the financial resources and the expertise of the MISA staff are more varied than could be expected in a smaller institution. The CBC's Programme Archives and MISA exchange microfiche copies of their respective catalogues and are working to coordinate their acquisition policies.

However, despite the status of the CBC as a Crown corporation and the agreement between it and the National Archives, it is significant in terms of acquisition that the Corporation is free to dispose of its records without the consent of the National Archivist, that it is under no obligation to

²⁰. John Twomey, Canadian Broadcasting History Resources in Canada - Critical Mass or Mess? (Toronto, Ryerson Polytechnical Institute, 1978), pp.37-38.

deposit any recordings whatsoever, and that to date it has regarded with "reluctance and suspicion" its own Corporate Archives Committee.²¹ Both the CBC News Library and Program Resources departments feel their principle obligation is to satisfy internal requests. There is some suggestion that the efforts undertaken to locate and transfer tape, film or sound material to the National Archives demands too heavy a share of the CBC's already dwindling assets and thus should not be an additional responsibility of CBC staff.

The agreement between the National Archives and the CBC has not assured the preservation of, or access to, all CBC records. The records produced by the regional centres of the CBC must be included in efforts to coordinate acquisition and accessibility. Each regional production centre has strong local loyalties and most are reluctant to approve the transfer of the programmes to a central repository in Ottawa. On its part, the MISA has no desire to maintain regional collections since its mandate is national in scope.²² This delineation of responsibility is complicated by the fact that some regional productions are eventually scheduled for national broadcast and so the fine line between territorial jurisdiction is often blurred. How best to accommodate these concerns is central to the discussion

21. Ernest J. Dick, "Prospects for a History of the Canadian Broadcasting Corporation," Archivaria 14 (Summer 1982):164. See also, The National Archives of Canada Act C-1, March 25, 1987.

22. Josephine Langham, "The Lively Archives," Archivaria 14 (Summer 1982): 170.

concerning the role of provincial archives in preserving CBC documents.

Regional production is a key component of the CBC's mandate and it is not surprising that the disposition of these records is a major consideration. Several proposals have been forthcoming in answer to the objections raised concerning the transfer of all CBC documents to a central repository. One is that provincial archives assume responsibility for local programming which would thus enable both producers and the general public to have viable and quick access to locally produced material. This appears to be a logical and expedient solution, but many problems surface when it comes to concluding an arrangement acceptable to all parties. No one has championed the position of provincial archives as cogently as Derek Reimer, Head of the Sound and Moving Image Division of the Provincial Archives of British Columbia. At a symposium dealing with the archives of the CBC, Reimer voiced the objections raised in face of the demands and obligations the care of such records entails.²³ Among his reservations regarding the provincial care of CBC records was the question of whether provincial tax dollars should be designated for the care of records produced by a federal crown corporation. This reinforces two points; first, that as a federal agency the CBC occupies a unique position, and second, that the funds needed to provide a professional standard of care are substantial.

23. Derek Reimer, "The View from a Provincial Perspective," Archivaria 14 (Summer 1982):159-162.

Equipment, manpower and storage expenditures plus all other operational costs must be met by the host repository. A further issue involves the separation of collections which would result when the textual records continue to be forwarded to Ottawa even if the videotape and film documents remain in a local repository. Once again the correlation between a federal archival authority and a federal corporation affects the willingness of provincial institutions to assume responsibility for the material.

In more specific terms, discrepancies arise between standards imposed by the CBC and those practiced by the archives. For instance, production needs often dictate more immediate and specific access than public archives are equipped to give. Rather than seeking an individual programme, most producers need a particular portion of that same programme, often one as short as sixty seconds in length. The descriptive documentation must therefore be very precise, but as yet, there is no standard from repository to repository.²⁴ Reimer claims that the CBC insists that institutions adopt CBC descriptive practices and counters that the PABC would be unwilling to abandon its own procedures to accommodate one collection, regardless of its undisputed value. Another area which demonstrates the problematic nature of caring

²⁴. The Canadian Working Group on Descriptive Standards provided an irrefutable illustration that this phenomenon is not unique among broadcasting archives, but exists in all institutions, for all records. Towards Descriptive Standards: Report & Recommendations of the Canadian Working Group on Archival Descriptive Standards (Ottawa: Bureau of Canadian Archives, 1985), p. 34-53.

for this material is, with obvious consequences, the lack of uniform appraisal criteria among archival repositories. A final item is the lack of intellectual unification of CBC collections through the use of guides, lists or catalogues. Consequently, a researcher is unable to locate holdings in various institutions across the country. This is not to say that individual institutions have not published guides to their particular holdings, but that union lists have not been compiled. It is issues such as these which have delayed provincial involvement with CBC archival material for many years.

Among the suggested solutions to these dilemmas is the establishment of research facilities in the regional records centres of the National Archives or assistance from the National Archives and the CBC to help provincial institutions maintain CBC archives.²⁵ Because there are arguments for maintaining regional collections locally, the National Archives may not choose to assume responsibility for all productions of the CBC. If local participation is required, there must be closer coordination between the archival institutions accepting responsibility for these records to avoid duplication, or loss, and to guarantee that those repositories which maintain these records can meet archival standards of operation.

Although the CBC dominates any discussion of broadcast archives it would be remiss to overlook the significant contributions of private and independent broadcasting companies

25. Ibid., p. 162.

and the various archives who preserve their records. The efforts of these bodies have largely gone unheralded although the scope of the collections is very impressive. They range from the in-house facilities of the CTV Network to the holdings of university and library archives. As yet, no extensive survey has been conducted which identifies fully the scope and extent of holdings in these repositories, but John Twomey's landmark study, Canadian Broadcasting History Resources in Canada: Critical Mass or Mess, provided the first overview of the current situation.²⁶ From his work we learn that the CTV Network Archives in Toronto maintains its administrative, programming, sales and promotion files along with approximately 700 videotapes and thirteen million feet of film in the Film Library. The role of the network's Archives and Film Library is to serve the needs of the network. Although there is no formal relationship with the National Archives, copies of some programmes are occasionally sent to Ottawa for deposit, but no arrangements exist for the routine transfer of a larger majority of CTV media documentation to institutions which permit public access. This lack of accessibility is reflected, no doubt, by the scarce number of scholarly works on private broadcasting in Canada.

Private collections are common although their exact extent is unknown. Retired broadcasters, network or station executives, and broadcasting employees in other capacities often yield rewarding and valuable items. Some arrange for their

²⁶. Twomey, Critical Mass or Mess?

collection to be donated to a public archives such as the Harry "Red" Foster collection of scripts and discs of privately produced programming from the 1940's and 1950's housed at the National Archives of Canada. Additionally, the Canadian Association of Broadcaster's Program Exchange Library in Ottawa includes a fine collection of the best privately produced programming in Canada.

University archives and libraries have made substantial contributions, perhaps the best known being the CBC Radio Drama Project at Concordia University under the direction of Howard Fink. Recognizing the value of CBC support documentation, Fink initiated the project to save the scripts of approximately 7,000 original Canadian plays produced on CBC radio from the late 1920's to 1963. Concordia now maintains 14,000 scripts and has preserved the creations of an era when Canadian productions were acknowledged internationally as vital contributions to the development of the dramatic arts.²⁷

York University cares for the CBC's television scripts by agreement with the network and also has custody of producer Mavor Moore's papers. Other Canadian universities maintaining broadcasting archives in some form are the University of British Columbia, Special Collections Division (the papers of Alan Plaunt, co-founder with Graham Spry of the Canadian Radio League), the University of Calgary (papers of novelists and playwrights who also wrote for radio or television, notably W.O.

27. Fink, "The CBC Radio Drama Project," pp. 54-63.

Mitchell), McMaster University (6,000 CBC radio drama scripts and the papers of James Bannerman, broadcaster and Leslie McFarlane, writer) and Queen's University (the papers of Merrill Denison, Canada's first radio dramatist). Other holdings are found at the Universities of Alberta, Saskatchewan, Windsor, Toronto, Mount Allison, New Brunswick and Memorial University.²⁸ The role these institutions play in the preservation of broadcasting archives is by no means meager.

Of course the preservation of private broadcast records does not rest solely with private collectors, universities or special organizations. Both the National Archives of Canada and several provincial archives have acquired interesting material from a variety of sources. One example is the Public Archives of British Columbia's acquisition of recordings from radio station CHWK in Chilliwack, British Columbia. The discs date from 1939 and 1945 to approximately 1950. Included are such items as the 1939 Royal Visit stopover in Chilliwack as well as advertising jingles for local businesses. A most prized recording contains tributes paid to CHWK on the occasion of its twentieth anniversary. The tributes reveal the role of the station and radio generally in a small community, describe the advances in broadcast technology and feature a host of local performers.²⁹ Such collections offer valuable insights into the impact of radio in rural and small urban centers. The interest of local archives

28. John Twomey, Critical Mass or Mess? pp. 52-58.

29. "News," ASCRT Bulletin, no. 19 (August 1983), p. 26.

ensures the preservation of such recordings and such efforts could not be duplicated on a national scale.

The provincial archives of Saskatchewan, Nova Scotia and Ontario are also actively involved in the preservation of broadcasting archives. In 1985 the Archives of Ontario conducted a survey of television stations in Toronto and Hamilton as a means of identifying archival records still maintained by their creators.³⁰ As a consequence, one of the stations donated material to the Archives for safekeeping. Combined with the interest of other groups it is apparent that some recognition at least has been given to the contributions of independent stations, writers, producers and other participants in Canada's broadcasting history.

In the introduction to this chapter, it was noted that archivists once overlooked the historical value of broadcast records and consequently followed neither a methodical nor a well orchestrated approach to acquisition. Access to these documents for research purposes was consequently impaired. Despite a progressive appreciation for the archival importance of the media record, neither the archival community nor the broadcasting industry has initiated comprehensive negotiations for the systematic preservation of these documents. Apart from sporadic arrangements between a limited number of creators and custodians, current efforts to acquire, preserve and make

30. Survey of Television Stations in the Metropolitan Toronto area. Conducted April 1 - October 31, 1985 by Jan Rollins for the Archives of Ontario.

available the special media documents of the broadcasting industry are still characterized by a lack of planning and coordination.

The framework of a structured approach to preservation should consist of a records disposition policy endorsed by both the industry itself and the archival community. This policy should include statements supporting records management in broadcasting agencies and recognizing that archives do not serve as media entertainment centres. But any commitment to preserve broadcast documents must be upheld by an action plan. Such a plan must address the feasibility of expecting broadcasting agencies to assume greater responsibility for the documents they create. In contrast to American and European practice, Canadian broadcasters are reluctant to preserve or to permit public access to their broadcast records. Instead, citing the escalating costs associated with preserving tape stock, providing adequate facilities and supporting a satisfactory staff complement, both public and private broadcasting agencies turn to public archives to serve as custodians. The reasons for this attitude are unclear. (Even those closely associated with the negotiations for the preservation of CBC material cannot state categorically whether the Corporation is unwilling or unable to maintain its own collection.³¹) But while the discrepancies between Canadian and foreign practices are worthy of further study, it is unlikely that Canadian broadcasters will soon modify their long standing

³¹. Derek Reimer, Archivaria 14 p. 159.

position on this issue.

Rather, archival institutions must take authority and exercise their mandates to preserve the public memory. As has been recounted, many different repositories have committed resources to the preservation of broadcast material. The role of local and regional archives has been demonstrated by issues of jurisdiction and public demand for local access. To form an effective network in this regard, these and other candidate repositories should outline specifically the extent of their mandate and the services they will provide. A statement of intent should be based on a methodical assessment of the projected scope of activity and the relevant operational considerations. This exercise can reduce the existing confusion by challenging archivists to settle essential issues: what is the potential scope of acquisition within the institution's jurisdiction (territorial or otherwise), how much can the institution afford to commit financially, what services can it offer, and what other repositories are involved in this area of activity. Identifying the partners in the network preserving broadcast material is an essential factor if acquisition activity is to be effectively coordinated. Without unity in this respect acquisition will continue to be haphazard and scarce resources will not be deployed efficiently.

CHAPTER TWO

APPRAISAL

Appraisal is defined in a glossary published by the Society of American Archivists as:

The process of determining the value and thus the disposition of records based upon their current administrative, legal and fiscal use; their evidential and informational or research value; their arrangement; and their relationship to other records.¹

This process requires the archivist to analyze the origin and characteristics of the record, be aware of current and developing research trends and review and measure a series of related criteria to determine the administrative, informational and overall archival value of those records. Also assessed is the relationship to other records, "both in an inter-institutional context, but also in a larger information context."² In other words, the archivist determines if the information contained in the records being appraised is contained

¹. Frank B. Evans et al, eds. "A Basic Glossary for Archivists, Manuscript Curators, and Records Managers," American Archivist 37 (1974):417.

². Gerald Ham, "Archival Choices: Managing the Historical Record in an Age of Abundance", American Archivist 47 (Winter 1984):15

in other textual or media archival collections, or in published forms. The cost of preserving the material is another important factor which is considered during the appraisal process.

In 1975 Gerald Ham observed that, despite the importance of appraisal as a crucial archival function, it continued to be "random, fragmented, uncoordinated and accidental."³ He suggested that archivists have tended to acquire what was most easily accessible, which underscores the fundamental connection between appraisal and acquisition. He also suggests that archivists must come to treat appraisal in a more scholarly and disciplined fashion. Ham continued his discussion of this important responsibility by examining, "Archival Choices: Managing the Historical Record in an Age of Abundance."⁴ The urgent need to make judicious choices is suggested in the title of his article. The exponential growth of 20th century documentation is a considerable factor. Whether responsible for textual or special media material, archivists agree that it is neither feasible nor necessary to retain it all.⁵ This chapter will explore the criteria and techniques used in the appraisal of broadcast records and will review some of the practices in established broadcast archives.

³. Gerald F. Ham, "The Archival Edge," American Archivist 38 (January 1975): 5.

⁴. Ham, "Archival Choices," pp. 1-22.

⁵. Ham, "The Archival Edge," p. 6.

A key element of appraisal, suggests Ham, is the application of traditional appraisal canons in a more rigorous, systematic and documented way. Ham also noted that:

Both traditional appraisal criteria and...other factors should be applied to the whole range of the historical record: photographs, sound recordings, television news footage, posters, handbills and other ephemera. Selection, intellectual control and physical preservation of these materials make even greater demands on the archivist's resources than do traditional paper records.⁶

Traditional canons do apply to broadcast material, but additional criteria are needed to address some of the unique appraisal problems posed by these documents. Most importantly, these criteria are "cumulative: none stand alone" and they cannot be reduced to a mere checklist.⁷ The criteria developed for broadcast records can be characterized as follows:

1. Historical: Programs judged to have enduring value for the study of Canadian and world history. Includes those which depict the evolution of the broadcasting industry as well as technological developments.
2. Sociological: Programs which reflect the overall composition of television programming (sports, variety, children's programmes etc.).
3. Artistic: Programmes which win awards or advance the art of television by demonstrating excellence in elements of television production. This can include the universal retention of work by noted producers, directors, writers or performers because of the connection to the individual and regardless of the value of the actual programme.

These categories indicate that the "best" of the broadcasting

⁶. Gerald F. Ham, "Archival Choices". p. 15-16.

⁷. Frank Boles and Julia Marks Young, "Exploring the Black Box: The Appraisal of University Administrative Records", American Archivist 48 (Spring 1985):137.

industry cannot be measured simply in terms of intellectual or artistic content. While attention is usually focused on documentaries and news broadcasts, the sociological influence of television is documented by preserving fictional work. Ken Larose explored the difficulties of chronicling popular culture and popular history and concluded thus:

To document film and television as media of mass communication is clearly to maintain records of major forces shaping modern societies...The reasons for the importance of these films have little to do with any intrinsic merit, but everything to do with their possible influence on large numbers of viewers. Thus any broadcast or film, regardless of its subject matter - from t.v. game show to political speech - may fit into this category.⁸

Although Larose's comments indicate that there has been some thought given to the need to preserve material of this nature, the contents of only a few collections reflect this philosophy. The result, observes Larose, is that:

Existing network criteria for keeping their own material lean heavily toward their most cultured and intellectual efforts, presenting an irony of preservation for future historians attempting to reconstruct our social history, especially in view of the overwhelming amount of mediocrity broadcast to our society. Does it matter that far fewer people saw the television play so carefully preserved than sat transfixed by a vacuous game show which was so callously erased? It might matter a great deal when our period is studied. Should we then preserve vast quantities of our future schlock?⁹

This question underscores the need to comprehend the origin and characteristics of the broadcast record.

8. K.M. Larose, "Preserving the Past on Film: Problems for the Archivist," Archivaria 6 (Summer 1978):144.

9. Ibid., p. 145.

The broadcast edition of a programme is a finished product, made up of many components, much like a published book. The creator engages in research, a thesis evolves, various elements are arranged and rearranged to demonstrate that thesis in an appropriate manner, judicious editing is applied and material which is irrelevant or superfluous is set aside. For example, the assembled footage for a television documentary is a mere fraction of the total film generated during the stages of production.

The records of a television or radio station consist of material produced in-house and programmes purchased from other production companies. The archivist seeks to clarify ownership to ascertain who holds the rights to the material and hence who may authorize its deposit in an archives. Within a station, each in-house producer may maintain his own files pertaining to the programmes he produces. "Master" or "central" programme files may contain only contractual and other financial information which is important, but which does not offer a full account of the production of the programme.

The heavy financial burdens associated with the operation of a broadcasting station force the erasure and re-use of tape stock on a fairly frequent basis. Consequently, a programme which is produced in-house is only preserved on tape as long as it has re-use potential. News libraries are maintained for their informational value, but intellectual controls vary according to the resources of the station. Moreover, some of the material may

be produced by other stations or syndicated news agencies and is loaned on a contractual basis for broadcasting purposes only. The legal ownership of the material must be ascertained before the archivist can determine what material may be subject to appraisal.

Should the archivist decide to round out the documentary record by preserving permanently broadcasts which meet not only the historical, but the sociological or artistic appraisal criteria, then considerations of volume and cost must determine how he implements this appraisal decision. The costs associated with the preservation and service of broadcast archives are high. The vast quantity of eligible material has led archivists to seek alternative means to preserve permanently material which meets the established appraisal criteria. The desire to preserve a representative record must be measured against the practicality of preserving "vast quantities of future schlock."

As the archivist grapples with these issues, he or she also determines whether or not the information worthy of permanent preservation can be safeguarded in other forms. This strategy depends upon a familiarity with existing archival collections as well as a commitment to the preservation of supporting textual documentation. By including the evaluation of the supporting textual documentation in the appraisal process, the archivist can preserve a more representative record of the creative process without physically preserving every individual production element which may or may not have been included in the final version of

the programme. A media production is supported by vital documentation such as scripts, production notes and policy and administrative records. The value of policy and administrative records has traditionally been appreciated, but not in context with the recordings they represented and as a result, some of the other textual records such as production files were ignored in favour of the more glamorous media documentation. The frequent consequence for reference and researchers was that source material was neither intellectually nor physically related. Researchers investigating a particular subject often did not realize that valuable material was located in other groups of records. Now institutions are striving to integrate information about their textual and media holdings to encourage researchers to consult all relevant sources regardless of their physical format.

Few of these considerations were conspicuous in the appraisal policies of former years. The absence of a well developed appraisal process for broadcast records was evidenced by the similarities between Ham's observations concerning the tendency to collect what is close at hand and the acquisition strategies, or lack of, in both public and private archives. Early appraisal and acquisition efforts were directed towards the rescue of whatever material had survived previous periods of neglect and mishandling. The results were a somewhat unstructured attempt at acquisition and appraisal. The lack of a

formal appraisal and acquisition strategy led to the loss of many documents which might otherwise have been preserved.

Past practices, experiences and operational requirements often determine the modern retention policies of archives within private organizations and may also influence what appraisal reforms are implemented. For instance, in a paper entitled "Report on the National Program Archives" Robin Woods, past archivist for the CBC, described the formation and growth of the Program Archives and reviewed the selection policy, or lack thereof, which subsequently made his role as archivist such a challenge. Woods summarized the corporation's attitude thus:

The greatest document producing machine in Canadian history was creating and consuming an incomparable record of our history. What was kept of this record and what was destroyed was decided almost entirely by operational expediency.¹⁰

Such a position is not incongruous in a corporate setting given that recordings of any broadcast are "ancillary to the medium - a by product of one of the myriad activities involved in making and distributing programs."¹¹ But while economic necessity may dictate many of these policies, Mr. Woods and other CBC staff often regret the loss of significant works which would have contributed not only to the excellence of the CBC Programme Archives, but to the heritage of the broadcasting industry as

10. An Account of the Development of Program Archives in the English Language Services The Canadian Broadcasting Corporation, quoted in John Twomey, Canadian Broadcasting History Resources in Canada - Critical Mass or Mess? (Toronto: Ryerson Polytechnical Institute, 1978):1.

11. Ibid., p. 1.

well. A rather poignant illustration concerns the discovery of seven C.P.E. Bach concertos. The manuscripts had been considered lost for 200 years, but were found in Toronto by violinist Adolf Koldofsy. The concertos had never before been performed in public, but the recordings of the CBC world premiere by Wanda Ladowska were subsequently destroyed. The loss to musicology, to the repertoire of Ladowska, and to the CBC's own music library is inestimable.¹²

Such losses were among the reasons the CBC created the Ottawa Program Research and Development Group in 1957. The Group was charged with investigating the corporation's programme archives. As a result of its study, Robin Woods was appointed as Supervisor of the Program Archives in 1959. As previously explained, a strategy was implemented for the acquisition, appraisal, selection and description of radio collections first, and in turn, television productions were administered, but the new medium posed its own obstacles: "The multiplicity, complexity, numbers and sheer bulk of these records soon dwarfed anything in radio."¹³ To manage these resources effectively, three basic appraisal criteria were established and these continue to guide the CBC Archives' selection process. First, material suitable for reuse in future programmes is preserved as are programmes documenting the history and culture of Canada or those providing a record of CBC television and radio

12. Ibid., p. 5.

13. Ibid., p. 5.

broadcasting. For example, part of the history of the CBC is documented by programme premieres and finales, anniversary shows, retrospectives, commissions, spectaculars, unique special events, controversial programmes, CBC documentaries, programmes featuring special achievements (such as new production or technological advances), programmes drawing a large audience response plus a sample of scheduled and unscheduled programming. "Historical" programmes such as recordings of major events, personalities, issues, celebrations and anniversaries are also preserved. While primary attention is given to Canadian subjects, the international perspective is not ignored. Outstanding artistic achievements in the art of radio or television production are also recognized and safeguarded. Amongst these are excellent prototypes of a genre, programmes which exhibit merit in any aspect of production and those which win awards in national or international competition.¹⁴ The scope of these guidelines seeks to encompass virtually all possible areas of study, but the abundance of material which must be considered means that inevitably a large proportion is lost through neglect or mischance.

The British Broadcasting Corporation again affords an opportunity to make several comparisons between North American and European practices. The BBC preserves approximately 2% of its programme hours and this is essentially due to the same policy cited for its acquisitions strategy; namely, that the BBC

¹⁴. Ibid., p. 20-21.

is financed from licence revenue and the terms of its charter state that all revenue is for activities relating to broadcasting only. This constriction largely determines the selection policy of the BBC's Sound Archives. Archive Selection Assistants audition all recordings which they feel deserve consideration for preservation. Comparisons are made to the existing collection to avoid duplication and attention is given to the significance of the sound version as opposed to the script itself. Consideration is also given to reuse potential, as well as the historic and artistic value of the programme. In addition, an annual recording is made of a full day's broadcast to preserve the contemporary characteristics of broadcasting.¹⁵

Various selection techniques permit an archivist to preserve a portion of the archival record and cope with problems of preservation. One potential avenue is through records management programs within government and private creating agencies. A closer involvement with the records early in their lifecycle will allow archivists to determine which records are worthy of permanent preservation and help to ensure the material will not be accidentally or purposefully destroyed. In fact, Records Management "may be the only effective way of coping with the enormous quantity of moving images currently being produced

15. Timothy Eckerlsey, "The Selection of Recordings for Permanent Retention in the BBC Sound Archives," Phonographic Bulletin no. 9 (August 1974) p. 9-12.

for...television."¹⁶ Unfortunately, this is not a process which seems to have been implemented to any great extent. There are no written accounts of any Records Management program designed for application to broadcast material.

Selective retention and sampling are other methods by which the archivist can reduce the bulk of a unit of records which has archival value, but which cannot be preserved in toto because of its extent. Sampling is used to refine the archival record and selection techniques are applied to the material after the archivist has determined to acquire a body of records.

The relative merits of different sampling methodologies and problems of application are important for the broadcast archivist. Subjective sampling consists of the selection of the most significant files or documents from a larger group based on a predetermined set of parameters such as subject or geographic location. Statistical sampling involves selecting a small portion from a larger unit that will accurately reflect all the important characteristics of the larger unit. Every "nth" file is selected when systematic statistical sampling is applied. This approach has been rejected by such institutions as the National Archives of Canada which prefer subjective rather than statistical sampling.¹⁷ The National Archives currently tapes a

¹⁶. Sam Kula, The Archival Appraisal of Moving Images: A RAMP Study with Guidelines. (Paris, General Information Programme and UNISIST, UNESCO, 1983), p. 31.

¹⁷. For a discussion of sampling techniques applied to the CBC programmes "Bob McLean Show" and "Take Thirty" see Rosemary Bergeron, "The Selection of Television Productions", Archivaria

station's entire broadcast day, from the beginning to the end, on a regular, but periodic basis. This allows the Archives to capture the distinctive quality of day long programming including commercials, voice-overs by announcers and regularly scheduled programmes. However, regardless of the chosen method, sampling is most useful when broadcast archivists develop written guidelines and regulate the rejection and disposal of unwanted material.¹⁸

Another option for effective collections management is reappraisal and deaccessioning. These avenues have apparently not been fully exploited, perhaps because there is "so little to guide archivists - no literature, no previous practice."¹⁹ Records appraised in the past can be subjected to refined appraisal criteria or merely appraised in a more "rigorous, systematic and documented way."²⁰ If the material is found to be lacking archival value, it can be removed from the holdings of the institution by means of deaccessioning. Another benefit of deaccessioning is that it allows archivists to reunite fonds or to repatriate material which may be more suitably located in a local repository. But, to deaccession conscientiously and without risking the loss of truly archival material, there must be well developed acquisition and appraisal policies and the deaccessioning process must be meticulously documented.

23 (Winter 1986-87):41-53.

18. Kula, The Archival Appraisal of Moving Images, p. 31.

19. Ham, "Archival Choices," p. 17.

20. Ibid., p. 15.

Critics of reappraisal and deaccessioning, such as Karen Benedict, give various reasons for their objection to this process. They contend that appraisal is a very subjective exercise and that it is difficult to separate differences of opinion between archivists from mistakes in judgement during the initial appraisal. Benedict claims that deaccessioning should not be considered as an option unless earlier collection and appraisal policies were unsound.²¹ In the case of broadcast records, there are arguments for reappraising material which was collected according to earlier acquisition policies and appraisal criteria.

The need to redefine the concept of what records should be eligible for permanent preservation underscores the importance of conducting a periodic review of appraisal criteria. The criteria applied within both private and public institutions should be regularly re-evaluated in light of new trends in general scholarship and archival science. New criteria can refine the process of appraisal and improve the standard of the collection within the institution, a prime benefit to researchers.

What can be concluded from these observations is that corporate broadcasting archives generally preserve material chiefly for their operational use. However, they also acknowledge the social and historical importance of the records

²¹. Karen Benedict, "Invitation to a Bonfire: Reappraisal and Deaccessioning of Records as Collection Management Tools in an Archives - A Reply to Leonard Rapport," American Archivist 47 (Winter 1984):45.

created by their organization and pay heed to those considerations as their means allow. Public archives, such as the National Archives of Canada, have more scope to preserve the public record and are therefore in a better position to select material based on wider selection criteria.

Sam Kula observed that prejudice against media documents is largely due to the stereotypical view of the moving image as nothing more than a Hollywood style feature film. As a direct consequence the medium is "regarded by the custodians of artifact and culture as escapist fare of no lasting value."²² Such misconceptions are slowly disappearing, but are not absent altogether from contemporary archives.

The continued refinement and articulation of the appraisal criteria and practices applied to broadcast material will have two benefits. First, it will reinforce the place these records have in archival repositories by emphasizing their cultural, social and historical value. Second, reference and public access will improve as archivists discover the means to more adequately represent the contributions of broadcasting, both as an industry and as an agent of culture.

²². Kula, The Archival Appraisal of Moving Images, p. 7.

CHAPTER THREE

DESCRIPTION

Description is "the process of establishing intellectual control over holdings through the preparation of finding aids" and is the means by which the contents of an archives are communicated to its clients.¹ Generically titled "finding aids", these reference tools are presented in various forms including guides, inventories, catalogues and indices. Characteristics of the record may influence which style of finding aid is most appropriate. So too may the access demands of the public. The consistency and quality of the information contained in a finding aid has become a focus of attention within the archival community, users included, and so the development of descriptive standards has emerged as an important goal of the profession. This chapter will explore the needs of users in broadcast archives, the descriptive practices which are preferred by archivists in broadcast archives and some of the issues raised

1. Frank B. Evans et al, eds. "A Basic Glossary for Archivists, Manuscript Curators, and Records Managers," American Archivist 37 (1974):421.

by the development of descriptive standards as they apply to broadcast records.

If one purpose of an archival finding aid is to make the record more accessible to the user, it may also be suggested that for broadcast material the finding aid serves to protect the record from unnecessary handling. Unlike textual records, special media documents cannot be browsed. Their physical form renders use laborious and repeated auditioning of film or tape inflicts damage. While copies for public use can be made from an original, this is a costly reference tool and does not facilitate research in of itself. The finding aid thus serves both as an essential navigational tool for the user and as a critical component of an archival preservation programme.

A client profile for users of broadcast material has not been made publicly available by any institution. And so, it is not possible to categorically portray the type of information or research projects these clients pursue or their research methodology. However, "experience has shown that researchers will approach recordings on an item basis, a specific event, a certain voice or performance."² This demand has several implications for archivists. First, emphasis will be placed on description at the item level if the institution perceives that its users seek specific segments of film or tape. Extensive cross-referencing and indexing will be necessary to accommodate

2. Leslie G. Waffin, "Recorded Sound in the National Archives of the United States," Phonographic Bulletin, no. 14 (May 1976), p. 6.

searches for specific subjects, performers or other creators such as directors, authors or producers. Further, traditional provenance based searches cannot always meet such demands. Recordings are produced for a variety of reasons and their content is of interest to scholars for more than its evidential value. A public affairs programme such as "This Hour Has Seven Days" will explore a wide variety of topics within any given year and appreciating the basic format of the series will not convey the topics, individual or events recorded for each edition of the programme. Moreover, despite having a different mandate and function, a network's news department may encroach upon the same subject areas to fulfill its programming needs or responsibilities thereby creating a different record of the same event. The second characteristic of user habits in broadcast archives is that clients requiring specific segments of film or tape often work to tight deadlines and can devote very little time to research. While this practice may seem unsatisfactory to the archivist, their public service duties compel them to find a way to satisfy this user group, which incidentally is often the original donor of the records themselves. The archivist responsible for the description of broadcast material might question whether the general needs of their user groups are accurately known. However, if it is accepted that the majority of clients seek specific information at an item level, how do archival finding aids serve this need?

For some time there was debate as to whether written

finding aids should bear the burden of responsibility for communicating the contents of a fonds. Some archivists feel that the subject specialist should advise researchers seeking information. Certainly the knowledge gained by working with a body of records will be superior to the facts which can be transcribed into a written finding aid and, of course, archivists working with media documents are, perforce, subject specialists. So convinced was Frank Burke of the merits of subject specialization that he wrote:

... the archivist, to be truly classified as an archivist, must be a subject or an area specialist, with substantial knowledge of the content of the material for which he is responsible. His value is enhanced by the length of time he has worked with researchers in the record...³

However, if the intent of the subject specialist is to offer improved accessibility to the records, it may not be an accurate response to user needs. First, the volume of records of many repositories precludes any single archivist from having personal knowledge of all the holdings or even those within a division or section of the institution. The archivist cannot have such detailed knowledge that he can lead a client to specific items scattered throughout many record groups. From a user's perspective, Philip Jordan wrote:

I do not expect an archivist, in a large or small or public or private institution, to have knowledge of the contents of each and every bit of paper in his

³. Frank G. Burke, "The Impact of the Specialist on Archives," College and Research Libraries 33 (1972):314.

custody.⁴

If there are strong arguments against the use of a subject specialist for access to textual records, then it is more reason still to abandon such an approach for media material. It should be noted however, that the principal reliance on written finding aids does not prohibit consultation with the archivist responsible for the records. It merely suggests that such consultation should follow, not precede, a search of available finding aids.

If written finding aids are the most effective way to cope with the volume of broadcast material housed in archives, then what types of finding aids are chosen by archivists to describe these documents? The Bureau of Canadian Archivists Working Group on Archival Descriptive Standards surveyed Canadian archives partly to determine what types of finding aids were preferred by archivists, what data elements were commonly included in these finding aids and to what degree Canadian practices for the description of archival material were already standardized. The findings were included in Towards Descriptive Standards: The Report of the Canadian Working Group on Archival Descriptive Standards.⁵ Twenty-two of the 151 repositories responding to the survey reported film or video holdings and

4. Philip D. Jordan, "The Scholar and the Archivist - A Partnership," American Archivist 31 (January 1968):60.

5. Towards Descriptive Standards: Report & Recommendations of the Canadian Working Group on Archival Descriptive Standards (Ottawa, Bureau of Canadian Archivists, 1985)

identified a total of forty-eight finding aids for the material. Preferences for certain types of finding aids were apparent. For example, descriptive lists, indices and catalogues are favoured in broadcast archives while the inventory, as defined by the Society of American Archivists places third among reported usage.⁶ Subject indices are more prevalent than chronological ones. "Other" types of finding aids, such as transcripts of recordings, are also reported. Location files are frequently maintained - not surprising given the need to account for the physical dissimilarities between film and tape formats and the consequent need for separate storage. Box and file lists are not common because documents such as sound and moving images are not routinely stored in boxes or files, but are shelved individually.

Some basic observations can be made based on the data amassed by the Working Group. First, the description of these records does focus on the item level, although some archives describe the entire fonds. Also, in a majority of instances, the use of one finding aid leads to the consultation of another, especially for film material. The treatment of sound recordings differs more frequently amongst reporting institutions. The description of these records is usually at a "file" or unit level rather than at the item level possibly because a single tape or cassette may contain many separate recordings- a less common

⁶. These figures do not represent the opinion of all audiovisual archives since only 50% of Canadian institutions responded to the survey conducted by the Working Group.

feature of videotape or film.⁷ The merits of these various finding aids can be considered in light of user demands. Also to be considered are the effects of institutional staff and budget resources which may contribute to the chosen format for information presented to the public.

The records of the broadcasting industry are held in many institutions across Canada. Moreover, users have an interest in the broadcasts preserved in other archives worldwide. The need for guides at the repository level is evident and to their credit, several Canadian archives have prepared guides for their broadcasting records- a considerable accomplishment considering the relative scarcity of published guides for textual collections. A fine example is the bibliography of the Concordia Radio Drama Project which lists over 8,000 radio drama scripts, including 3,700 Canadian plays broadcast by the CBC, the CRBC and the CNR between 1925 and 1961.⁸ The entries provide a succinct description and give the location of major collections housed in Canada. The guide also lists those plays held by the BBC Drama Library. Indexed by item, author, title and the sequence numbers in the main entry, the guide is well organized and easy to use.

7. The term "file" as a level of arrangement and description is somewhat misleading when applied to special media material. And since the archivist may wish to describe the contents of a like group of records within a fonds of broadcast material, it may be more accurate to assign the term "unit" to this level.

8. Howard Fink, "The CBC Radio Drama Project and its Background," Canadian Oral History Association Journal, (1976-1977):54-63.

In Europe and the United States several institutions have published thematic guides and their availability internationally has encouraged use by many foreign researchers. The BBC Sound Archives has produced three comprehensive catalogues for recorded talks, speeches, events, commentaries, interviews and reminiscences plus World War II recordings from 1939 to 1945. Each provides an excellent avenue for identifying and locating BBC sound materials. BBC Radio and TV Drama Catalogues are equally well organized.⁹ Also available is a guide to the BBC Home Service - Nine P.M. News 1939-1945, which reproduces news-readers typescripts and is organized chronologically.

In the United States, the Library of Congress offers a guide to the Radio Broadcasts in the Library of Congress 1924-1941. The 5,100 live broadcasts listed are arranged chronologically. Each is indexed by title and performer and the main entry includes the date, title and length of the broadcast as well as the call number of the broadcasting station.

Another useful publication is Donald Godfrey's Directory of Broadcast Archives.¹⁰ Although published in the United States, it includes references to Canadian institutions. The collections in each repository are identified and briefly

⁹. BBC Radio Drama Catalogue 1923-1975. The microfiche edition reproduces 35,000 catalogue cards in the Play Library of the BBC at Broadcasting House.

BBC TV Drama Catalogue 1936-1975. The microfiche edition reproduces 16,000 catalogue cards in the Play Library of the BBC Television Script Unit.

¹⁰. Donald Godfrey, A Directory of Broadcast Archives (Washington, D.C., Broadcast Education Association, 1983)

described. Available finding aids are also noted. In addition to the special media records listed, the location of textual collections are given, such as the Andrew Allan Papers, the Earle Birney Papers and the John Drainie Papers. While the data provided in a guide of this type is naturally concise, it allows the researcher to obtain a general indication of potential sources.

Guides such as these enable the user to identify which records are held within a particular institution. The finding aid which is then consulted gives additional information concerning those collections. In most broadcast archives, after consulting a guide such as those described above, the researcher would turn to a card catalogue. The scope and emphasis of each entry in these catalogues varies according to the extent and subject content of the fonds it represents. While providing information about the intellectual content, the entry may also describe the physical state and the location of the record and list the production team responsible for the recording. Experience with client requests may lead to the formulation of different formats for main entry cards and varying policies regarding indexing from one repository to another. Certainly the operational requirements of a corporate archives will help to determine the data included in a card entry. In a public repository less emphasis may be placed on detailed indexing, but the research methodology of users and the availability of staff and resources may determine the quantity of information provided.

The Motion Picture, Broadcasting and Recorded Sound

Division of the Library of Congress provides an opportunity to examine the methodology of a large organization. To make best use of available resources while satisfying the demands of a diverse clientele, the Division undertakes description in three stages. The first consists of a general inventory which affords immediate location and administrative control of a collection. The purpose is to gain prompt dominion over the material with less emphasis on the accuracy of the historical information contained in the description. In the second phase a preliminary catalogue is prepared. A staff member is assigned a film or tape on a priority based upon expected user demand, technical concerns and/or donor needs. The item is auditioned and extensive research is undertaken to verify all information taken from the piece. All archival control data is likewise verified. Technical data sheets and preliminary control cards are prepared. While this stage is considered an intermediate one, the data recorded on the cards is quite extensive. It includes:

1. Original Title (the main entry)
2. Country of Origin (if not the United States)
3. Any related company, its relationship to the original release and to the copy in the Division.
4. Production and Broadcast Dates
5. Copyright Information (claimant, date, number)
6. Director - and possibly some other major credits
7. Some cast names

8. Collection, Source and Date of acquisition
9. Physical description
10. Physical location
11. Notes - to explain further any of the elements listed above or to list secondary sources consulted
12. Other titles - includes cross-references to other titles for the same work.

Full cataloguing is completed on a collection by collection basis as time and funding permit. The information listed in stage two is verified and then transferred onto a MARC input sheet for eventual transfer to a computer. There are no on-line facilities. Once in the database, special request lists can be generated for researchers on a cost basis. Cards with cross-references are also produced by the computer to update the preliminary controls used in stage two and so the catalogue and index permit access by all the elements listed, an illustration of the benefits of an automated system. These procedures ensure that at any given time after a collection is accessioned, some sort of intellectual control will facilitate user access.¹¹

By comparison, the CBC maintains file cards for every item with cross-references by date, subject, name, programme title, author and performers. The main entry card gives a precis of contents and distinguishing marks. The Moving Image and Sound Archives of the National Archives of Canada has adopted a system

¹¹. Interview with staff of the Motion Picture Division of the Library of Congress, August 18, 1985.

similar to that of the Library of Congress. Their emphasis is also on providing minimum control as quickly as possible through the use of preliminary data forms which are eventually replaced when full cataloguing has taken place.

At the BBC Sound Archives, the retrieval of information is facilitated by a classified card catalogue and a supplementary index in dictionary form. The main characteristic of the catalogue is a division by form (ie: interview or play) with allowances for further specialization such as music, sports, or foreign language productions. Each main classification is assigned a letter code for identification. For example, A is for Talks and Speeches, B is for News, C for Chronology (significant events arranged in date order) and D is for Second World War material and so on. Each entry within that classification includes the names of the broadcasters, authors, composers and production staff. Technical information and a precis of the subject content is also recorded. An alphabetical index by title, subject and participant supplements the main catalogue. This index is designed to meet the re-use needs of internal researchers.¹²

The use of an index as a complement to main entry cards in a catalogue is common. In many cases the index forms a significant portion of the catalogue system. Additional points of access can be provided by cross-referencing data about the

12. Tony Trebble, "Classification and Cataloguing Practice in BBC Sound Archives," Phonographic Bulletin, no. 7 (July 1973), p. 19-23.

production taken from the main entry card or by introducing subject headings to assist subject searches. Despite the common use of this descriptive tool, there is no agreement about what body is indexed - is it the inventory to the collection (if one exists) or should the entries in an index refer to specific portions within the fonds itself? If the index leads the user directly to the collection without the need to consult any other type of aid, should the index then describe a series or discrete items within a collection?

Automation can assist with the production and dissemination of archival finding aids. However, a computerized system is dependent upon the foundations laid by sound manual practices. Nevertheless, as the following accounts demonstrate, archives can realize tangible benefits from the introduction of automated reference systems. "Danmarks Radio" record collection consists mainly of commercial recordings. The library's card catalogue contained eight million index cards and was growing at a rate of 9,000 additional cards per week. Apart from the main entry for new acquisitions, subject headings identifying composers, arrangements and artists had to be listed and filed on separate cards. The introduction of a computerized system eliminates the need for cross-references which bear essentially the same information as the main entry card. The entry can provide a full description of the record and the user can manipulate the search

feature of the computer to isolate those subjects of interest.¹³ The Netherlands Broadcasting Foundation, NOS, also maintains a library of commercial recordings. The two million cards in their card catalogue have been supplemented with an automated system which uses subject "headings" and "keywords" to describe newly acquired material. After the material has been examined, a number of categories or subject headings are identified. "Headings" which will appear in the computerized entry will be selected from this group. The computer allows researchers to combine several "headings" to locate more specialized items. "Keywords" are freely chosen words or terms which refer to characteristics of the text or music. Authority lists for both "headings" and "keywords" are maintained to ensure consistency.¹⁴

The increasing dependence on automated systems for the creation of archival finding aids has heightened, but not created, the need for descriptive standards. While an evaluation of the specific merits of standardization and the many problems associated with implementation are not suited to this discussion, the introduction of approved standards will strengthen the intellectual control archivists exercise over their holdings, will promote the sharing of information between

13. Bibi Kjaer, "Cataloguing and the Computer - Danmarks Radio Computerizes Index File," Phonographic Bulletin, no. 19 (December 1977), p.36-39.

14. Joop van Dalfsen, "The Use of the Computer in the Documentation-System of the Sound Archives of the Netherlands Broadcasting Foundation NOS," Phonographic Bulletin, no. 21 (July 1978), p. 21-27.

repositories and will facilitate reference.

An archives housing audiovisual material may wish to adopt existing library cataloguing rules for the description of these documents because many recordings are considered "published" items. However, archival needs differ from those of a library and so Anglo American Cataloguing Rules (AACR2) are not strictly applicable. Many of the data elements presented in AACR2 are not relevant for archives. The Working Group on Archival Descriptive Standards suggested that the Bureau of Canadian Archivists appoint a committee to study the requirements of sound and moving image materials in order that archival descriptive standards could be devised for them. This work would be co-ordinated with the current efforts of the Association for the Study of Canadian Radio and Television. This crucial recommendation will help to ensure that proposed standards accommodate the unique characteristics of the records. The Report of the Working Group has already inspired some institutions to evaluate current practices and introduce standards for the intellectual control and description of records in their custody.

Description is critical to such archival functions as acquisition, appraisal and reference because it is a vehicle for the intellectual control of archival records. Apart from the administrative benefits such control brings, good finding aids facilitate access. Any measures taken towards the development of

descriptive standards will have a pronounced effect on the quality of reference service provided to researchers. For example, the creation of standardized subject, name and geographic headings will streamline the search process by eliminating variant terminology. A more uniform presentation of finding aids within and amongst institutions may reduce the confusion of users and the need to become familiar with yet another information system.

It may be some time before archivists lose the impulse to design their finding aids according to the perceived desires of their particular client group. It is understandable that archivists seek to satisfy the needs of their users by accommodating their research practices. Item level description would have great appeal to any research community and, as this chapter has discussed, users of broadcast material would undoubtedly prefer this approach. However, as the volume of holdings grow, item level description becomes less feasible. Regardless of the type of institution, an archives cannot communicate the contents of the majority of its overall holdings if it devotes all resources to item level description. To afford greater opportunities to scrutinize a larger proportion of material, more use could be made of the traditional inventory. The archivist could thereby provide information on the entire fonds and then subsequently offer specific details at a series or item level as time and resources permit. Variations of this approach are in practice at the Library of Congress and the

National Archives of Canada. Scholarly use might be fostered by demonstrating the diversity of a collection while still providing for the more precise needs of broadcasters and filmmakers.

The implementation of descriptive standards and automation will likely improve access within broadcast archives, but the challenge to describe adequately all holdings will still be daunting. It remains to be seen whether user habits will change under the pressures the volume of material presents or whether archivists will struggle with the burden of describing growing numbers of records at the item level. Either way, this issue emphasizes the critical importance of description to access and use by demonstrating the relationship between user needs, growth in acquisitions, descriptive practices and the need for descriptive standards.

CHAPTER FOUR

PHYSICAL ATTRIBUTES

The technical components of special media materials greatly impair access and use. This chapter will review some of the principal concerns associated with the physical formats of these records and the consequences for archival repositories. Included in this discussion is an assessment of the curatorial responsibilities of the archivist as opposed to those undertaken by conservators. Acquisition decisions, appraisal criteria and the provision of access may be better understood in light of the physical demands of these records. For instance, the poor condition of early film and tape stock hastened the haphazard acquisition of collections as archivists sought to prevent their further deterioration and loss by acquiring what remained. The appraisal of these records also reflected their physical characteristics since the preservation of evolving formats is a means of representing technological advance. Moreover, as previously noted, the preparation of finding aids is largely directed at reducing the need to consult original material which should not be subjected to repeated auditioning. Moreover, the provision of any public access must respect the frail qualities

of these documents.

Archivists responsible for textual records have an understanding of the fundamental physical considerations which threaten the lifespan of paper documents. They deal constantly with how such issues as volume and physical condition affect acquisition, appraisal, description and dissemination. The physical properties associated with special media records are less appreciated. A synopsis of some of the major physical problems will hopefully demonstrate how such issues as high costs, rapid development of technology and developments in media conservation bear upon the archival treatment of these records.

Archivists working with broadcast records acquire a degree of technical expertise which allows them to allocate wisely available resources and reconcile the physical and intellectual needs of the records. Defining the extent of that expertise and accommodating the physical requirements of these records is increasingly difficult because technological considerations are complex and the field of knowledge is rapidly expanding. In the absence of available training amongst support staff, institutions may feel deterred from assuming responsibility for broadcast material. Smaller repositories with a primary focus on textual records may not have either archivists or conservators with the necessary skills to care for audiovisual documents.

Commonly, the extent to which this challenge is met is dependent upon the financial and staff resources an institution can afford to commit. For instance, the National Archives of

Canada relies upon the specialized skills of trained media conservators. Smaller institutions without the equivalent facilities seek alternatives, such as the Public Archives of British Columbia which employs a single staff member in its Sound and Moving Image Division expressly to service the technical requirements of their holdings. Other organizations follow the advice of the National Archives of Canada Conservation Branch which suggests that archivists acquire a familiarity with the essential technical considerations and provide the best possible protective measures for the physical properties of the collection; in the event of a serious conservation problem, the archivist can then request the assistance of a qualified media conservator. During a 1984 workshop entitled, "Workshop on the Conservation and Preservation of Moving Images and Recorded Sound", the conservation professionals explained the associations between the physical needs and limitations of the records, conservation and reproduction expenses, and the archival decisions of the archivist. Among many examples cited was a hypothetical situation in which an archivist acquired a collection in poor physical condition and in return promised copies of all items for the donor. The conservators urged the participants to be aware of the costs and staff resources needed to ensure the archival preservation and reproduction of this "collection". Furthermore, they discussed how commitments such as were made in this example tend to undermine the order and priorities already established within a conservation section.

The workshop attempted to educate the archivist in order that he or she might be better able to appraise, acquire and disseminate archival broadcasting records. The emphasis was placed on the fundamental issues which affect sound and moving images and the essential knowledge the archivist should have regarding these documents. Also examined were the hazards which cannot be corrected without the assistance of a professional conservator. The following discussion reflects the philosophy of this workshop.¹

Severe physical damage to either film, sound recordings or video tape is readily apparent even to the untrained eye and, as will be outlined, various preventative measures can be undertaken. However, in order that he may assess the future needs of a collection, the archivist will become familiar with the more subtle signs of deterioration. Film and tape may appear to be in perfect condition, but the presence of unseen contaminants can threaten a collection no matter how strict the archival storage and handling requirements. For example, the quality of film processing has a great effect on stability because "processing fluids may leave stains which destroy the image and a residue of raw chemical which will destroy the film."² If the film is subsequently improperly stored or

1. "Workshop on the Conservation and Preservation of Moving Images and Recorded Sound". National Archives of Canada. July 2-5, 1984. Attendance by author.

2. Sandra Lopez, "Film: An Archival Problem," P.N.L.A. July 34 (Spring 1970):16.

mishandled, the process of decay is accelerated and even under ideal storage conditions these residual chemicals will impair the material.

As a further example, the dangers of nitrate film are well documented. Until the 1950's nitrate served as the primary base for 35mm film stock and so is commonly found within archival collections. Nitrate has a life span of forty to sixty years and once deterioration begins it accelerates very rapidly. Ultimately the surface becomes sticky, the emulsion separates from the base and the image is lost. The risk of spontaneous combustion is great, especially with rolled film because as it deteriorates a flammable gas is emitted. While the film must be exposed to high temperatures (over 100° fahrenheit) for an extended period before an explosion results, spontaneous combustion of nitrate film has occurred. The National Archives of Canada employs specially equipped vaults to provide the environmental and technical control necessary to preserve nitrate film. The isolation of the vaults also protects other collections from damage due to fire or emitted gas.

Another demonstration of the inherent weaknesses in film material is the inability of colour film stock to retain its vividness. Television broadcasts which incorporate film footage from the 1960's illustrate how serious this problem has become. When comparisons are made to modern film or videotape, the loss of quality caused by the fading of the colour dyes is strikingly apparent. As yet, no way has been found to prevent the fading of

colour film. Moreover, modern colour stock offers no guarantee against the same loss of clarity in future years. Heat and humidity contribute to the impairment of the image and so it is recommended that colour material be stored in temperatures close to 0°F and 15-20% relative humidity.³ Nevertheless, such precautions will not totally prevent but only delay the loss of quality.

Although these examples illustrate the types of physical deterioration which cannot be reversed by preventative or restorative measures, there are many procedures which can be followed in an archival environment which will prohibit a serious loss of quality. The implementation and enforcement of proper storage and handling regulations are essential. Of fundamental importance is the environmental standards imposed. Apart from the special needs of nitrate and colour film, the recommended temperature requirements for sound and moving images are much the same as for textual records (60-70°F). Interestingly however, the effects of high temperatures vary with different media materials. For example, shellac and modern vinyl recordings should not be exposed to high temperatures, but older acetate tapes and modern polyester can apparently withstand

3. The cost of cold storage is considerable and is impractical on a large scale for most institutions. Commercial freezers are not equipped to provide the humidity levels recommended. If cold storage is available, it is imperative that the film be brought to room temperature before it is auditioned or the stress may fracture the brittle film.

temperatures of over 100 fahrenheit.⁴ Generally however, temperatures should never exceed 70 F since high temperatures can cause several forms of deterioration apart from the growth of mold and mildew. One of the most common is "print-through", a melding of images which occurs when a film is rolled and the emulsion is back to back. Because the two sides are in contact the emulsions lift off and transfer onto other portions of the rolled film.

Another common result of high temperatures and shifting humidity is shrinkage or warping which affects acetate or cellulose film. An allowable degree of shrinkage is measured at .8% and inexpensive gauges are available to perform these measurements.⁵ When this mark is exceeded the sprocket holes in the film will no longer align with the teeth of the projector and the film will tear and be irreversibly damaged. Occasionally shrinkage can be temporarily reversed with the use of "vacumated" tanks. After soaking for one to three weeks in a chemical solution, the softened film is sufficiently pliable for copying. However, the film does not remain in this state permanently and thus a preservation copy must be made immediately.

Vacillating or high humidity poses the same threat to sound

4. Dietrich Schuller, "Technical Basis of Sound Archive Work" in Sound Archives: A Guide to their Establishment and Development, ed. David Lance (International Association of Sound Archives Special Publications no. 4, 1983), p. 17.

5. Information obtained during the "Workshop on the Conservation and Preservation of Moving Images and Recorded Sound", 1984.

and moving image collections as to any other media. It is recommended that humidity levels not exceed 45-65% and that stable conditions be maintained. Unique items, such as wax cylinders, require more specialized climatic conditions. The size of an archives may prohibit modified compartments for the storage of delicate materials, but the prevention of fluctuations in humidity and temperature is more essential than the design of exceptional climatic facilities.

Contaminants such as dust, sulphur oxides, carbon and nitrogen are especially harmful. Dust leads to scratches on film, tape and sound recordings. Damage caused to the base side of film can be repaired, but emulsion scratches are permanent and result in a loss of the image. As a preventative measure, all recordings should be placed in appropriate enclosures.⁶

Briefly, the correct storage of this material consists of the following specifications. Shelving should be sturdy and of sufficient width to accommodate all sizes of cassettes or discs. Discs should be provided with adequate support to prevent leaning and should not be tightly packed. Neither film nor tape should be wound too tightly around a reel or "cinch" marks will result. Conversely, tears and folds will occur if the tape or film is too loosely wound. Film in any container should be shelved in a horizontal position to prevent it from sinking on the reel.

6. There is information available recommending proper enclosures for both sound and moving images. Given the technical advances in this field it is wise to consult the most current publications.

Sound and video tape may be stored vertically.⁷

Damage caused by improper storage is rare in an archival repository since most institutions adhere to these recommended standards. Unfortunately, injury is more commonly the result of negligent handling. Initially, mistreatment by donors, such as the use of adhesive splices, faulty playback equipment and a poor storage environment, may damage the material. An institution must emphasize the need to ensure that proper handling requirements are met by both staff and public users to minimize further wear.

Much of the physical breakdown of a recording is inflicted by the playback machinery. As the film or tape winds through and around the guides within, tiny scratches are etched onto the material. Two key preventative measures can minimize the consequences of repeated auditioning. First, whenever possible the original should not be used for reference purposes. Even under the strictest guidelines, repeated use leaves signs of deterioration. Many institutions provide a reference copy for research use and the original remains the preservation master. As a second precaution, the equipment should receive regular maintenance because the tape heads wear down and the electrical parts can become faulty. The frequency response should be checked daily, the tape heads cleaned and demagnetized weekly and

7. David Hall, "Phonorecord Preservation: Notes of a Pragmatist," Special Libraries 62 (1971):358-360.

a full service given every two months.⁸

Proper playback procedures also help to reduce stress on sound and moving images. To avoid excessive strain some archives permit only the regular play functions; no rewind or fastforward options and no stop and starting privileges are offered. Others do not place any operating controls whatsoever in the hands of the user. An intercom system allows communication between the staff, who initiate the playback, and the user, who sits in a specialized listening area. These options may not be available to smaller archives who have neither the equipment nor the staff to enforce such a programme, but users can be prohibited from inflicting unnecessary wear on both the machinery and the tape, and of course should be supervised while handling any material.

It is interesting that as the technology has developed, so too have the conservation recommendations for the preservation and care of these documents. For instance, it was previously suggested that to guard against the threat of magnetic or electric contamination, tapes should be stored on non-conductive shelving such as wood or plastic. It is now felt that the threat was exaggerated because the level of electricity or magnetism needed to affect a tape is far higher than is customarily found in either archival or museum storage areas.

⁸. Recommendations based on regular use patterns. Dietrich Schuller, "Technical Basis of Sound Archive Work," in Sound Archives: A Guide to their Establishment and Development, p. 14-15.

As expertise in the field of sound and moving image conservation grows, it is clear that much greater attention will be focused on how evolving technology can be applied to the care given these records. In many instances these advances pose further problems, such as how to maintain equipment and expertise for an outdated technology. The machinery created to produce and playback early forms of film and tape becomes rare and expensive to maintain as the format grows obsolete. Because archivists seek to preserve the original form of the information whenever possible, it is not acceptable simply to copy the old format onto a new one. Moreover, changes come so rapidly that "new" formats very quickly become "old". It is therefore necessary to preserve much of the early equipment.

Tape formats have already matured to such an extent that bulky two-inch tape is obsolete. The smaller formats are convenient and less costly for the broadcaster, but the life span and durability of tape has not been precisely defined. The introduction of video and optical discs may present several attractive options. For the permanent storage of records in archival institutions, videodiscs have revolutionized the concepts of storage and retrieval. Data is recorded "on a special master disc by exposure to an intense and sharply focused pencil of light from a high-powered laser."⁹ The recording is accomplished by rearranging the protons that form part of the

⁹. Dennis Mole and Josephine Langham, Pilot Study of the Application of Video Disc Technology at the Public Archives of Canada (Ottawa: Public Archives of Canada, 1982). p. 5.

structure of the recording substance. The laser forms tiny holes or ridges in a tight spiral on the surface of the master disc. Replicas are made by a process of "stamping", similar to the manufacture of phonograph records. The information is "read" by a laser while the disc spins on a high speed turntable. Translated electronically, the information then appears on a television screen. A computer controls the operation of the video disc and allows for either random search or programmed instruction.¹⁰

The storage capacity is astounding. Sam Kula marvelled that such "recording devices...will enable me to carry our (Moving Image and Sound Archives) entire holdings around with me in an attache case."¹¹ Unfortunately, tests for longevity have been inconclusive. The life span can be predicted with a reasonable degree of accuracy, but cannot be strictly specified. However, the substances used for such discs are extremely stable and are far more permanent than magnetic tape. Moreover, since it is read by a light source, nothing touches the disc itself. Theoretically then, given that there is practically no wear, the number of plays is limitless. The beam of light ignores dust, dirt and scratches on the surface since it focuses on the encoded signal. When the recording is sealed within a plastic coating, its longevity is extended and it can then withstand abuse from

¹⁰. Ibid., p. 5.

¹¹. Sam Kula, "Archiving Television: NFTSA and Broadcasts of National Historical Significance," ASCRT Bulletin, no. 16 (November 1982), pp. 10-11.

handling and still reproduce the recorded information with absolute fidelity.¹²

Given that this new technology offers so many appealing prospects, it is unfortunate that full implementation has not yet been successful in either Canadian or American archival institutions. The Public Archives of Canada commissioned a pilot study in 1978 to investigate the feasibility of using video discs as a means of providing access and solving many other common conservation problems, not only for special collections, but for textual records as well. The conclusion of their study was that the technology met archival standards, but the uncertainty of costs and storage capacities in the future was sufficient to warrant caution in adopting the system at the present time. The cost of producing a master disc was estimated at \$2000.00. Each subsequent copy could be pressed for roughly \$40 to \$50. The greater the number of copies produced, the smaller the cost per piece. Nevertheless, the initial price remains considerable and beyond the financial capabilities of smaller institutions. Manufacturers are continuing to improve and redevelop the necessary hardware and so systems produced one year are outdated by the next. The systems currently available range in price from \$10,000 to 7 or 8 million dollars and so while the potential for such technology is great, the costs and need for research and development have deferred immediate implementation. An extensive study just completed by the

12. Mole and Langham, Pilot Study, p. 6.

Smithsonian Institution Libraries also concluded that optical disk technology has not been sufficiently developed to suit the special needs of Archives and does not warrant the current cost.¹³

In the meantime, archivists must cope with the current impact of technological development. As previously mentioned, videotape formats have changed radically in recent years. Broadcasters relied primarily on film in the 1960's. In the interim they changed to 2" tape, then 1" tape, and then 3/4" and are now favouring broadcast quality 1/2" tape. And, the playback equipment alters as each new format is introduced. The repercussions extend to the archives which must either provide such equipment or re-dub old tape onto new. Repositories must also ensure that if such transfers are undertaken, the resulting quality will meet an acceptable standard for playback. Determining what that standard should be has become an extremely contentious issue. Broadcasters are the primary users of radio and television archives and broadcasting organizations stipulate that the materials will be preserved and maintained to meet "broadcast standards", but these standards are fastidious and costly to meet. Broadcasters insist that quality not be compromised, but archivists claim that the broadcast standards as requested are excessive and that the care awarded the material in an archives is inevitably better than it would receive if housed

13. "Report of the Smithsonian Institution Libraries Optical Disk Working Group," by Nancy E. Gwinn, Chair. Washington, D.C., 1986. (Typewritten)

by the creating agency. A recent survey of several broadcasting organizations clearly revealed that audiovisual materials were not stored in ideal environmental conditions and that preservation and conservation procedures had not been addressed.¹⁴ The level of care extended in an archival setting is clearly superior to the rather haphazard provisions made by the creating agencies. If such documents were left in their care, it is unlikely that they would survive let alone be maintained at the broadcast standards they insist on for archives. Archivists are in a strong position to argue that the level of care they provide will protect the "broadcast quality" of the item and until such time as the standards are clarified and more sharply defined, donating organizations should be informed of the benefits of archival maintenance.

A consequence of these cumulative factors is that institutions seeking to acquire broadcast records consider not only whether the collection falls within their purview, but whether or not their facilities are sufficient to provide adequate care for the material once it is acquired. (Such considerations bear upon preventative maintenance and handling and not the treatment of irreversible damage such as nitrate deterioration or colour loss.) If despite its jurisdictional rights an institution concludes that it cannot afford to provide archival care for a collection, the repository may decide not to

¹⁴. Survey of Television Stations in the Metropolitan Toronto area. Conducted April 1 - October 31, 1985 by Jan Rollins for the Archives of Ontario.

accept the records. Or, it may be more rigorous in its appraisal decisions in an effort to reduce the amount of material destined for permanent preservation. Similarly, in-house broadcast archives must carefully balance their appraisal decisions with cost considerations. Should they seek to donate their records elsewhere, they will not do so unless they have confidence that the repository can meet the technical specifications they seek to impose. Access is also influenced by the physical form of these records since the precautions taken by the institution to prevent mishandling impinge upon the ease of use.

If there is a single issue dominating the discussion of physical considerations, it is the enormous costs which are assumed when caring for these records. From the additional shelving needed for horizontal storage of film canisters to the ever-changing requirements brought by evolving tape formats and equipment improvements, most archives may never be in a position to take a proactive role in the acquisition, preservation and dissemination of broadcast records. For those who will, the physical requirements of these documents will continue to play a large role in determining the methodology of archival care for special media documents.

CHAPTER FIVE

COPYRIGHT: "NO SEX APPEAL"

Canada's Copyright Act was enacted in 1921 to codify the economic and moral rights of creators.¹ The Act assures them of fair compensation from those who wish to obtain a copy of their work, reproduce it or sell it to the public. It also safeguards their moral rights entitling them to claim authorship and preventing the "distortion, mutilation or modification of (their) work."² But the same provisions which protect the economic and personal integrity of the copyright holder seriously hamper public rights of access in an archival setting.

Since the introduction of this law, new technologies, creator expectations and user interests have confirmed the need for major revisions. In the past sixty-seven years several committees have been appointed to determine the form and extent of such revisions, but despite a long standing agreement that the Act has been unable to meet society's needs, new legislation has only recently been proposed. The archival community has much to

1. Canadian Copyright Act 1970 R.S.C. 1970.

2. Keon, "The Canadian Archivist and Copyright Legislation," Archivaria 18 (Summer 1984): 91.

gain by urging the adoption of a contemporary law because archival records in all formats are subject to copyright regulations. Moreover, as technological innovations make it easier to appropriate the works of others by copying, rights of access may be unduly restricted in an attempt to protect the rights of creators. In 1984, in anticipation of the introduction of a new copyright bill, the government issued two major discussion papers for the consideration of creators and interested users, From Gutenberg to Telidon: Proposals for the Revision of the Canadian Copyright Act and Charter of Rights for Creators: Report of the Sub-Committee on the Revision of Copyright.³ As participants in the review process, archivists as well as many other affected groups and individuals made presentations to the government Committees responsible for recommending the provisions of the new law. The public responses to the proposals in From Gutenberg to Telidon were assessed and addressed by the Sub-Committee on the Revision of Copyright in Charter of Rights for Creators. The exchange of views resulting from the release of these two papers, in addition to the articles written by archivists caring for broadcasting records, form the basis of this discussion of the problems and issues associated with the formulation of even-handed legislation and the affect of

3. Canada. Department of Consumer and Corporate Affairs. From Gutenberg to Telidon: Proposals for the Revision of the Canadian Copyright Act, 1984.

Charter of Rights for Creators: Report of the Sub-Committee on the Revision of Copyright. By Gabriel Fontaine, Chairman. Ottawa: Queen's Printer for Canada, 1985.

copyright on the archival treatment of sound and moving images. The purpose of examining specific aspects of Canadian and international copyright law is to demonstrate the many ways this legislation affects access and reference to broadcast material. To this end, most of the principle provisions of the law will be discussed and evaluated. Also, the alternative methods or suggestions for providing safeguards for the creator while promoting public access will be explored. And, as has been the case in preceding chapters, before detailing the specific arguments which have been presented by Canadians in pursuit of a contemporary copyright law, consideration will be given to American and European experiences.

The similarities between international copyright laws were demonstrated to the archival community in 1978 when the Copyright Committee of the International Association of Sound Archives reviewed the legislation of member nations and documented the problems of dissemination which resulted from imposed restrictions on use. A fundamental criticism of the many pieces of legislation examined by the committee was that they had been drafted in an era when the broadcasting industry was new and unsophisticated.⁴ For instance, at that time, technical innovations such as home video recorders and satellite dishes were not even envisioned, but these devices are now common and existing laws do not provide for their availability.

4. "Report of the IASA Copyright Committee," Phonographic Bulletin, no. 24 (July 1979), pp. 5-26.

The most striking similarity between the various acts is the excessive duration of protection granted to the creators of recordings. In Canada the term is fifty years from the making of the original plate.⁵ The same applies in Australia, New Zealand, Switzerland, Austria, Ireland and South Africa, among others. In Brazil it extends for sixty years; in Italy a thirty year rule applies; in West Germany, Norway and Sweden it is twenty-five years; in the United States, twenty-eight; and in Japan, twenty.⁶ The length of these terms is an unfortunate obstacle to the use of material in any type of institution.

On the other hand, IASA also determined that some countries have attempted to balance compensation for artists with privileges of legitimate use. One tool for accomplishing this is the registration and/or compulsory deposit system. This involves the requirement for registering and depositing a work within a certain period or copyright protection is forfeited. Elsewhere, such as in the United States, registration and deposit must occur before the owner(s) can exercise their copyrights (such as when instigating a legal suit in cases of infringement). Some nations require material such as sound recordings to be deposited for cultural reasons. These systems identify copyright holders and lessen the hardships of tracing the owner.

While occasionally such provisions are designed to permit

5. R.S.C. 1970 c. C-30, s.9.

6. "Report of the IASA Copyright Committee," Phonographic Bulletin, no. 24 (July 1979), pp. 21-26.

access in a library environment only, others allow for legitimate research use in an archival setting. For example, the National Record and Audiovisual Department of the French National Library studied the legal problems of permitting public access to their holdings and subsequently sought a decree ruling that research utilizing audiovisual materials would be limited to on site use only, taking into account French laws on copyright.⁷

In the United Kingdom unauthorized importation, sale, hire or commercial exhibition for trade purposes is an infringement of copyright. A recording is protected against duplication in whole or part, as well as against unauthorized broadcast or performance.

The Canadian law defines "publication" as the issue of copies to the public. It specifies that "unpublished works" in libraries, museums and archives are protected for over fifty years from the death of the author or for over 100 years from the creation of the work. After these limitations, the work may be reproduced for private study or research.⁸ Other countries employ the "fair use" doctrine which is intended to permit scholarship to flourish without fear of infringing copyright. This practice is a central component in both the Canadian and

7. Marie-France Calas, "The National Record and Audiovisual Department of the French National Library: History, Activities, Collections," Phonographic Bulletin, no. 23 (April 1979), p. 18.

8. Jim Keon, "The Canadian Archivist and Copyright Legislation," Archivaria 18 (Summer 1984):95.

American legislation. In the Canadian Copyright Act as enacted in 1921 and codified in a revised statute in 1952, "fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary" does not infringe copyright. Also, a "performance without motive of gain" does not contravene the legislation; however, copyright is infringed if the work is "sold or let for hire" and alteration to, or omissions from, the produced work are not permitted without the owners' consent.⁹

In the United States a 1974 landmark lawsuit dealt with the interpretation of such measures when the CBS network sued the Vanderbilt University Television News Archives charging that the institution had infringed on the copyrights of CBS news programmes. Since August 5, 1968, the Vanderbilt Archives had taped both news and special news events, such as presidential conventions, congressional hearings and so on. Copies were available on loan for a fee. The archives also compiled onto one tape any individual news items selected by researchers. CBS charged that such a practice damaged their credibility and reputation since no one other than a CBS employee was authorized or qualified to edit their broadcasts. Furthermore, they argued that the statements made by public figures existed because of the equipment and personnel paid for by the network, and therefore, the audiovisual record was effectively their property. The U.S. Federal Court was petitioned to order Vanderbilt University to

⁹. R.S.C. 1970, c. C-30, s.17 (2).

return all the material including taped copies. CBS affirmed that all attempts with Vanderbilt to reach an agreement which would provide access without copyright infringements had been unsuccessful.

Vanderbilt countered by arguing that the news broadcasts had historical value, were of national significance, influence and interest and so should be available under the provisions of "fair use". They cited the dismal record of preservation and retrieval at many commercial stations and networks which had resulted in an abundant loss of material. They maintained that their collections were unaltered and "as aired" (which is correct except for the compilation tapes which contravene copyright regulations, not to mention the archival principle of original order). Vanderbilt excused this practice by reasoning that a researcher with an interest in viewing only specified items would not labour under the misconception that he was watching a replay of an actual broadcast. The Archives also asserted that no items were sold, duplicated or rebroadcast.

Several experts advised as to the validity of these arguments. L. Quincy Mumford, the Librarian of Congress, stated that: "The daily television news programs are not copyrighted and do not exist in any such permanent form as Kinescope film."¹⁰ Certainly videotapes of programmes are selectively retained by stations if they are of exceptional significance and have high

¹⁰. "CBS Sues TV News Archives," American Libraries 5 (1974):119.

re-use potential, but the overwhelming majority are erased and usually only the scripts and filmed portions of news programmes survive.

Ultimately CBS was unsuccessful with the suit. The U.S. Congress passed the Copyright Revision Act in 1976 which permitted "libraries and archives to make off the air videotapes of daily network news for research purposes and for lending."¹¹ This action subsequently led CBS to drop its copyright infringement suit.¹² Vanderbilt still operates its Television News Archives and has also established a Regional Video Center at George Washington University in Washington, D.C. to increase access to its holdings, although no archival material is stored at the Regional Center. Instead "it serves as a rental agency for Vanderbilt by assisting patrons in ordering newscasts and compiled tapes."¹³ Vanderbilt continues to rent tapes for off-site use and still compiles tapes according to user specifications.

A beneficial consequence of the CBS/Vanderbilt case was the creation of ATRA, the American Television and Radio Archives, located in the Library of Congress. Although the case was settled out of court, the U.S. Copyright Office prepared for the

11. "Hearings to Consider Acquisition of Television Programs for ATRA," Library of Congress Information Bulletin 41 (March 12, 1982):80.

12. Deidre Boyle, "Regional Center brings TV News to Libraries," American Libraries 9 (1978):51.

13. Ibid., p. 51.

possibility of court proceedings by introducing an approach it hoped would narrow the "Vanderbilt" amendment. It commissioned ATRA to provide a potential federal resource for audiovisual news. Sections 108(f)(3) and the ATRA portion of the new Copyright law limited television archives to audiovisual news programmes and narrowed their lending power.¹⁴ Under the ATRA act the Library of Congress is to place in the archives: "those television and radio programs which are of present or potential public or cultural interest, historical significance, cognitive value, otherwise worthy of preservation."¹⁵ These provisions accomplished two often disparate aims. While permitting off-the-air recording, the copyright owners were assured that copies of taped programmes would not proliferate outside the Library because of their lending policies nor would the uncontrolled public performance of copyrighted works contained in those transmitted programmes be permitted. Conversely, the retention of these valuable records was assured.

The Copyright Office of the Library of Congress published its final regulations on the acquisition and deposit of unpublished television programmes on August 17, 1983 in the Federal Register. Designed to assist ATRA, these rules allow the library to make off-the-air copies and to demand copies of unpublished television transmissions. ATRA may also acquire

14. "Hearings to Consider Acquisition of Television Programs for Atra," p. 80.

15. Ibid., p.80.

programmes through the copyright registration process and for published programming, through Section 407 of the mandatory deposit rule.¹⁶

According to the U.S. Copyright Act, all broadcast materials are under mandatory deposit regulations. The Register of Copyrights may make a written demand to the owner of the right of transmission to deposit a copy of a specific programme in the Library of Congress (Section 407(e)(2)).¹⁷ The legislation also permits off-the-air recording of broadcasts for archival purposes.¹⁸ As well, any non-profit archives or library may copy an unpublished work for purposes of preservation or security. Interestingly, "as the law applies to television broadcasting, the transmission of a program is not publication - it is a performance, not a publication."¹⁹ Publication is defined as the distribution of copies to the public by sale or other transfer of ownership or by rental, lease or lending. Offering to distribute copies to a group of persons for the purposes of further distribution, public performance or public display also constitutes publication. Given these guidelines, rules and obligations it is easy to understand the difficulties between Vanderbilt and CBS.

16. Ibid., p. 80.

17. Ibid., p. 80.

18. Keon, "The Canadian Archivist and Copyright Legislation," p. 95.

19. "Hearings to Consider Acquisition of Television Programs for Atra," p. 81.

ATRA's liability was softened by the development of the formula for off-the-air recording. By it, the Library of Congress does not have to notify noncommercial stations before taping their programmes. If the owner of the transmission rights submits a written request, the Library will confirm if a copy was made. An attempt is made however, to notify independent commercial stations if a recording is to be copied by the Archives.

Ideally, the principle of mandatory deposit would guarantee a comprehensive collection since to register copyright, it is necessary to deposit two copies of the work. However, broadcasters rarely need to register for their own purposes, hence the clause allowing the Register to request compliance. The need for a finely tuned appraisal policy is evident. If the request is made too late, the program will likely have been erased and it would be impossible to insist that every individual programme be registered. Not every programme requires copyright protection and the costs of preserving all such registered works would be considerable. In fact, not all films produced are registered for copyright, especially experimental or independent films. Moreover, many films fail to achieve commercial success, and so in the absence of a market, the producers don't bother to complete registration by depositing a copy of the production.²⁰

Fair use provisions in American Copyright legislation do

²⁰. Sam Kula, The Archival Appraisal of Moving Images: A RAMP Study with Guidelines (Paris: General Information Programs and UNISIST, UNESCO, 1983) pp. 45-46.

allow for some flexibility, but the guidelines are not so broad as to provide a "loophole" for indiscriminate copying. Guidelines permitting non-profit institutions to tape off-the-air for educational purposes were reached by a negotiating committee representing educational and library organizations, copyright proprietors, creative guilds and unions. The copy may be retained for a maximum of forty-five days unless a special license extends the duration. The Television Licensing Centre was created for the precise purpose of negotiating the licenses between non-profit educational institutions and networks or other video copyright owners.²¹ The arrangement is intended for teachers, but the implications for the archival community are clear. Since recognition has been given to the educational value of broadcasts, the groundwork has been laid for establishing a system for the permanent retention of broadcasts with archival value.

"Fair use" is often easier to demonstrate depending upon the nature of the programme itself. An "informational" work such as a news programme or documentary is recognized for its educational value whereas one created purely for entertainment is less easily approved. Archivists in the United States are arguing that today's entertainment is a source of interest to tomorrow's historian and as such the prejudice against such fare should not be upheld by those judging "fair use" of copyrighted

21. Laura Gasaway, "Audio-visual material and Copyright in Special Libraries," Special Libraries 74 (July 1983):233.

materials.

Despite the ambiguities which remain, American copyright legislation has gone far to ensure the preservation and availability of broadcast records. For archivists, the ideal Canadian copyright act would echo some of the provisions in the American legislation, such as the authority of a national agency such as ATRA to choose and preserve programmes of historical value as well as mandatory registration procedures to assist with the identification of broadcasts deserving permanent preservation. Unfortunately, the measures which can be introduced in the new law are limited because of previous Canadian commitments made internationally. The basis for Canada's legislation is the 1886 Berne Universal Copyright Convention. At a conference in Berne, Switzerland the participants adopted the "International Convention for the protection of literary and artistic works" to which Canada was a signatory.²² Under the agreement, which came into effect on December 7, 1887, member nations are bound to provide a certain level of protection for works by authors from other member countries and such protection is enjoyed reciprocally. Thus, Canadian works are protected at home and abroad. The first revisions to the Convention came in 1896, but the basic structure remained unchanged. The appended Berlin Diplomatic Conference in 1908 suppressed all registration procedures. Consequently, because Canada is still a party to the Berne

22. R.S.C.c. C-30 Schedule II: Revised Berne Convention.

Convention, no Canadian copyright legislation can impose mandatory registration or deposit:

Registration of copyright is optional in Canada. There is no statutory sanction or penalty for not registering a work; one does not forego copyright by neglecting to register a claim in it. Copyright protection arises automatically with creation in all published and unpublished works and no formalities or procedures are required to obtain protection.²³

The Copyright Act affects the deposit, preservation and use of broadcasted materials housed in archives in several ways. First, the lack of mandatory registration and deposit means that agencies such as the National Archives acquire material without having the benefit of a central source documenting the creation of broadcast programmes. Second, archival institutions need to duplicate sound and moving images for preservation purposes and have strong arguments for the role of reference copies as a conservation tool. The copyright act does not sanction these activities. The law is so vague about usage of this nature that it is broken continuously, but not for the purpose of commercial exploitation. Third, access is frequently subject to various restrictions. For instance, the current agreement between the CBC and National Archives of Canada permits the public to view or listen to certain materials on Archives' premises only. The CBC allows individuals or organizations to use material for personal or educational purposes in closed circuit providing the borrower guarantees that copies will not be made and that he will not profit commercially. The National Film Board sells or lends

²³. Ibid., p. 92.

audio-visual material to the general public, but must acquire all the necessary rights held by performers or technicians.

Naturally, the buyer or renter may not profit himself by any further commercial transactions as he does not acquire the copyright with the purchase or rental of the programme. Unlike the NFB, most archives cannot negotiate for these copyrights; they cannot afford to purchase them nor can they manage to identify all owners. Contractual agreements between an Archives and a donor occasionally waive copyright for research purposes, but such arrangements are not always a satisfactory solution since the donor rarely holds the copyright on every item he deposits with an Archives. And as shall be demonstrated, fair use provisions do not satisfy all the concerns of archivists primarily because "there is doubt as to whether the reproduction of unpublished material falls within the scope of fair dealing."²⁴

The Association for the Study of Canadian Radio and Television outlined the principle problems with the current copyright legislation in a brief submitted to the Federal Cultural Policy Review Committee. Because of its comprehensiveness, it is worth quoting at length:

By Federal statute, two copies of every Canadian document (book, periodical, newspaper) must be deposited in the National Library, Ottawa, upon publication...The guarantees of preservation and rapid availability of print materials are obvious. Furthermore, there are parallel guarantees of the

²⁴. Keon, "The Canadian Archivist and Copyright Legislation," p. 95.

preservation of government records, through similar mandatory deposit regulations; and there are new laws giving accessibility to these records.

By contrast, there are no such guarantees relating to the products of broadcasting. There are, simply, no regulations nor any compulsory procedures for the preservation of, or accessibility to, these materials. The documents of the CBC, a Crown Corporation, do not fall within the mandatory deposit regulations required of government Departments, nor do private broadcasters have any greater obligations of this kind. Thus the scripts and valuable supporting documents of broadcasting (including correspondence, contracts and so on) as well as the electronic records of actual broadcasts, are under no protection, and under no accessibility regulations. Access to actual programs is regulated by the Copyright Act; the important term here is "publication". The only form in which a program is presented to the public is on the air. Unlike print materials, the public appearance of which constitutes publication (and hence reasonable further access), the broadcasting of radio or television programs is not considered to be publication. Not only is it not mandatory to deposit copies of broadcast programmes, but access to post-broadcast programs is as restricted as to unpublished manuscripts, letters and other private writings. It is simply impossible to get access to broadcasts within a reasonable period of time without the special permission of all copyright holders. Meanwhile, and understandably, the major priorities of our broadcasters have been production and diffusion, not preservation and accessibility.²⁵

In this Brief, which was heard by the latest of several commissions charged with seeking reforms for Canadian copyright law, ASCRT concisely and eloquently presented the views of its membership; broadcasters, writers, archivists, and many others interested in the study of broadcasting. Three previous attempts at reform were not significantly successful. The Ilsley Commission and the Canadian Economic Council produced lengthy

25. The Association for the Study of Canadian Radio and Television, Brief: on the White Paper on Copyright, March 12, 1985 (Typewritten), p. 7.

reports which were never acted upon.²⁶ The Department of Consumer and Corporate Affairs produced the Keyes and Brunet Report in 1977.²⁷ It did much to galvanize the archival community, but again nothing concrete resulted. Recently a jointly sponsored study by the Department of Consumer and Corporate Affairs and the Department of Communications issued a government White Paper entitled From Gutenberg to Telidon: Proposals for the Revision of the Canadian Copyright Act. The White Paper invited discussion and in 1985 the Sub-Committee of the Standing Committee on Communications and Culture issued a report based upon the proceedings and evidence heard respecting From Gutenberg to Telidon. Entitled, A Charter of Rights for Creators, it has not been well received by the archival community. In fact, the Association for Canadian Archivists warned that the implementation of the recommendations contained in the report "could prove harmful to the operation of archives in Canada."²⁸

Each of these reports has defined or redefined exactly what constitutes a film, sound recording or broadcast audio-visual

26. Royal Commission on Patents, Copyright, Trade Marks and Industrial Design: Report on Copyright, Ottawa, 1957. (Ilsley Commission) and Economic Council of Canada, Report on Intellectual and Industrial Property, Information Canada, Ottawa, January 1971. (Economic Council)

27. A.A. Keyes and C. Brunet, Copyright in Canada - Proposals for a Revision of the Law, (Ottawa: Consumer and Corporate Affairs Canada, 1977).

28. "Association of Canadian Archivists Committee on Copyright: A Response to Charter of Rights for Creators," Archivaria 21 (Winter 1985-86):127.

creation. This is critical because until 1970 no works other than products of the publishing industry were listed within the Copyright Act. The more inclusive definitions of protected works reflects a contemporary ease with communications media which is lacking in the original legislation. The technology is no longer new, and it has improved and expanded to such an extent that it is an integral part of our daily life and so the outdated descriptions have been appropriately modernized. Regrettably, this progressive step has not been equalled in other sections of the reports. For example, the term of protection for broadcasted material is still lengthy. The term for film presently depends upon whether it is classified as a dramatic or photographic work. If a "dramatic" classification applies, the term is the life of the author plus fifty years; if a "photograph" then fifty years from the making of the original negative. Sound recordings are protected for fifty years from the making of the original plate. Keyes and Brunet recommended applying the general term of the life of the author plus fifty years to published works. For unpublished works they advised:

That the form of protection provided to literary, dramatic and musical works unpublished at the author's death be until publication or public performance and for fifty years thereafter, but that the total term of protection not exceed seventy-five years after the death of the author, or 100 years after his death where the work has been deposited in an archives.²⁹

Gutenberg to Telidon proposed that both sound and film

29. A.A. Keyes and C. Brunet, Copyright in Canada - Proposals for a Revision of the Law (Ottawa: Consumer and Corporate Affairs Canada, 1977) p. 65.

recordings be protected until the expiry of either the period from the date of first publication until the end of that year plus fifty years thereafter or, if unpublished, the period from creation until the end of that year plus seventy-five years.³⁰ The Charter of Rights for Creators endorsed this suggestion and stated that productions by corporate entities are more common than productions by private individuals and so the protection of audiovisual works would be difficult to calculate based on a person's lifespan.³¹ While this measurement may be based on a fair evaluation of Canadian film making practices, it is ironic that the new terms are even longer than those presently in effect. It is also important to note how the definitions of "published" and "unpublished" determine which term applies. The Ilesley Commission proposed that publication of a film should mean exploitation in "the normal way" as well as general rental, lease, loan or sale of copies to the public. Keyes and Brunet reinforced this point by recommending: "That publication, with respect to film, be defined to provide for all manners in which films are in practice made available: by lease, rental, sale or license."³² From Gutenberg to Telidon did not adequately address this issue. Publication is left simply as "issue of copies to the public". The Charter of Rights for Creators tried to compensate and when referring to audiovisual works, the sub-

³⁰. Gutenberg to Telidon, p. 56.

³¹. Charter of Rights for Creators, p. 39.

³². Keyes and Brunet, Copyright in Canada, p. 82.

committee stated that: "The New Act, in defining 'publication', should take into account the various methods of making a work available to the public other than by issuance of copies of that work."³³ The committee indicated that the current act does not adequately provide for instances such as film distribution where a copy is never sold to the public itself and where use is for a limited time only. The new definition seeks to encompass any means by which a work is made available to the public.

These considerations concerning published versus unpublished material in audiovisual form are crucial to the archivist and so is the definition of whether a broadcast has been "fixed" prior to transmission. A broadcast itself is not currently protected by copyright in Canada. The material transmitted may be, but copyright lies in it, not the actual broadcast on the airwaves. Legally it is considered that a work must be "fixed" in a material form as a criteria for protection. While not a proviso in the Copyright Act itself, this requirement stems from difficulties the court encounters in proving the existence of an unfixed work.³⁴ "Fixing" has therefore been defined as presentation in a written or printed format, but this definition does not recognize that audio and visual recordings cannot be presented in a written or printed form. Moreover, live performances, such as news programmes, are never "fixed", but merely transmitted during the actual broadcast. Under the

33. Charter of Rights for Creators, p. 39.

34. Gutenberg to Telidon, p. 5.

present terms such materials could be left unprotected. In 1977 Keyes and Brunet reported:

Canadian broadcasters are not interested in securing ownership of the copyright in material they broadcast; their interest is in contracting for the rights necessary to enable them to broadcast that material. Indeed, broadcasters expressed no interest in having a copyright attach (sic) to their broadcasts.³⁵

To facilitate use, it was the non-broadcasting interests which favored the protection of broadcasts. Keyes and Brunet recommended a term of protection equalling fifty years from the date of the broadcast with exclusive rights of reproduction, transmission and use resting with the broadcasting organization. Gutenberg to Telidon saw the solution in redefining "fixation" to include broadcasts themselves. The sub-committee agreed, but broadcasters have altered their stance since Keyes and Brunet. They now seek to have the broadcasting signal protected, in addition to the material embodied in those signals.³⁶ Copyright protection, they argue, should extend to the organization of all daily broadcasts which is termed the "broadcast day" by the industry. The sub-committee agreed attaching the following rights to each broadcast:

- a) the right of reproduction
- b) a right of transmission
- c) a right to authorize each of the above; and
- d) a right of retransmission³⁷

³⁵. Keyes and Brunet, Copyright in Canada, p. 107.

³⁶. Charter of Rights for Creators, p. 57.

³⁷. Ibid., p. 58.

The sub-committee also reduced the term of protection from fifty years as recommended by Keyes and Brunet to twenty-five years from the fixation of the broadcast. However, the sub-committee was not unanimous in its support of this proposal.³⁸ It is relevant to note that the Canadian Broadcasting Corporation did not endorse this plan but that it was a demand of the private broadcasting industry. Many argue that the creativity needed to organize a broadcast day is not equal to that exhibited by a playwright, composer or producer. Certainly another argument against this action is that it adds yet a further layer to the hierarchy of copyright ownership. What it provides is enhanced corporate protection and increased royalty dollars.³⁹ The example here emphasizes once again the disconcerting bias towards entrenching creator rights and financial benefits without proper appreciation for the legitimate dissemination of the creations themselves. Protection of the signal should be designed to discourage pirate transmission operators, but such illegal activity has not yet been halted despite existing copyright rules and enforcement. For archivists of broadcasting material, the preservation of live transmission such as public affairs or news programmes will be made even more precarious because the negotiation of rights to produce an off-the-air recording will inevitably be time consuming and difficult to complete. There are no second opportunities to record a live performance and

38. Ibid. (Dissenting Opinion Appendix A), pp. 99-101.

39. Ibid., p. 100.

without exemptions providing for archival reproduction of live transmissions, archival preservation cannot be guaranteed.

A further complexity concerns the identification of the copyright owner. It is especially difficult when audiovisual material is concerned, because there is inevitably more than one person responsible for production. For film material at present, the author of a "dramatic" work is the first owner (unless the work was completed in the course of the author's employment). For a "photographic" film, the owner of the negative is deemed the author. If the work was commissioned, the person ordering the film is the first owner. This complex system was to be suspended by the Ilsley Commission which stated that the owner should be the maker of the film; in other words the person who made the necessary arrangements for the creation of the film. Keyes and Brunet upheld this recommendation.

Gutenberg to Telidon also supported this interpretation by submitting that the producer of a film, video or sound recording would own copyright. However, within the discussion, attention was given to the plight of performers who do not have rights concerning recordings of their performances. Not only is the re-use of authorized recordings beyond their control, but the common practice of "bootleg" recording is unrestrained. If performers were granted statutory or property rights for their performances, it would obligate a user to obtain the permission of every performer in a recording before it was re-used. The White Paper wisely counselled against awarding individual copyright, but

encouraged the ruling that unauthorized recording, or re-use of a recording, be considered an offense. The Charter of Rights for Creators presented another viewpoint. In its view, the ownership of copyright should remain with the individual or entity principally responsible for the arrangements undertaken for its making. The recommendation made in Gutenberg to Telidon regarding performer's rights was overturned by the Sub-committee because it did not wish to treat unauthorized recording or re-use as a criminal offence.⁴⁰ Instead, the Sub-committee recommended that "performers' performances form a new category of copyright subject matter". Accordingly, it proposed that performers should be the first owners of the copyright in their performances and that performer's performances should be protected for a term of at least twenty years from the time of fixation of the performance. This grants proper compensation for re-use, while protecting against unauthorized use. The Sub-committee stated: "A performer is just as much a creator as is the producer of a sound recording or film...No good reasons have been advanced to deny protection to performers in their own creative contribution."⁴¹ While other creators may not have advanced good reasons for denying copyright protection to performers, it can be assumed that users and archivists would have. The logistical problems of tracing and obtaining performers permission to acquire, copy and make available every

40. Ibid., p. 54.

41. Ibid., p. 55.

recording on which they are featured would be overwhelming. The Sub-committee claimed in Charter of Rights for Creators that it would be in the performer's economic interests to sanction re-use and stated that collectives can negotiate for the performers they represent, but for archival purposes such proposals add a new hierarchy to an already complex strata.⁴²

Of other interest to archivists is the Sub-committee's ruling that there should be no copyright in government works such as those "works produced by a Crown agency such as the Canadian Broadcasting Corporation or the National Film Board, the purpose of which is to entertain rather than to assist in policy debate and evaluation."⁴³ Section 11 of the current act states that "where a work is prepared by or under the direction or control of the Crown or a government department, copyright belongs to the Crown in the absence of an agreement to the contrary with the author."⁴⁴ From Gutenberg to Telidon argues that there can be no firm delineation as to what government employees should hold copyright because so many work under different circumstances. Some are in competition with the private sector and others are fully subsidized. The Sub-committee has clarified the situation, fortunately in keeping with the recommendations of the Association for the Study of Canadian Radio and Television. In their Brief on the White Paper

42. Ibid., p. 53-55.

43. Ibid., p. 11.

44. R.S.C. 1970 c. C-30, s.11.

ASCRT urged that:

genuine creative products be distinguished from administrative records, and ... that only consciously creative broadcasting documents (including audio, visual and paper script records) should come under copyright protection. Administrative records, which are the secondary products of the productions process, should not be placed under copyright protection.⁴⁵

This contribution, from an organization interested in the archival preservation of broadcasting material, joins the long list of recommendations put forth by assorted archival interests who hope to see concrete allowances made in copyright law for the preservation and use of valuable archival records. To date, rulings of "fair dealing" are the only avenue exempting users of archival material from copyright liability. Section 17(2) of the Canadian Copyright Act declares that "any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary" does not constitute infringement of copyright.⁴⁶ This sketchy statement conveys no clear policy, but specific definitions or lists of factors are provided to assist in the determination of a "fair dealing" ruling. For example, reproducing more than a "substantial" part of an recording without consent is an infringement of copyright not defensible under the fair dealing provision. If less than "substantial", the provision will apply. What exactly constitutes a "substantial part" is not defined by either a

⁴⁵. My thanks to Mr. Hugh Taylor who kindly provided a copy of this Brief for the purposes of this study.

⁴⁶. R.S.C. 1970 c. C-30, s. 17(2).

quantitative nor a qualitative test. Consequently, in event of a legal suit the court must set the parameters on its own discretion. From Gutenberg to Telidon sought to clarify this section by providing specific details. It was proposed that in addition to being renamed "fair use" in the new law, a "priorized" list and explanation of applicable factors would be included. Moreover, it was written that "fair use will not conflict with the normal exploitation of the work" nor will it "unreasonably prejudice the legitimate interests of the copyright owner."⁴⁷ Interestingly, as envisioned in From Gutenberg to Telidon, fair use should apply to all copyrighted material "regardless of whether such material has been published in the traditional sense."⁴⁸ This was rejected by the Sub-committee which felt "publication has been, and should continue to be, the exclusive right of the copyright owner". It justified this decision by claiming that "a member of the public cannot deal fairly with a work that is unavailable to the public."⁴⁹ Such a ruling seems unfair to the academic community because it prohibits access to material which may be unpublished for any number of reasons. Perhaps the creator died or lost interest in the project before its completion. In either case, legitimate scholars are barred from what could be rightful access. The Sub-committee also rejected the term "fair use" saying the concept of

47. Gutenberg to Telidon, p. 39.

48. Ibid., p. 40.

49. Charter of Rights for Creators, pp. 65-66.

fair dealing should remain. The difference appears to lie in the prosecution of infractions and is essentially a legal point. For the user, infringements of copyright must first be established under "fair dealing" and then defended on one of five grounds: private study, research, criticism, review or newspaper summary. Rather than providing dispensation then, fair dealing can be cited as a defence. The concept of "fair use" is much wider according to the Sub-committee which claimed that the term was borrowed from the America legal system. They based many of their criticisms on the high number of instances of U.S. litigation.

Fair dealing provisions do not specifically deal with archival pursuits either from the institution's or the user's perspective. Archivists have sought a ruling exempting some of their activities from copyright restrictions. This is not to say that they are not cognizant of creators' rights. In fact, ASCRT's Brief to the Sub-committee urged appropriate compensation for owners and to achieve that goal, where broadcast items are concerned, a clear distinction was requested between commercial re-use of programmes, or parts of, and educational use of such material. ASCRT, not unlike the ACA in past submissions, did not receive a favorable hearing from the Sub-committee. Consistently, proposals for revisions to the copyright law have authorized the duplication of archival materials for preservation purposes only. Some discussion was made of other archival "activities" in Keyes and Brunet (specifically exemptions for the use of unpublished materials),

but the suggestion was rejected.⁵⁰ Their final recommendation permitted archives to copy material judged to be "deteriorating or damaged."⁵¹ Upholding the opinion of the Ilsley Commissions that all rights to reproduce a broadcast rested with the maker, Keyes and Brunet noted: "Copyright deals with the rights of authors first and not with the cultural objectives of society as manifested in any policy concerning the preservation and archival storage of copyright works."⁵²

One further proposal which had repercussions for archives dealt with the implementation of compulsory registration and/or mandatory deposit. The relative merits of such a programme are well documented. Perhaps the most obvious consequence is that it provides a systematic means of verifying the copyright status of a document. Unfortunately, the "no formalities" article of the Berne Convention bars any member from introducing such a provision. Keyes and Brunet argue that introducing a national system is feasible, but that internationally the plan would neither meet with approval nor be efficiently implemented."⁵³ From Gutenberg to Telidon also cited the "no formalities" article as the reason Canada cannot adopt a registration procedure. Moreover, it went so far as to recommend the abolition of the existing voluntary registration system by remarking that the

50. Keyes and Brunet, Copyright in Canada, p. 173.

51. Ibid., p. 175.

52. Ibid., p. 173.

53. Ibid., p. 208.

registration data is "inconclusive and incomplete" and that presumptions of copyright ownership should lie with the plaintiff in case of litigation.⁵⁴ Responses to this recommendation illustrated the many potential problems which would result from the elimination of voluntary registration and concluded that some information was better than none at all. The Sub-committee was convinced that voluntary registration should be maintained, on the condition that the registration process require applicants to provide more information than was previously expected. Mandatory registration remains a contravention of the "no formalities" article of the Berne Convention.

Canada's inability to introduce such a plan has unfortunate consequences for the archival community. Mandatory registration would not only establish the status of a majority of the works created in this country, but it would enable both archival institutions and their users to identify positively the owner(s) of those rights. The ambiguity surrounding creation dates and subsequently the expiration of the term of protection would disappear because that information would be recorded. Moreover, the deposit regulation might also include the placement of a copy of a designated production in an archival repository. But until such time as the Berne Convention articles are reviewed and possibly altered, Canada has no means of introducing a formal registration process.

Given that so many difficulties hamper the identification

⁵⁴. Gutenberg to Telidon, p. 73.

of copyright owners and the subsequent negotiation for the legitimate use of copyrighted material, how are archives and their users to proceed? Each of the commissions has acknowledged that it is often difficult to ascertain specific and accurate information for a copyrighted work. This remains especially true for broadcast material where so many "creators" contribute to the production of a single programme. If the recommendations of the Sub-committee are realized, even more individuals will own some right to prohibit access to a document. The creation of collectives or copyright societies which will represent individual creators has been endorsed by each commission or committee. As explained in From Gutenberg to Telidon: "In Copyright law, a copyright society is an organization to which copyright owners may assign or license all or part of their rights for the purpose of exploitation and enforcement."⁵⁵ The societies would represent copyright owners whose membership in such a collective would be voluntary. Creators could grant exclusive licenses to the collectives on a whole or partial basis. In other words, a member need not consign the bulk of his rights to be administered by a society but only certain ones. This way the collective could negotiate on his behalf for some aspects of his copyrights while he personally controlled others. A member would not be constricted by an extended commitment to the collective and so could withdraw his membership completely if he so choose. These societies would

⁵⁵. Ibid., p. 61.

be required to submit their distribution and monitoring procedures to a revised Copyright Appeal Board to ensure fairness and efficiency. The Board would have the power to intervene in the administration of a collective if requested by a member of the society. The Board would also be able to authorize the use of a work where it was not possible to locate a copyright owner.⁵⁶ The purpose of this arrangement is to protect the financial interests of the creators. However, if the negotiation of rights for a single programme must still involve several parties how will the user or the archival institution benefit? Two societies already exist to represent musical and dramatico-musical performing artists. They have not alleviated the problems for broadcast archivists or the users of such documents. This recommendation appears to be yet another example of the emphasis on creator rights rather than on encouraging and facilitating use of their creations.

Publisher Jack McClellan wrote the Hon. Anthony Abbott, then Minister of Consumer and Corporate Affairs (the department responsible for copyright): "Copyright is not high on the list of Government priorities and in a troubled world it shouldn't be. It has little sex appeal. Copyright is, in fact, one of the dullest subjects known to man."⁵⁷ Although not presently a source of public controversy, copyright may receive greater

⁵⁶. Gutenberg to Telidon, pp. 61-64. and Charter of Rights for Creators, pp. 85-88.

⁵⁷. "The Photograph: An Annotated Bibliography for Archivists," Archivaria 5 (Winter 1977-78):133.

attention in the future if rights of access are restricted because institutions such as archives and libraries fear an extension of liability in cases of copyright infringement by patrons. Don Roberts, author of "Practice and Problems of Access to Sound Archives in North America", accused archivists of hiding behind the protective shield of copyright ambiguities: "Too often that statement oh, it's illegal to copy that' is used as an excuse for not providing service."⁵⁸ But, archivists are concerned that the institution may ultimately be held responsible if users do not adhere to copyright regulations and illegally copy or publish items from their holdings. Some foreign repositories, occasionally in cooperation with the government formulating copyright law, have sought means by which they can unhesitatingly encourage academic use of copyrighted works. The United States created ATRA and France and England have defined circumstances under which legitimate research use may be made of protected works. In Canada archivists have attempted to convince lawmakers that copyright can provide the creator with rights over reproduction, publication, performance, adaptation and recording without restraining reasonable access by the public. Their success cannot be evaluated until all of the legislation has been tabled. However, the tenor of the latest report issued by the Sub-Committee on the Revision of Copyright warns of the bias towards creator rights and the failure of the user lobby to

⁵⁸. Don Roberts, "Practice and Problems of Access to Sound Archives in North America," Phonographic Bulletin, no. 17 (April 1977), p. 32.

persuade legislators to provide guarantees of fuller rights of access.

What alternative efforts can be exerted to promote access and facilitate reference service if the new copyright legislation does not adequately address the issues associated with the public use of protected material in archives? One recourse is to enter into a contractual agreement with the donor which grants the repository sole or joint authority to copy records for preservation purposes, to prepare copies for reference use, to issue copies to the public for study and related non-commercial purposes, and to approve the publication of material. However, it must be noted that donors are not always the owners of copyright; or, not the exclusive owners. Multiple copyrights commonly protect not only the creator, but the performing artist(s), the technical crew and the broadcaster as well. The task of identifying the full scope of copyright owners and obtaining their permission to allow public access in an archival setting could prove to be an onerous, and often impossible, task for archivists. Organizations such as the Association for the Study of Canadian Radio and Television can serve as ambassadors between archives and donors by demonstrating the benefits of the services provided by the former while communicating the concerns of the latter. The main benefit of such a dialogue is that the copyright holder may be quite content to allow the archives to undertake the administrative functions of approving reproduction and publication if they understand that

the archives will not compromise their economic or moral rights.

Another step which would help to alleviate archivist's uncertainty regarding copyright would be the preparation of a simple manual of guidelines which would explain, in laymen's terms, the provisions of the Canadian Copyright Act, how copyright affects archival documents and which identifies the responsibilities of archival institutions and users. Legal opinion could then be given regarding the accuracy of the explanations and the recommended course of action. Such a manual would translate the legal jargon of the legislation, accurately describe the responsibilities of institutions making copyrighted material available to the public and assess the extent of liability of archival repositories and clients in the case of copyright infringement.

Clearly the complexities of the law prohibit an easy solution to the question of copyright in archives. Nor can the answer be reached without the assistance of the legal community. Archivists may be reluctant to individually analyze, interpret and oversee the application of the Copyright Act in their repository. Few laymen want to assume the responsibility for performing a task which is usually assigned to a lawyer specializing in copyright. Archival institutions rarely have sufficient financial resources to clarify their legal position regarding copyright particularly on a case by case basis. Until litigation is involved, it may be difficult to excite administrators or sponsors about the possible legal repercussions

for underestimating the extent of copyright coverage for archival materials. In the short term, archivists familiar with copyright issues may reluctantly fall prey to Don Roberts' prediction and restrict access because of lack of clarification - an unofficial policy of "better safe than sorry." This would be a sad legacy of the new legislation.

CONCLUSION

In 1972 Frank Burke, archivist and future Executive Director of the National Historical Publications and Records Commission (U.S.), wrote that "archival practice is oriented to arrangement and description, not use."¹ Perhaps this tendency reflects an earlier philosophy espoused in 1922 by British archivist Sir Hilary Jenkinson:

The duties of the archivist...are primary and secondary. In the first place he has to take all possible precautions for the safeguarding of his archives and for their custody, which is the safeguarding of their essential qualities. Subject to the discharge of these duties, he has in the second place to provide to the best of his ability for the needs of historian and other research workers. But the position of primary and secondary must not be reversed.²

While Burke's comment suggests that archivists might subconsciously adhere to this doctrine, archival mandates seldom formalize the primacy of preservation over use. This thesis has sought to examine the issues and considerations affecting preservation of and access to special media broadcast records.

1. Frank G. Burke, "The Impact of the Specialist on Archives," College and Research Libraries 33 (1972):315.

2. Sir Hilary Jenkinson, A Manual of Archives Administration, second edition (London: Percy Lund, Humphries & Co., 1937), p. 15.

Archival institutions foster the support of sponsors and the general public by encouraging interest in, and use of, archival documents. The symbiosis operating here is that use promotes preservation and preservation promotes use. There are however, obligations to the record and operational circumstances which make it more difficult to reconcile use and preservation. Among numerous issues discussed in the course of examining how different archival functions affect the degree to which a user does or does not access broadcast records, five are distinguished.

First, past failure to acquire broadcast records has obvious repercussions for scholarship since certain documents have not survived to be consulted. A continued lack of coordination between institutions impairs access and the use of these records because some will not be preserved and others will be difficult for users to locate. Second, the careful appraisal of broadcast material is important in two respects. As related to acquisition, appraisal guidelines assist in deciding what to collect. After acquisition, specific criteria are applied in selecting which part of the whole body of material is to be preserved. The appraisal process applied to broadcast records has been somewhat erratic and the articulation of specific appraisal criteria for these documents is only a recent accomplishment; one which should be encouraged and discussed with colleagues regardless of media responsibilities. Likewise, descriptive practices for special media material should receive

very careful attention. The greater the size of the collection, the larger the percentage of material which is neither processed nor described. For purposes of access and use, the contents of this material must be communicated to the researcher. Policies regarding levels of description for media documents are required and the descriptive standards which are developed must incorporate the special characteristics of media documents while managing to minimize deviation of practice. Coupled with intellectual access is physical access. It is pointless to indicate the content of a record if it cannot be auditioned. Nor can copyright considerations be overlooked since reproduction and publication are intimately linked to the provisions of the Canadian Copyright Act. The new legislation will not resolve archival concerns regarding copyright and its relevance to access; rather, the revised Act will generate renewed deliberation. Finally, financial considerations cannot be disregarded for the provision of access is frequently dependent upon the availability of adequate resources.

Given these observations, how can archivists improve accessibility to broadcast archives? Building on a shared appreciation of the archival value of these records, creators, custodians and users should join together to preserve, make available and promote the use of broadcast documents. John Twomey concluded his study by emphasizing the need for effective leadership. He recommended the formation of a Canadian Broadcasting Heritage Task Force which would review the policies

and practices of private and public archival institutions, advise the federal government regarding the preservation of significant material and encourage media scholarship.³

The foundation for such an initiative lies within the Association for the Study of Canadian Radio and Television which is already well established and would be a credible and trusted ambassador between creators, custodians and users. The members of ASCRT represent many fields with an interest in Canadian broadcasting, and this organization is well suited to understand and articulate the special characteristics which affect the appraisal, description, storage and dissemination of sound and moving images while reinforcing their enduring value as a genuine research source. However, no body in the Canadian archival community has the authority to create or manage an archival program for the broadcasting industry. The archival system comprised of provincial and territorial councils has advisory powers, but no authority to regulate archival operations. Any efforts towards the establishment of a systematic approach will depend upon the voluntary cooperation of broadcasters and archivists. Whatever authority exists must come from within the agency or institution which commits its resources to the preservation of these records. Twomey felt the most important missing factor was the lack of conviction on the part of broadcasters themselves. If archivists are to be successful in

³. John Twomey, Canadian Broadcasting History Resources in English: Critical Mass or Mess? (Toronto: Ryerson Polytechnical Institute, 1978), p. 70-71.

convincing the industry of the need to document itself properly, archival institutions must be prepared to meet the challenge by clarifying their role and responsibilities.

One fundamental issue which must be resolved is how to deal with private versus public agencies. The CBC is a publicly funded corporation and the disposition of its records must be subject to public approval. There are no indications that the Canadian public would condone the destruction of these documents. Therefore, the government must develop a policy regarding the preservation of CBC material. Either the Corporation must maintain its own archives, and be funded accordingly, or other archives must be compensated for the costs of acquiring, preserving and making available CBC documents. It is futile to expect the CBC to decide this issue. As long as it is underfunded it will continue to reject responsibility for its records. Commitment to custodial services must be made by the Canadian government and a firm policy formulated regarding the designation of official repositories for CBC material.

Dealing with the records of private broadcasters will be another matter. Government regulation regarding private corporate records is unprecedented. However, these broadcasting agencies could be made to see the benefits of good corporate citizenship and government funding could supplement private initiatives. Certainly the precedents established by American and European private broadcasters could be studied and emulated.

The Canadian broadcasting industry is no longer in its

infancy. And while broadcasters concentrate on tomorrow's broadcast, archivists must constantly remind them of the lingering value of yesterday's programming. To accomplish this effectively, the archival community should establish a blueprint for preservation and formalize its commitment to public access and use. The archival profession can then gain the support of broadcasters in documenting in some fashion, more of society's historical and cultural activities.

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