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Florida Legislates Its Slice of the Hollywood Pie: A Comparison of International Incentives for Film Production

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COMMENTS

FLORIDA LEGISLATES ITS SLICE OF THE HOLLYWOOD PIE: A COMPARISON OF INTERNATIONAL INCENTIVES FOR FILM PRODUCTION

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I. INTRODUCTION

THE dominance of the American film industry in world markets has prompted foreign governments to offer tax incentives and government subsidies to preserve their film industries. This dominance can be exemplified by the fact that America exports 92% of the films and videos distributed in Canada.[1] In 1990, American films were also shown on 85% of western European cinema screens and earned the majority of $2 billion in box office receipts.[2] Film makers in Paris and London blame Hollywood for corrupting the "refined" tastes of European film-goers;[3] only 15% of European films are exhibited outside the country of production.[4]

Some non-American films, however, achieve international success. For example, the success of "Crocodile Dundee" internationally advertised Australia as an adventurous place to travel, and it created a national identity for the country. Australian director Bruce Beresford commented on Australia's new national identity: "[w]hen I was growing up everybody wanted to pretend they weren't Australians. They all wanted to be English; some of them wanted to be Americans. Now it's changed. There's been a huge wave of nationalism. You see people around Sydney wearing 'Crocodile Dundee' hats."[5]

In addition, countries are economically motivated to offer incentive programs. Film production can provide significant benefits to a nation's economy. For example, entertainment is America's second larg-

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1. Karen Thuermet, *Say 'no' to America?*, GLOBAL TRADE, Aug. 1991, at 8.

2. *Sleeping with the Enemy*, THE ECONOMIST, Oct. 26, 1991, at 91.

3. *Id.*

4. *Id.*

5. Sean Mitchell, *'Daisy' Director Drives In New Race-Relations Study Australian Bruce Beresford's 'Mr. Johnson'*, S.F. CHRON., Apr. 7, 1991, at 21.

est net export.[6] In 1991, film productions contributed $8 billion to California's economy, $1 billion to New York's economy, and $277 million to Florida's economy.[7]

In America, California receives the largest amount of revenue from film production. Other states, however, are developing incentives programs to try to lure the film producers to their State. Florida is the first state to enact an incentive program into law,[8] but other states such as Texas, are considering similar programs.

The purpose of this Note is to explore the types of incentive programs offered and the objective behind each type of incentive. The type of incentives offered depended on whether the country or state was trying to preserve, increase, or initiate its film industry.

II. Preservation and Growth of a Country's film Industry

The following government programs use tax incentives and government subsidies to preserve the individual country's existing film industries. In addition, the national programs are intended to encourage the growth of their film industries to the point where the industry will be competitive without government aid.

A. *Canadian Incentive Programs*

Since 1939, the Canadian film industry has received substantial support from the Canadian government with the creation of the National Film Board.[9] The Canadian effort to sustain a competing film industry is partly due to a commitment to preserve its national identity as separate and distinct from its American neighbor.[10] In 1990, film and television productions added hundreds of millions of dollars to the Canadian economy.[11] To promote the growth of the Canadian film industry, the Canadian federal government created Telefilm Canada to support independent Canadian film productions by administering public financing in production, distribution, marketing, and version-

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6. Joel Kotkin, *How the West Was Lost? Why the Sun Won't Set on the Empire Built By the Anglo-American*, WASH. POST, July 5, 1992, at C1.

7. Susan Strother, *Florida Wins 13 Films, TV Project Show Business is Becoming a Mainstay of the State's Economy, The Governor Says in Orlando*, ORLANDO SENTINEL, Mar. 17, 1992, at C1.

8. Florida Film and Television Investment Act, FLA. STAT. § 288.051 (Supp. 1992).

9. *Financial Incentives for the Film Industry* 18 (Coopers & Lybrand et al. eds., 1991) [hereinafter *Financial Incentives*].

10. *Id.*

11. *Action: Canadian Production Guide*, Canadian Film and Television Production Association, Toronto, Ontario, at 5 (1991) (on file with the *Journal of Transnational Law & Policy*).

ing.[12] The agency also finances projects by way of equity investment, secured loans, or non-interest bearing advances.

To be eligible for funds, either the production, distribution, or foreign sales company must be Canadian-owned and controlled. The project must also be certifiably Canadian under the guidelines of the Canadian Audio-visual Certification Office (CAVCO), and the Canadian Radio-television and Telecommunications Commission (CRTC).[13] Films are given points based on the film's use of locations in Canada and Canadian talent. The criteria for the points are as follows:

> 1. All producers must be Canadian citizens.
> 2. The production must earn a minimum of six points based on . . . key creative people qualifying as Canadian. . . . [A]t least one of the Directors or screenwriters and at least one of the highest paid or second highest paid actors must be Canadian. Also points for screenwriters may be obtained only if all screenwriters are Canadian or if both the principal screenwriter and the author of the work on which the production is based are Canadian.
> 3. At least 75 percent of all production cost . . . must be paid to Canadians and at least 75 percent of post-production costs must be paid for services provided in Canada.[14]

If a film receives eight to nine points, Telefilm Canada through one of its funds, may finance a maximum of 40% of the production budget or up to $1.5 million. If the film project, however, receives ten points of Canadian content, Telefilm Canada may increase its participation to 49% and advance up to 15% of production costs over the maximum investment.

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12. *Id.* at 7. The full names of the funds are: Versioning (dubbing or subtitling) Assistance Fund, Canadian Production Marketing Assistance Fund, Feature Film Fund, and the Feature Film Distribution Fund. *Id.*

13. *Id.*

14. *Id.* at 32. The key creative people earned the following points:

> Director - 2 points
> Screenwriter - 2 points
> Highest paid actor - 1 point
> Second highest paid actor - 1 point
> Head of art department - 1 point
> Director of photography - 1 point
> Music composer - 1 point
> Picture editor - 1 point
> In addition, the Canadians must be paid at least 75% of all production costs except for the remuneration paid to the producer and key creative employees, and all costs associated with legal fees, accounting, insurance, and financing.

Id.

The Canadian government is analyzing various models for a proposal that would provide Canadian production companies with a corporate tax credit for every dollar spent on eligible productions. The Refundable Investment Tax Credit (RITC) would entitle profitable companies to a credit on corporate tax liabilities, and companies without sufficient corporate tax liabilities would be entitled to a cash grant.[15]

The cash grant would be paid directly to the production company. All eligible productions would automatically receive the RITC to allow the production company to rely on the receipts in advance as an alternate source of financing. The amount of credit will correspond to the number of Canadian content points granted to a production by the Canadian Audio-Visual Certification Office. Presently, the proposal recommends a sliding scale of credit, the highest value being a 20% credit, and the lowest value being a 16% credit.[16] The RITC will be an addition to the current Capital Cost Allowance which allows corporations a 30% deduction for all capital expenditures.[17]

B. *Incentive Programs of France*

The French government views the film industry as a key component of French culture. France offers grants and guaranteed loans funded through the Taxe Speciale Additionelle (TSA), a consumer tax on movie tickets. In addition, France offers tax benefits through an accelerated depreciation program for production expenditures. In 1990, total spending on film production amounted to 3,289 million francs ($661 million), an increase of 15.5% from 1989.[18]

The Centre National de la Cinematographie (CNC) is financed by the TSA. All producers of French films automatically receive aid from the CNC. The amount is calculated by a formula which takes into account the amount of TSA received from the ticket sales of the producer's films over a five year period.[19] Also, a maximum of 500,000 francs ($86,000) in interest-free loans are available for eligible films. The Commission des Avances sur Recettes decides which films are eligible, and the loans must be used to clear debts of a current production or to reinvest in a new production.[20]

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15. *Id.* at 22.
16. *Id.*
17. *Id.*
18. *Financial Incentives, supra* note 9, at 46.
19. *Id.*
20. *Id.* at 47. To qualify as a French film, the film must be filmed in the French language, last longer than an hour, have French producers or EEC national producers, and have 15% of the production costs financed by the producers. *Id.*

To encourage private investment in film and television production, the government introduced a program called SOFICA in 1985.[21] A company whose exclusive activity is the financing of film, radio, or television productions qualifies for the SOFICA program, and thus it is referred to as a SOFICA company. Investors (shareholders) of a SOFICA company are eligible for a tax benefit. There are two types of tax benefits: one for individual investors, and the other for corporate investors.

Shareholders who are individuals may deduct 25% of their dividends from their taxable income. For example, in a given year an individual stock owner receives a 100 franc dividend from the stock of a SOFICA company. If the taxpayer's total taxable income is 200 francs, the taxpayer pays income taxes on 175 francs (200 minus 25% of the 100 francs received in dividends from shares of a SOFICA company).[22]

If the shareholder is a corporation, however, 50% of the total amount invested in shares of a SOFICA company is deducted from the corporation's taxable income in the first year of the investment. For example, if a corporation invests 100 francs in a SOFICA company, in the first year of the investment, the company deducts 50 francs (one-half of the 100 franc investment) from its taxable income. The corporation, however, must pay the appropriate corporate taxes on the total amount of income (no 25% deduction like that given to the individual investors) from its investment in a SOFICA company.[23]

C. *The Australian Film Finance Corporation*

In 1988, Australia established the Australian Film Finance Corporation (FFC) to financially support Australian feature films, television dramas, and documentaries. The governmental corporation operates similar to a bank by securing loans against the rights in the program, or against sales agreements.[24]

In 1990, the FFC implemented a Film Fund to annually provide financing for the production of five films.[25] The Film Fund was estab-

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21. *Id.* at 48. SOFICA is an acronym for *Societes de Financement des Industries Cinematographiques et Audiovisuelles. Id.*

22. *Id.*

23. *Id.*

24. Kim Williams, *The Australian Cinema; from the Kelly Gang to Crocodile Dundee*, UNESCO COURIER, Dec. 1988, at 34, 37.

25. *Newsletter of the Australian Film Finance Corporation*, Feb. 1992, at 1 [hereinafter Newsletter].

The 1992 Fund film list:

Madonna is an off-beat, romantic comedy.

lished by the FFC to promote the growth of the Australian film industry. The Film Fund is funded both by private investors and government monies. The FFC will dissolve the fund when the industry becomes more stable and more private banks are willing to take over the financial role of the Film Fund.[26]

Each film is selected by the FFC from a pool of about 190 projects. To be considered, the film must first obtain a certification from the Department of Arts, Sports, the Environment, Tourism and Territories. The Department verifies that the film will be made wholly or substantially in Australia, and that it will contain significant Australian content.[27] The FFC distinguishes the eligible films by their marketability, creative principals, track record of the producer, and the overall commercial prospects of the film. The FFC determines whether each film has the potential to obtain 40% financing from the private sector.[28]

The Film Fund is composed of class A units and class B units; each has a face value of A$1000 ($1300). The investor's initial purchase must be a package of five units. Buyers of A units will receive a pro rata share of any proceeds associated with the copyrights of the films,[29] the license fees,[30] and net proceeds.[31] The FFC guarantees investors a minimum return of 121% of their investment.[32] Also, Aus-

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Gino is a comedy about a stand-up comedian.

Mushrooms is a black comedy about a couple of elderly ladies who have to dispose of a corpse.

Rio and Katz is a comedy about a spoiled rich girl and a Greek man who team up for a stage act.

Speed is about an urban misfit who turns into a psychopath.

26. *Id.* at 5.

27. *Sydney & New South Wales Film Directory,* New South Wales Film and Television Office, at 28 (1992).

28. *Id.* at 30.

29. *The 1991 FFC Film Fund Prospectus,* Australian Film Finance Corporation pty Limited, Sydney NSW, at 10 (1991) [hereinafter FFC].

"Each Production Company has assigned 80% of future Copyright in its Film (and negative, sound and film materials) to the FFC which is required to assign to Investors a 40% interest in future Copyright for approximately 15 years, unless the FUND is terminated earlier." *Id.* In addition the Investor (including the FFC) owns a pro rata share of 40% of the Copyright in a Film. *Id.*

30. *Id.* at 6. "The FFC is to acquire marketing rights for each Film worldwide and is required to pay a License Fee for this right to all Class A Investors. Subject to delivery of all the Films, returns from this License Fee to Class A Investors are required to be 121% of their Investment." *Id.*

31. *Id.* at 7. Class A Investors are entitled to a pro rata share of the Net Proceeds until all Investors receive a return (including the License Fee) of their original investment of 152%. "Thereafter Class A Investors are entitled to share 26.4% of further net Proceeds for the duration of the Fund." *Id.*

32. *Id.* at 3.

tralian investors are entitled to deduct 100% of their investment in class A units from their taxable income. The FFC buys all of the 4,170 Class B units to raise A$4,169,459 ($5,420,297) for the fund.[33]

The purpose behind the FFC Film Fund was to encourage private investing in Australian film productions. In 1990, the project attracted 225 investors, but only received A$4.5 million ($5.85 million). The amount received was A$1.7 million ($2.21 million) short of the target. The FFC was sufficiently encouraged by the result, and it planned a second fund in 1991.[34]

The Entertainment Business Review, however, reported that clients of Australian brokers and investment advisers had only a light interest in film investments since 1981.[35] In 1981, film investors qualified for a 150% tax deduction for monies invested in film productions. In addition, 50% of the net revenues earned on film investments were tax free.[36]

Currently, investors are entitled to an immediate income deduction of 100% for monies invested in the film fund.[37] The disinterest of the investors may be related to the high risk involved in film investing. Even the FFC warns investors that they still have the risk of non-delivery (films never being completed), and it advises investors not to rely on receiving any returns in addition to the guaranteed return of 121%.[38]

III. Initiating a Film industry Using Government Subsidies and Tax Incentives

The governmental programs described in this section used subsidies and tax incentives to encourage film productions. Each country or state hopes to produce an infrastructure that will support a film industry. The productions can be entirely foreign if a certain percentage of the production budget is spent in the incentive-offering country or state. There are no cultural requirements on benefiting films as there were in the Canadian, French, and Australian programs.

A. *Luxembourg Film Production and Financing Program*

In December 1988, Luxembourg implemented film production tax incentives in the hope of becoming a European center for the film

33. *Id.* at 3-6.

34. *Private Investors Steer Clear of Film Business,* Screen Finance, Sept. 20, 1990, (section entitled "Energy").

35. *Id.*

36. *Id.*

37. *Financial Incentives, supra* note 9, at 11.

38. FFC, *supra* 29, at 7.

industry.[39] The purpose of the Luxembourg Film Production and Financing Program is to encourage film production activities through tax incentives for investors. The tax rules reduce the corporate tax liability of a film finance company by a maximum of 30%[40]

Luxembourg finance companies qualify for tax certificates equal to the deutsche mark amount of production expenses incurred in Luxembourg, if their sole purpose is to finance one or more films.[41] Upon completion of a film, the Ministry of Finance issues the tax certificates to the shareholders of a Luxembourg finance company.[42] A unique provision of the law allows foreign shareholders with little Luxembourg corporate tax liability to sell their tax certificates to local companies with tax liability.[43]

In addition, Luxembourg banks accept the tax certificates issued, discounted to 30% of their nominal value, as collateral on past-production loans. For example, if 80% of the production budget qualifies as eligible expenses, the Luxembourg banks will lend 30% of that amount collateralized solely by tax certificates.[44]

Also, tax certificates can be used as security for Luxembourg bank loans. With these loans, the producer (any nationality) can finance a maximum of two-thirds of the total production budget. First, the producer must create a Luxembourg finance company (it is common for a finance company to be created for the production of a particular film and then dissolve after the completion of that film). The producer

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39. *Luxembourg Offers Tax Breaks to Filmmakers: Luxembourg Inaugurates Film Production Incentives in Bid to Attract Audio-Visual Industry,* 89 TAX NOTES INTERNATIONAL 8-22 (1989).

40. *Id.*

41. *Luxembourg Film Production and Financing Program, compiled by* RKR PICTURES, CORSAIR ASSET MANAGEMENT, & SERIES S.A., Los Angeles, at 2 (unpublished) (1991) (on file with the *Journal of Transnational Law & Policy*).

In addition, expenditures for goods and services not directly available in Luxembourg but provided through a legitimate Luxembourgian entity are eligible deductible expenses.

42. *Law Establishing a Special Temporary Tax Regime for Audio-visual Investment Certificates,* art I. Government of Luxembourg (1992) (on file with the *Journal of Transnational Law & Policy*).

The following are excluded from benefiting from the law:

> -works which are pornographic or encourage violence or racial hatred, or condone crimes against humanity or in general are contrary to public policy and decent moral standards;
>
> -works intended or used for advertising purposes;
>
> -information programs, programs dealing with current affairs, and sports broadcasts.

Id.

43. *Id.* The standard tax rate for companies is 33% (with local taxes it becomes 47.5%) and the top bracket for individuals is 56%. *Financial Incentives, supra* note 9, at 73.

44. *Id.* at 3. "Thus 24% of the total budget is free money to the producer, as far as traditional recoupment is concerned." *Id.*

must finance at least one-third of the total production cost by investing in equity shares of the finance company to cover expenses not incurred in Luxembourg.[45] Two Luxembourg banks will each loan one-third of the total budget in exchange for one-third of the shares of the finance company as security. Thus, the loaned money must be used to purchase the remaining two-thirds of equity in the finance company. Two-thirds of the production costs of the producer's film must be spent in Luxembourg to qualify for tax certificates. The banks accept the shares of the finance company as security since tax certificates are issued directly to the shareholders (the producer).[46]

As a result of the program, more than 30 feature-length films and television programs were filmed in Luxembourg in 1991, a 100% increase from 1990. The Luxembourg program increased film-related spending by about 45 million marks with only a cost of 8 million marks in lost tax revenues to the government.[47] Thus, the country gained 37 million marks from the program.

B. *Irish Tax Relief for Film Companies*

In the 1990 Finance Act, the Irish government extended the 10% preferential corporate tax rate to film production companies (terminating December 31, 2010).[48] The standard corporate tax rate is 43%. Previously, the preferential corporate tax rate was reserved only for companies which manufacture goods. A film qualifies for the preferential corporate tax if three conditions are met:

1. The film must be produced on a commercial basis with a view to the realization of profits.
2. The film may be produced for cinema or television broadcasting, or for training or documentary purposes.
3. Not less than 75 percent of the production work must be carried out in Ireland.[49]

In general, resident Ireland companies are liable for corporate tax on all ordinary income and capital gains. A company is regarded as resident a for tax purposes "if it is managed and controlled" in Ire-

45. If less than one-third of production costs are outside Luxembourg, the producer (as a shareholder) will receive the tax certificate for costs incurred in Luxembourg. *Id.*

46. *Id.*

47. Paul Montgomery, *Lux: Luring Showbizzers via Subsidies,* MOTION PICTURE INTERNATIONAL, Feb. 3, 1992.

48. *Finance Act 1990 Expands and Clarifies Irish Manufacturing Tax Incentive Program,* 91 TAX NOTES INTERNATIONAL 2 (Jan. 9, 1991).

49. *Id.* at 3.

land.[50] Also, non-resident companies may be liable for corporate tax "if they carry on a trade in Ireland through a branch or agency."[51] Thus, both Irish film companies and non-Irish film companies will benefit from the preferential corporate tax rate for film productions.

The Irish government also offers a tax deduction for companies which invest in a qualifying film company, which is a company that exclusively finances film productions. The investing company may deduct from its corporate tax liability the amount of the investment in a film company up to 600,000 punts ($972,000) in any three year period.[52] To qualify for the deduction, the investing company must not be connected with the film company, a minimum of 75% of the film production must be completed in Ireland, and the investing company can only finance a maximum of 60% of the film's production budget.[53] If several companies invest in a film company, only 60% of the total production budget can be financed by companies which are

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50. *Tax Planning for Investment in Irish Made Films*, ¶ 1.0 (1990) (on file with the *Journal of Transnational Law & Policy*).

51. *Id.*

52. *Id.* at ¶ 3.0.

Example: Assume investors received a return equal to their original investment plus a fixed percentage appreciation of 5% after three years.

ABC Limited hypothetical invested 600,000 punts in an Irish Film Finance company.

Overall Return Irish	Punts
Gross Outlay	600,000
Less Tax Relief @ 40%	240,000
Net Cost of Investment	360,000
Return after 3 years	630,000
Net Cost of Investment	360,000
Profit	270,000

Percentage Return (approx.) 20.6% per annum.

Id. at ¶ 8.0.

53. *Id.*

The other conditions are:

> [A] film is one which is produced on a commercial basis, wholly or principally for exhibition to the public in cinemas or by way of television broadcasting. It does not include a film made for exhibition as an advertising program or as a commercial. An investor company may obtain a tax deduction for an investment of up to [200,000 punts] (assuming an exchange rate of US $1.61 = punt this would equate at US $322,000) in any one year period. An investor company invests more than [200,000 punts ($322,000)] in the production of one film only, it may elect to obtain a higher deduction in that year up to a maximum of [600,000 punts ($966,000)]. The total investment on which an investor company and its connected companies may obtain relief in any three year period cannot exceed [600,000 punts ($966,000)]. The investor company must hold shares in the film production company for three years. Where an investor company makes an investment by acquiring new ordinary shares in a film company and the investor company retains the shares for three years after acquisition, the full cost of the shares is allowed as a deduction for capital gains tax purposes.

Id.

receiving a tax deduction. For example, if two companies are investing in a film company, each company can only invest an amount equal to 30% of the film's production budget to qualify for the tax deduction.

There are no limitations on who can own an Irish film company or on the nationality of the producer, director, actors, and other key creative people of the films produced by an Irish film company. Thus, an American producer could receive a maximum of 60% financing for a film through Irish companies if he or she created an Irish film company. Irish film companies operate similar to Luxembourg finance companies, often being created to produce a particular film, and then dissolved after completion of that film.

Another Irish program that encourages film investments is the Business Expansion Scheme (BES). Under BES, individuals who purchase shares of a film production company may deduct the amount of their investment from their income tax for the year in which the shares were issued. This is quite a savings considering that Ireland's top income tax rate is 52%. The amount allowed to be deducted is subject to a maximum of 25,000 punts ($40,500) for each tax year and 75,000 punts ($121,500) for a lifetime of the investor. To be eligible, the shareholder must retain the shares for five years from the date of issuance without guaranteed return on the original investment.[54]

C. *Bavarian Film Subsidy Program*

On July 15, 1987, the Bavarian State Ministry of Science and Art publicly announced that the Free State of Bavaria will grant loans for the promotion of the Bavarian film industry. The purpose of the allocated funds serve to establish "similar terms of competition in Bavaria as they exist in other states of the Federal Republic, and they are to secure employment in the Bavarian film industry."[55]

The Film Subsidy Program operates by granting a loan to a film project which promises a finished film of quality and economic potential.[56] The loan cannot exceed 30% of the film's projected production budget with a cap of DM 2 million ($1.22 million). In addition, the loan must be spent on costs incurred in the first half of production;

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54. *Id.* at ¶ 5.0.

55. *Directives Governing the Implementation of the Bavarian Film Subsidy Program*, Special Publication by Film Information Office Munich, (English Translation, Feb. 1989) at pt. I, ¶ 1 (on file with the *Journal of Transnational Law & Policy*).

56. *Id.* at ¶ 3.2. Film projects which are offensive to ethical or religious sensibilities, or describe sexual or brutal acts in "an obtrusively coarse and exploitative manner" are prohibited from benefiting from the subsidy program. *Id.*

thus, the purpose of the program is to provide the necessary seed money for film productions.[57]

The loan conditions are: the amount of the loan granted must be spent in Bavaria, Bavarian studios must be used, and dubbing into the German language must be done by a Bavarian enterprise. Also, the loan is to be repaid on a pro rata basis from the domestic and foreign royalties of the film during the sixty-month period following the first run.[58] Interest will accrue at the current money market rate, and it will stop accruing at the end of the eighteenth month following the German premiere.[59]

To promote young talent, the Bavarian government annually grants a maximum of DM 300,000 ($183,000) to a graduate of Munich's Film and TV School to produce the recent graduate's first feature-length film. The returns from the film's distribution/sales are to be used to finance the recent graduate's second feature-length film.[60]

D. *The Florida Film and Television Investment Act: Florida's Attempt to Gain a Greater Share of America's Film Industry*

On March 13, 1992, the Florida Legislature passed the Florida Film and Television Investment Act[61] with the intent to promote, stimulate, develop, and advance the growth of Florida's feature film and television production industry. Prior to enacting the law, the Legislature found that the production of motion pictures, video, and television projects in Florida grew by 20% in 1991.[62] The Legislature also concluded that Florida's entertainment industry has the potential to generate over $1 billion annually in direct expenditures during the early part of the twenty-first century if the necessary support services, including in-state financing projects, are developed.[63] Initially, the state has chosen to invest in the print and advertising of a film or the marketing of a television project. The investment in film production is less secure as there is no guarantee that a project will be fully produced, and if fully produced may never be distributed. Therefore, before the state will commit funds for the advertising or marketing, a project must be completed, and its distribution and exhibition contracts secured.

57. *Id.* at ¶ 3.3.
58. *Id.* at ¶ 3.5.
59. *Id.* at ¶ 3.4.
60. *Id.* at ¶ 3.12.
61. Florida Film and Television Investment Act, FLA. STAT. § 288.051 (Supp. 1992).
62. *Id.* at § 288.052.
63. *Id.*

For a feature film, the distribution contract is the contract between the producer and the distributor. The exhibition contract is between the distributor and the theaters exhibiting the film. In the case of television, distribution refers to the contract between the producer and the network; the exhibition contract is also between the producer and the network, but refers to the scheduled air time for the project.

The act creates the Florida Film and Television Board which will be responsible for carrying out the purposes of the act.[64] The Board will consist of seven members appointed by the Governor; the majority of members will have experience in the financing of film and television productions.[65] The major role of the Board will be to review and certify applications for investment funds.[66] Film or television investment can be a financial risk if the investor does not have the necessary experience in the entertainment industry. Thus, it is vital for the Board to be composed of experts in negotiating print and advertising or marketing investments.[67]

Currently, William S. Stevens III, the Executive Director of the Florida Film and Television Investment Board, is involved in preparing an operational plan for the Board. The administrative affairs of the Board will operate similarly to a bank or credit union.[68] There will be several operational units, such as negotiations, investment management, funding, legal, and accounting.[69] In addition, the operational plan will provide the Board and staff with general parameters for making print and advertisement investments, and the plan shall be used as a guide in analyzing applications.[70] In 1993, the board is expected to be appointed by the Governor and begin operations.[71]

Eligible applicants for this program include, but are not limited to, film or television producers, production companies, distributors, distribution companies, or their subsidiaries.[72] The applicants do not have to be Floridians to apply. Projects seeking to qualify for investment funds will be required to:

(a) certify and expend at least forty percent of the project's total allocated production budget in Florida;

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64. *Id.* at § 288.053.

65. *Id.*

66. Interview with William S. Stevens III, the Executive Director of the Florida Film and Television Investment Board, Florida Department of Commerce, in Tallahassee, FL (Aug. 13, 1992) [hereinafter Interview].

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. FLA. STAT. § 288.056 (Supp. 1992).

(b) certify that the project's production funding has been secured;
(c) provide a financial analysis and projections of the project;
(d) provide documentation that the project has a commitment for distribution or exhibition;
(e) provide a reasonable return on the investment made by the State of Florida in the project based on the financial analysis and projections.[73]

The Board has the authority to certify projects to receive investment funds for a maximum of 40% of the production costs, or $3 million, whichever is less. The investments must be used for the print and advertising or marketing of the project.[74] In return, the project must spend at least 40% of its total allocated production budget in Florida. The Board however, will most likely look more favorably upon a project that spends 60% or 80% of its production fund in Florida.[75] Especially in the first few years of operation when resources might be limited, the greater percentage of the production budget spent in Florida will be to the applicant's advantage.[76]

The Board may pre-certify applicants who have their distribution contracts pending.[77] Pre-certification of print and advertising funds could assist independent producers in securing distribution contracts.[78] An independent producer will have more bargaining power if he or she comes to the distributor's negotiating table with a certain amount of money available for distribution or marketing.[79]

IV. CONCLUSION

The motives behind the incentive programs of a country or state largely depend on the volume and success of films produced by their country's film industry. The more established the film industry, the more the government programs are aimed at encouraging the production of films that promote the national culture and the local artists.

The countries or states entering into the film industry offer incentives to promote private investment in their local film production companies, to encourage international producers to choose their country or state for film locations, and to develop local talent in film productions. International producers not only contribute to the host

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73. *Id.*
74. *Id.*
75. Interview, *supra* note 66.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*

country or state's economy, but also serve as teachers to local inexperienced producers. When the national film industry has developed, a country or state will then narrow its incentive programs solely to benefit local talent.

The ultimate goal of all incentive programs is to create a stable and successful film industry independent of government support. In essence, each country's long term goal is to be in the position of the American film industry. Likewise, each state's long term goal is to be in the position of California. Neither the federal government of the United States or the State of California offers incentive programs for the film industry. Each entity benefits economically from film production at no cost.

The film industry is attractive to a country or state because it advances the entity economically; it is an industry that does not pollute the environment, and it employs a group of the population (artists) that have a history of low employment. Also, the film industry assists other industries of the entity. Because it involves people with high profiles, the filming sites attract tourists. The influx of tourists builds the communities' local restaurant and hotel industries. Thus, the United States, and especially California, has realized that show business is less show and a lot more business.