TRUTH, JUSTICE, AND THE CANADIAN WAY? HOW HOLLYWOOD IS NO LONGER "MADE IN THE USA."[1]

by Matthew A. Foote

Mr. Matthew Foote is an Associate with Hirschler Fleischer, P.C., in Richmond Virginia, working in real estate development and finance. Matthew holds a J.D., Magna Cum Laude from the University of Richmond School of Law, a M.A. in English from the University of California, Irvine and a B.A. in English from the University of Arizona. He also served as a Legal Intern for several organizations including the Minnesota Vikings Football, LLC; Target Stores in Glen Allen, Virginia; The Rutherford Institute in Charlottesville, Virginia; and Macaulay & Burtch, P.C. in Richmond, Virginia.

I. INTRODUCTION

"Independence Day," named after the 4th of July, is a film about an alien invasion of the United States, in which all-American symbols like the White House and the Statue of Liberty are destroyed.[2] "Miracle" is the story of the 1980 American hockey team, which shocked the heavily-favored Soviets at the Olympics in Lake Placid, New York.[3] Both films stir patriotic emotions, champion American spirit and the American dream, and seem to be as all-American as apple pie. Thus, it is difficult to imagine that such quintessentially American films, set in the United States, were actually filmed abroad.[4] Similarly, 2003 Best Picture Academy Award winner "Chicago," which celebrates all-American jazz culture and the city of Chicago, was filmed in Toronto.[5] Both the original 1978 "Superman" movie and "Superman Returns"—whose main character, ironically, defends truth, justice, and the American way—were filmed outside the U.S.[6] Other very "American" films recently shot abroad include "Cinderella Man," "Hollywoodland," "New York Minute," "Cold Mountain," "United 93," "Brokeback Mountain," and "Blues Brothers 2000."[7] However, this trend toward "runaway" film production does more than simply raise eyebrows.[8] Indeed, the exodus of U.S. productions to foreign countries transfers billions of dollars and tens of thousands of jobs to foreign economies each year, and those numbers are steadily growing.[9]

Though not intended to be an exhaustive study of the runaway production problem, this article examines runaway film production and its ramifications. Part II discusses the different types of runaway productions, and some of their most common runaway locations. Part III examines the economic, employment, and cultural consequences of runaway productions, and Part IV analyzes the origins and causes of the problem. Part V discusses some of the more successful action taken by foreign governments to lure motion picture productions, as well as examples of some efforts by U.S. entities to curb the flow of runaway productions. Finally, Part VI suggests a possible solution to the problem based on the most successful of those examples.

II. WHAT ARE "RUNAWAYS," AND TO WHERE ARE THEY RUNNING?

Runaway productions are feature films, made-for-television movies, and television series intended for U.S. audiences but produced outside of the United States.[10] Dr. Martha Jones, of the California State Legislature's Research Bureau, defined runaway productions as "films that were conceptually developed in the United States, but filmed somewhere else. If the conversation is at the federal level, runaway production goes to other countries. If at the state level, production that goes to states [other than California] is a runaway."[11]

There are three general species of runaway productions: artificial economic runaways, natural economic runaways, and artistic runaways.[12] Artificial economic runaways are productions lured abroad by legislatively-created (i.e. "artificial") incentives.[13] Natural economic runaways are filmed abroad because of naturally-occurring economic conditions, like cheap labor and rent.[14] Artistic runaways are productions filmed abroad for artistic reasons, like the necessity to film a story about the Roman Coliseum in Rome.[15]

A. DOMESTIC RUNAWAYS

As mentioned, Hollywood entertainment executives classify productions shot in states other than California as "domestic runaways."[16] This paper focuses on the international implications of runaways, and therefore domestic runaways are not emphasized. However, some of the successful efforts by U.S. locales serve as useful illustrations for how to strategically stem the flow of international runaways. For example, Louisiana and New Mexico have launched unique and successful campaigns to attract productions.[17]

B. INTERNATIONAL RUNAWAYS

Obviously, international runaways are far more damaging from a national perspective than domestic runaways, because they deprive the United States of the rich economic and cultural rewards that entertainment productions offer. Among the foreign countries most successful in luring U.S. entertainment productions are Canada, the United Kingdom, Australia, and New Zealand.[18] Morocco and Romania are also increasingly attracting productions.[19]

Multiple studies have shown that the shift in production of feature motion pictures away from the United States continues to grow. In 1999, the Screen Actors Guild ("SAG") and the Directors Guild of America ("DGA") commissioned the Monitor Company, a leading management consulting company, to study the problem of runaway production in the years 1990 to 1998 ("Monitor Report").[20] According to the Monitor Report, 27% of U.S. developed film and television productions in 1998 were runaways.[21] That percentage had doubled since 1990, according to the report.[22] The total number of international runaways nearly tripled in that time period, increasing from 100 in 1990 to 285 in 1998.[23] Made-for-television movies have been hit the hardest by runaway production. In 1998, 45% of U.S. developed made-for-television movies were runaways.[24] The upward trend in international runaways has continued since the Monitor Report. The Center for Entertainment Industry Data conducted a

Continued on Page 5

Continued from Page 4

similar study of the years 1998 to 2005 ("2005 CEIDR Report").[25] Perhaps most disturbing is the finding by the 2005 CEIDR Report that the U.S. market share in worldwide production dollars spent on theatrical releases fell from 71% to 47% from 1998 to 2005.[26] This constitutes an average drop in production dollars of 3% per year. While the economic consequences of this drop are already significant, they could be severe if this trend continues.

1. Canada: the Most Common Destination for Runaways

According to the Monitor Report, Canada has captured the vast majority of runaways.[27] In fact, so many productions occur in Canada, entertainment industry people call the country "Hollywood North."[28] The Monitor Report revealed that 81% of the total international runaways were filmed in Canada, including 90% of the made-for-television movies.[29] During the time period examined, U.S. domestic feature film production grew an average of 8.2% annually, while U.S. features produced in Canada grew 17.4% annually.[30] Even more revealing is that U.S. domestic television production grew 2.6% annually, as compared to an 18.2% growth in U.S. television production in Canada.[31] The 2005 CEIDR Report found that Canadian feature film production grew 179% from 1998 to 2005.[32]

2. United Kingdom and Elsewhere

The United Kingdom has the largest film industry in Europe due to its production incentive programs.[33] The 2005 CEIDR Report showed that feature film production in the United Kingdom and Ireland rose 66% from 1998 to 2005.[34] The 2005 CEIDR Report also revealed that feature film production in Australia and New Zealand rose an astounding 531% from 1998 to 2005, and an even more amazing 927% in Eastern Europe during this period.[35]

III. WHY SHOULD WE EVEN CARE ABOUT RUNAWAYS?

A. IMPORTANCE OF THE FILM INDUSTRY

In 2001, the U.S. Department of Commerce reported ("Commerce Report") that the motion picture industry is "one of the most economically important industries in the United States."[36] The Commerce Report found that the film industry directly provided over 270,000 jobs, "more than the number of workers directly employed by the steel industry."[37] Estimates of the jobs produced by the motion picture industry, both directly and indirectly, range as high as 480,000.[38]

Internationally, American films are a uniquely dominant American product. Indeed, Sheldon Presser of Warner Brothers told Congress in 2005 that the film industry has a "surplus balance of trade with every single country in the world . . . no other American business enterprise can make that statement."[39] For example, in 2002, 70% of box office revenues in the European Union were spent on U.S. films.[40]

Productions not only directly benefit film-related businesses like pre- and post-production companies, but also indirectly to an "average of 300 non-film businesses" that provide necessary services.[41] Rather than one large, self-contained business, film production is made up of small, specialized production businesses as well as personal-services support. The result is that films can have a dramatic impact on the local economies where they are filmed. For example, the film "Tin Cup" resulted in a total of $641,000 to local dry-cleaning business, hardware and lumber companies, and private business location fees.[42] Another Kevin Costner film, "Field of Dreams," resulted in 100,000 tourists to the Iowa cornfields in the seven years following its release.[43] Likewise, "The Bridges of Madison County" also reportedly increased tourism in Iowa by 20% in one year.[44] Production of "A Time to Kill" generated 10,000 paychecks to Mississippi residents.[45] Reportedly, the total direct and indirect economic impact of one movie filmed in Chicago, Illinois was $33.5 million.[46] Similarly, "Superman Returns" injected $80 million into the local Australian economy, as well as 800 new full time jobs and over 10,000 total people employed during filming.[47]

B. CONCERN OVER RUNAWAYS HAS BEEN BUILDING FOR DECADES

Runaway productions are not a new phenomenon, and major Hollywood figures have been warning about the economic consequences for years. As early as the 1940's, then-SAG President Ronald Reagan met with President Truman about the problem of runaways.[48] Twenty-eight motion picture-related unions commissioned a study in 1957 that concluded that runaway production should be a cause of growing concern.[49] In 1961, Charlton Heston testified before Congress that foreign subsidies were creating the problem of international runaways.[50] Heston and SAG unsuccessfully pleaded with Congress to "fight subsidy with subsidy."[51] Their warnings went unheeded, and the problem of runaways has continued to grow.

C. CONSEQUENCES: JOB LOSS AND ECONOMIC LOSS

The Monitor Report found that the number of full time jobs lost by U.S. workers due to runaways multiplied nearly four times from 1990 to 1998.[52] In other words, the number of lost full-time jobs in the entertainment industry rose from 6,900 in 1990 to 23,500 in 1998. This constitutes a cumulative total of 125,100 jobs, an increase of 479% jobs lost to SAG members and 200% to DGA members.[53] The 2005 CEIDR Report estimates another 47,000 jobs have been lost since 2000.[54]

The Monitor Report found that the total economic impact of international runaways rose from $2.0 billion in 1990 to $10.3 billion in 1998.[55] The direct production expenditures lost from the U.S. due to international economic runaways totaled $2.8 billion in 1998, plus another $1.9 billion in lost tax revenues.[56] This represents nearly a 600% increase from 1990.[57] During this time period, the total percentage of films and television programs developed in the U.S. but produced in foreign countries rose from 29% to 37%.[58] In addition, the 2005 CEIDR Report estimated that a total of $23 billion in economic benefits related to motion picture production

Continued on page 6

Continued from page 5

had been lost to international runaways from the years 2000 to 2005 alone.[59]

The economic ramifications of runaways are illustrated by the example of what "Chicago" did for Toronto's local economy. The local production budget for the film was $14 million—money paid to Canadian film production companies.[60] Overall, the estimated additional impact on supporting Toronto businesses—local small businesses provided all goods and services necessary to film production—was $21 million.[61] Considering that this represents the economic benefits from only one production, it is clear that runaways represent a significant economic boon swinging from U.S. to foreign businesses.

D. CULTURAL CONSEQUENCES

Whether we like it or not, the film industry represents a significant cultural entity, and Hollywood is an iconic American setting. The Supreme Court of the United States has even weighed in on the importance of motion pictures, finding them to be a "significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression."[62] Former President Ronald Reagan said that as president of SAG, he "tried to emphasize how important the movies were to American Culture."[63] The U.S. Department of Commerce recognized that, in a sense, films stood for America itself:

> America exported stories defining a system of government that could withstand open criticism and still grow stronger *(Mr. Smith Goes to Washington, Gentleman's Agreement);* stories demonstrating that talent and hard work could surpass birth into a social class as determinants of wealth or fame *(Rocky)*; stories about one person's ability . . . to overcome persecution and prejudice *(To Kill a Mocking Bird);* stories exploring the impact of American slavery and prejudice and the struggle to transform society into one of equal rights for all *(Roots)*. Many of these American films and television programs have helped promote freedom and democratic values, the same values that encouraged throngs of people throughout the world to rise up and challenge repressive governments, contributing to the end of the Cold War, the destruction of the Berlin Wall, and the events in Tiananmen Square before the crackdown.[64]

As such, many people feel that Hollywood productions that run away to foreign countries rob the U.S. of significant cultural benefits. For example, James Mangold, writer and director of "Walk the Line," says that runaway productions cause American filmmakers to "lose the ability to capture part of our own culture."[65] One director of "Superman Returns" quit the production over the decision to film in Australia, complaining "when I flew to New York to scout, I became enamored with our greatest American city. It was clear to me that this was Metropolis. As a filmmaker, I felt it was inappropriate to try to capture the heart of America on another continent."[66] Similarly, Academy Award-winning cinematographer Jack Green refused to work on "Miracle." Green said "here was a film about the American Dream, and they were shooting it in Canada. It just really disturbs me."[67]

III. CAUSES OF RUNAWAY PRODUCTION

A. OWNERSHIP OF MOTION PICTURE STUDIOS BY TRANS-NATIONAL MEDIA CONGLOMERATES

Unlike the golden era of Hollywood, where movie moguls like Charlie Chaplin and David O. Selznick ran the studios, today's movie studios are managed by corporate executives.[68] Trans-national conglomerates like News Corp., Sony, Viacom, America Online-Time Warner, and Disney now own the studios. Understandably, these large corporations owe their primary duties to shareholders. Thus, their interest is not in patriotism, artistic or creative integrity, or the sentimentality of Hollywood. Rather, the trans-national conglomerates are principally concerned with making a profit. Thus, the decision that results in the highest profit margin will be made, regardless of sentimentality.

Furthermore, these trans-national conglomerates are not dependent on the movie studios as the principal means by which they earn a profit. Indeed, in 2003 the movie business accounted for only 7% of Viacom's total income, 19% for Sony, 19% for News Corp., 18% for Time Warner, and 21% for Disney.[69] Ultimately, however, the fact that movie studios are owned by such conglomerates and motivated solely by profits could be a good thing for the runaway production problem. While many may lament its effect on the creative process and the alleged lack of quality films produced, this business model should lead runaway productions back to the United States if the proper financial incentives are implemented.

After all, if studios are now looking at films solely in terms of profit and their duty to shareholders, they are bound to produce their projects in the U.S. if the federal and state governments can make it cheaper for them to do so. 20th Century Fox Executive Vice-President Fred Baron confirmed as much, saying "what we're trying to do right now is fight to film in America. But in our process, we are forced to go offshore because of prices."[70] The rise in movie production in Louisiana and New Mexico gives a strong indication that domestic tax incentives could keep films in the U.S. However, the steady increase in international runaways indicates that the current incentives offered by foreign countries are more attractive.

B. LOWER LABOR COSTS IN FOREIGN COUNTRIES

Lower labor costs contribute to natural runaway productions, in that the labor conditions are not a legislatively-created incentive for runaways. Nevertheless, the dollars saved by paying lower wages can be significant. In fact, cheap labor can save producers up to 40% in production costs, even without any artificially-created government incentives.[71] For example, the minimum weekly salary of an assistant director in Canada is $2927 U.S., as compared to $3285 in the United States.[72] Clearly, if this 11% savings is multiplied by the large number of cast and crew, it can constitute significant savings in production costs. Other countries provide even more dramatic evidence. For example, Australian labor rates are 25 to 35% less than those in the U.S.[73] In Romania, labor costs are 80% cheaper

Continued on Page 7

Continued from Page 6

than those in the U.S.[74] A driver for a film production in Hollywood can earn $470 per day, as compared to an equivalent position in Romania earning less than $10.[75]

Indeed, despite its setting in North Carolina during the American Civil War, "Cold Mountain" "absolutely would not have gotten made" if not for "the savings that Romania offered."[76] Similarly, Oliver Stone was attracted to Morocco's cheap labor when filming 2004's "Alexander," as movie extras there work for $1.80 an hour.[77] These stark contrasts between U.S. and foreign labor rates could indicate a major reason why film production spending rose 927% in Eastern Europe from 2001-2005.[78]

C. FAVORABLE EXCHANGE RATES

Another major contributor to natural runaways appears to be favorable exchange rates in foreign countries. Canada provides a useful example of how the exchange rate can make foreign production more financially favorable to producers. Between 1990 and 1998, when the value of the U.S. dollar increased in relation to the value of the Canadian dollar, production costs in Canada were reduced up to 23%.[79]

On the other hand, the Craig Report found that evidence directly linking exchange rates and runaways is "far from conclusive."[80] Since Canadian-commissioned reports conflict with U.S.-commissioned reports, it is difficult to know whose data and conclusions are correct. After all, U.S. studies are motivated by the desire to spur legislators into action against runaway production, while foreign studies hope to deter such action. Perhaps some answers to the exchange rate debate may be provided when data is available about runaway productions happening now, with the U.S. dollar recently at its all time low against the Euro, and similarly weak against other currencies.[81] Presumably, if the dollar continues its downward trend, exchange rates will be less of a factor in the runaway production problem.

D. TAX REBATES/INCENTIVES

The 2005 CEIDR Report concluded that exchange rates, cheap labor costs, and other factors are mere bonus incentives for would-be runaway producers— tax incentives (i.e. "subsidies") are the real culprit.[82] Therefore, the countries that offer the most generous tax incentives to producers are most successful at luring runaways.

1. Canadian Tax Incentives

Canadian federal and provincial tax incentives have drawn runaways by allowing producers rebates of up to 43.5 cents on every dollar spent on productions.[83] According to the Monitor Report, Canada has accomplished its dramatic increase in runaways because its government "has engaged in comprehensive and aggressive, long-term strategic campaign to attract US producers. This program includes government incentives and tax rebates, which, coupled with lower production costs, have made it economically attractive for producers to film in Canada."[84]

In addition to direct financial assistance, Canada and its provincial governments offer tax incentives for productions that meet certain criteria. First, the production company must be a Canadian-controlled company and it must own the copyright in the film.[85] There are multiple ways that producers can fulfill this requirement. First, the producer can simply hire a Canadian production company to shoot the film. Canadian production companies have improved in quality to compete admirably with Hollywood production companies.[86] The producer can also team up with a Canadian production company and call the film a co-production, even if the U.S. producer has all the actual creative and financial control. Alternatively, the producer can easily incorporate in Canada for a nominal fee.[87] This approach allows the producer to take further advantage of the tax incentives, as the producer becomes a Canadian taxpayer upon incorporation. The additional criteria to receive the tax incentives are that the director or screenwriter and one of the leading actors must be Canadian, 75% of the production must take place in Canada; 75% of production costs must be paid to Canadians; and it must meet certain genre and content guidelines.[88] Presuming the producer can find the necessary Canadian creative talent, the rest of the criteria are easy to fulfill. After all, the cost of labor and the exchange rate have already helped lure the producer to shoot in Canada to begin with.

If the production qualifies, the producer receives a tax credit of 25% of labor costs up to 12% of the total cost of the production.[89] Generally, tax credits are more valuable than deductions, because credits are subtracted dollar for dollar from the company's total tax liability, and credits constitute guaranteed, immediate savings. Alternatively, the producer may opt for a refundable tax credit of 16% of salaries and wages paid to Canadian residents.[90] This clearly provides incentive for producers to employ a higher percentage of Canadians, thus improving the Canadian economy by increasing jobs and the revenue flow from consumer spending and income tax.[91]

2. United Kingdom Tax Incentives

As mentioned, the U.K. boasts the largest film industry in Europe, largely due to a 100% tax write-off for feature films and made-for-television productions that meet certain criteria.[92] Qualification is fairly easy: the majority of labor for the production must be U.K. or European Union citizens, U.K. production companies must be used for production, and at least half of the technical production equipment must be supplied by U.K. companies.[93] As mentioned above in regard to Canada, the producer can easily meet these criteria by hiring a U.K. production company, utilizing a co-production approach, or incorporating in the U.K.

The U.K. also lures runaway productions through sale-lease back tax benefits. In a sale-lease back, a non-U.K. producer can refinance a film by selling it to a U.K. buyer whose business is distributing films. The buyer then leases the film back to the production company at a discount over ten to fifteen years.[94] The sale price of the film is usually calculated based on the total production cost minus the lease payments, which usually equate to roughly 10% of the production cost.[95] Thus, the producer has made an up-front profit of 10%.

The U.K. tax system encourages such transactions by allowing the buyer to claim 100% of the film's purchase price as tax relief against other liabilities.[96] So, the producer is incentivized by an up-front profit of 10%, and the buyer has a tax incentive as well as the right to exploit the movie for profit. To qualify for a sale-lease

Continued on page 8

Continued from Page 7

back tax benefit from the British government, a film must meet the following criteria: it must be intended for theatrical release; it must qualify as a "British Film," meaning that 70% of its production cost must be spent on filmmaking activity in the U.K.; and 70% of its labor costs must go to citizens or residents of the E.U.[97]

3. Australian Tax Incentives

Australia has been able to use tax incentives to lure high-budget productions like "Mission Impossible II," "The Matrix Revolution," "The Thin Red Line," and "Star Wars Episode III—The Revenge of the Sith."[98] Australia offers a federal tax rebate of 15% of production expenditures of eligible film and television productions.[99] In order to qualify, the production company must be an Australian resident or a non-Australian company with a permanent establishment in Australia, and the production must have a budget of more than $15 million.[100] There are certain additional limitations on the rebate. For example, if the production's budget is less than $50 million, at least 70% of the total expenditures on goods, services, or property must be supplied in Australia.[101] Again, it bears mentioning that a tax rebate, like a credit, is generally more valuable to the producer than a tax deduction.

Australia also lures runaways by creating incentives for private Australian citizens and corporations to invest in films. These alternative tax programs, called the "10B Offset" and the "10BA Offset," provide tax offsets for Australian investors who own copyrights in "national" or "cultural" films.[102] Under the 10B offset, investors can write off their entire investment for two years for films, television movies, mini-series, or episodic series made substantially in Australia.[103] The 10BA Offset provides a 100% deduction for investments on productions completed and exploited within two years.[104] Since the deduction is higher, the 10BA Offset also has higher content criteria, including physical production and script elements.[105]

Producers looking for economic incentives to run away to Australia also have incentives provided by the nation's states and provinces. Tax rebates and exemptions, cast and crew rebates, grants, and free or subsidized public services all make production in Australia more economically attractive.[106]

E. PRODUCTION FACILITIES AND TECHNICAL EXPERTISE

Once foreign companies have lured runaway productions, those countries must be able to provide facilities and expertise comparable to those the production company could find in the U.S. After all, the economic incentives will mean nothing to the producers if they are unable to get their films made to their desired quality. Accordingly, the leaders in international runaways have increased both the capacity and quality of their production facilities and expertise. For example, British Columbia, Canada boasts seventy post-production facilities, sixty shooting stages, and the ability to crew and service forty projects simultaneously.[107] Similarly, the United Kingdom has developed a niche in special effects, and thus has attracted a large quantity of post-production on films shot in the U.S.[108]

The Commerce Report found that the technical expertise issue has been self-perpetuating.[109] Runaway productions of U.S. films have brought Hollywood's technical experts to foreign countries, where local artisans have been able to learn from their technical expertise. Thus, the foreign technical people are able to replicate the services offered by their U.S. counterparts who trained them. Oscar-nominated cinematographer Piotr Sobocinski verified this by praising his Vancouver crew: "I worked with the best crews all over the world, but here I have a really fantastic crew . . . I never hear the word 'no.' It's really the first time in my life that I'm going on the set with pleasure."[110] As Mark Dillon writes, "Chicago's Oscar showing is FTAC's worst nightmare: it tells other producers that not only does Canada have a cheap dollar and attractive tax subsidies, but its film workers are on par with the best."[111]

IV. ARE RUNAWAYS REALLY A PROBLEM, OR ARE SOME OF US JUST PLAYING "CHICKEN LITTLE"?

Some industry experts argue that runaway productions are not quite the problem others make them out to be. For example, Allen Scott, Director of the Center for Globalization and Policy Research at UCLA, claimed in 2002 that runaway production would never constitute a serious threat to Hollywood.[112] Scott's argument was based on the premise that Hollywood's technical superiority would always make Los Angeles the "significant core of the industry's product range."[113] In addition, Jack Valenti, former Motion Picture Association of America ("MPAA") chief, claimed in 2004 that "there has been no 'outsourcing' of U.S. motion picture jobs . . . no permanent jobs have been exported."[114]

However, the reasoning of Scott and Valenti defy the evidence. While Scott's conclusions about Hollywood's technical superiority may have had more validity in 2002, other countries have closed the gap in this area. As discussed above, Australia, New Zealand, Canada, the U.K., and other nations have developed many production facilities and sound stages that compete admirably with those in Hollywood.[115] It is also logical to assume that market forces will determine this issue. After all, foreign production facilities will not lure U.S. producers if they are unable to deliver the quality that producers expect. Considering the dramatic rise in runaway productions found by the Monitor Report and the 2005 CEIDR Report, foreign production companies are getting the job done.[116]

Valenti's conclusions are similarly counter-factual. As discussed above, the 2005 CEIDR Report and the Monitor Report both found that runaway productions have resulted in significant loss of employment opportunities.[117] Perhaps the context of Valenti's comments explains his inaccuracy, as Valenti was bristling from criticism of the entertainment industry's alleged "outsourcing" of jobs from Congresswoman Diane Watson (D-CA).[118] Nevertheless, the data shows that Watson's criticisms were valid.

In addition, Hollywood's own history shows that concern over runaway productions is justified. After all, early filmmakers came to the West Coast in order to avoid patent enforcement actions by Thomas Edison, who invented the moving picture.[119] The availability of cheap labor and land was also a major factor in the development

Continued on Page 9

Continued from Page 8

of Hollywood as the heart of filmmaking.[120] Essentially, Hollywood itself was built on runaway productions. Thus, Hollywood is right to concern itself with remaining competitive with other possible venues.

V. PREVIOUS ATTEMPTS TO COUNTERACT RUNAWAYS

A. SAG'S GLOBAL RULE ONE: A GRASS ROOTS EFFORT

SAG has implemented its own grass roots effort to stem the flow of international runaways by attempting to police its members. SAG's "Rule One" declares that "no member shall work as a performer or make an agreement to work as a performer for any producer who has not executed a basic minimum agreement with the guild. Members who violate this rule could be subjected to . . . fines, suspension, and expulsion."[121] SAG worries that producers who hire actors to work on foreign projects without official SAG contracts can avoid paying contributions to guild pensions, health funds, and residuals.[122] SAG estimates that from 1996 to 2000, guild funds lost $23 million in contributions due to work by its members on non-signatory productions.[123] Due to these losses, SAG claims it has been forced to raise the minimum earnings threshold for members to qualify for SAG health plans.[124]

1. Opposition to Rule One

In May 2002, SAG extended Rule One internationally, and it has faced opposition. First, it is questionable whether SAG even has the authority to prevent its members from working overseas, beyond its jurisdiction.[125] In addition, SAG faces the monumental task of monitoring its 120,000 members.[126] Thus far, its enforcement has been spotty, and has apparently consisted of asking its high-profile members to refuse to work on projects of all actors on the production do not have official SAG contracts. For example, reportedly Russell Crowe demanded that the child actors on "Master and Commander: the Far Side of the World" be signed to official agreements before Crowe would continue working.[127] Similarly, Arnold Schwarzenegger refused to work on "Terminator 3" unless production was moved from Canada to California.[128] Nevertheless, SAG has had a difficult time convincing lesser-known actors, who have less leverage, to demand that foreign projects adhere to SAG standards.[129]

In addition, SAG has also had backlash from the Alliance of Motion Pictures and Television Producers ("AMPTP"), which complains that Global Rule One violates the collective bargaining agreement between SAG and AMPTP.[130] Predictably, AMPTP would like its producer members to have as much freedom of trade as possible, but SAG argues that AMPTP has a duty to protect American SAG members working outside the U.S. This split on Global Rule One is indicative of the general resentment that arises when unions act unilaterally to control industry-wide problems. Often, the arguable benefits of such actions to one union's members will be offset by detriments to other aspects of the industry.[131]

In addition to backlash within the industry and the difficulty in policing its own members, SAG has predictably faced opposition to Global Rule One from foreigners who hope to lure runaway productions. Producer guilds from New Zealand have resolved only to enter into domestic working relationships with actors, thus directly opposing Global Rule One.[132] The Alliance of Canadian Cinema, Television, and Radio Artists ("ACTRA") has publicly supported Global Rule One by saying it will cooperate in allowing actors working in Canada to work under SAG terms.[133] However, ACTRA's stance may be simply one of diplomacy, and may not indicate its long-term stance on the issue. Indeed, both AMPTP and ACTRA have indicated they may pursue legal remedies in opposition to Global Rule One, believing it undermines existing agreements between other producers associations and actor unions.[134] In addition, the Canadian Film and Television Production Association ("CFTPA") has publicly opposed Global Rule One, maintaining that Canada is ACTRA's jurisdiction. CFTPA argues that Global Rule One strips ACTRA of its jurisdiction over English language films and television in Canada.[135] Canadian producers also argue that enforcement of Global Rule One will complicate production to the point of chasing away lucrative runaway productions.[136]

The lesson of Global Rule One may be that carrots work better than sticks. Any time an entity takes action to dis-incentivize runaways to foreign countries, there will presumably be restraint-of-trade complaints. Therefore, perhaps the more appropriate and effective action is to use positive incentives for producers to stay in the U.S., rather than penalties for runaways. In fact, in 2004 Congress enacted legislation intended to provide such incentives for American businesses to stay in the U.S.

B. U.S. FEDERAL INCENTIVES: THE AMERICAN JOBS CREATION ACT

The American Jobs Creation Act of 2004 ("2004 Act") was enacted by Congress to curb offshore production and lure it back to the United States. [137] While not specifically enacted for the entertainment industry, the 2004 Act appears to have had some positive effect in discouraging runaways. For example, low budget made-for-television movies had been severely affected by foreign productions prior to the 2004 Act. The number of made-for-television movies produced in the U.S. had dropped from 182 in 1995 to 49 in 2003.[138] After passage of the 2004 Act, made-for-television movie production in the U.S. rose back up to 84 in 2005, largely because the 2004 Act benefits productions with budgets under $15 million.[139]

The 2004 Act includes an Internal Revenue Code provision that allows for a tax deduction for the full cost of qualified films or television productions in the year the costs are incurred, regardless of when the film is released.[140] For productions made in the U.S. with aggregate costs under $15 million (or $20 million in some low income areas), producers are allowed deductions for direct costs like equipment, as well as indirect costs like development costs, financing fees, administrative expenses, and depreciation of property.[141] Another tax deduction is available under the 2004 Act for net income derived from license sales or exchanges.[142] Thus, the producers can save money on licensing the film.[143] Any type of

Continued on page 10

Continued from page 9

production can qualify under the 2004 Act, including motion pictures released theatrically or straight to video, mini-series, television episodes, or made-for-television movies.[144]

While the 2004 Act is a step in the right direction, it is clear that the legislation did not contemplate the film industry specifically. For example, 87% of films with budgets under $10 million dollars were already filmed in the U.S. in 1999.[145] Thus, the 2004 Act benefits producers of low budget films that were not running away in the first place. Consequently, the 2004 Act is a "swing and miss" in terms of addressing the runaway problem.[146]

C. STATE EFFORTS: LURING PRODUCTIONS TO U.S. LOCATIONS

The State of Louisiana may provide a viable example for successful legislation to keep productions at home. After the economic devastation of Hurricane Katrina, Louisiana legislation has allowed the film industry to help re-invigorate Louisiana's economy.[147] The 2005 legislation provides an exemption from state sales and use taxes for any motion production picture spending at least $250,000 in Louisiana.[148] In addition, a production company spending $1 million or more on payroll to Louisiana residents is eligible to receive a 20% employment tax credit.[149] Under the bill, a Louisiana taxpayer can receive a 10% tax credit on his or her investment in a production. If the taxpayer invests over $8 million, the tax credit increases to 15% of the investment. Consequently, a producer who films in Louisiana can save money on sales and use taxes, significant dollars in payroll, and can more easily find Louisiana investors. The result has been a boon to Louisiana's post-Katrina economy: the ten movies filmed in Louisiana in 2005 had a combined budget of $550 million and created 600 new jobs.[150]

Other states have recognized the economic and employment benefit to Louisiana's film production incentives. For example, New Mexico has begun offering a combination of benefits to lure productions: tax rebates of $.25 per dollar; no-interest loans of up to $15 million for productions filmed mostly in the state and hiring a high percentage of New Mexico residents; and salary rebates for training New Mexico residents as crew members.[151] The result has been positive: $54 million paid to 3,261 New Mexico residents, and $160 million spent in the state on film production through September, 2007.[152]

D. ATTEMPTS TO COMBAT FOREIGN SUBSIDIES

The Film and Television Action Committee ("FTAC") was formed in 1988 for the purpose of "recovering American film jobs."[153] FTAC claims to be supported by a great number of entertainment industry entities, including SAG.[154] FTAC believes that "foreign production subsidies like those offered by Canada and its imitators do not comply with U.S. trade agreements."[155] Therefore, FTAC hopes that the U.S. Trade Representative will investigate such subsidies and confirm they violate trade agreements. As a result, the FTAC hopes that such subsidies will be eliminated, either through negotiation or World Trade Organization mandate.

However, success through FTAC's efforts seems improbable for several reasons. First, the 2000 CEIDR Report stated that there is no legislative prohibition against Canadian production subsidies. The U.S. Office of Management and Budget classifies the production of motion pictures and television as a Service Industry . . . there are no protections from a trading partner who chooses to subsidize . . . the film and television production industry under the current General Agreement on Trade in Services. If the production of motion pictures . . . were classified as a Manufacturing Industry, the Canadian subsidies would fall under the dispute settlement provisions of the World Trade Organization.[156]

In addition, the American Jobs Creation Act of 2004, as well as various state incentives like those in Louisiana and New Mexico, are similar in nature to the Canadian subsidies about which the FTAC complains. Thus, FTAC's complaints may be somewhat hypocritical. Second, the FTAC is totally dependent on the U.S. Trade Representative, which may or may not ever take action, and the FTAC has no enforcement power on its own. Lastly, the DGA and MPAA are concerned that the FTAC's proposed course of action will ruffle the feathers of foreign nations like Canada, making it more difficult and costly to export U.S. film to those countries.[157] In essence, the action could increase costs for producers by forcing them to film in the U.S., while also increasing costs of exporting the films. While it could deter producers from going overseas, it could also deter filmmaking in general.

VI. CONCLUSION: SUGGESTED SOLUTION TO RUNAWAYS PROBLEM

As discussed above, runaway productions are detrimental to the United States both economically and culturally.[158] Aside from the cultural concerns, runaways cost the United States $23 billion and 47,000 full time jobs from 2000 to 2005.[159] These numbers are growing, as foreign countries like Canada, England, and Australia take more and more affirmative steps to lure the economically beneficial productions to their shores. Similarly, some states within the U.S. have enacted legislation to draw the lucrative productions.

Congress clearly recognizes the general danger of outsourcing, and has attempted to limit it by passing the 2004 Act.[160] However, the 2004 Act does not go far enough to compete with overseas incentives, and does not specifically address the unique nature of runaway productions. Considering that Ronald Reagan and Charlton Heston warned of the dangers of runaway productions as far back as the 1940s, the time has come for Congress to take aggressive action to ensure that the film industry remains an indisputably American industry.[161]

First, it makes sense to form a Congressional committee to analyze what other countries and U.S. states have done to successfully attract productions, and subsequently make recommendations to Congress to implement competitive incentives.[162] The motion picture committee should then continue to monitor the runaway production problem, as well as ongoing foreign legislation to attract runaways, and make periodic updates and recommendations to Congress.

Assuming the committee finds that further federal legislation is necessary to protect this economically vibrant industry, legislation

Continued on page 11

Continued from Page 10

should be drafted to lure producers back to the U.S. The new legislation could be dubbed "Federal Incentives to Lure Motion Pictures to the United States Act" ("FILMUSA"). FILMUSA must be comprehensive, employing multiple tactics to entice filmmakers, and aggressive enough to compete internationally. The first consideration should be that, when all other things are relatively equal, American producers generally prefer to stay in the U.S. for logistical ease and to save on travel costs. Thus, it is not necessary for financial incentives to blow away the competition. However, the legislation should provide tax credits or rebates, rather than the less beneficial tax deductions.[163] The credits should be liberal enough to keep producers in the U.S. when balanced against costs they will save by avoiding overseas travel for casts and crew members.[164] The credits should be staggered to increase based on the number of jobs provided to Americans, higher budgets (thus, greater economic benefit to the filming location), and how "American" the film is, in terms of content.[165]

FILMUSA could also include other provisions to deter runaways, including: stricter import tariffs on runaway productions;[166] SAG and DGA cooperation in implementing less favorable terms in standard SAG and DGA contracts for economic runaways; provisions that automatically adjust credits based on the falling or rising value of the U.S. dollar relative to foreign currencies; and tax credits for sale-leaseback buyers and for investors like those in the U.K., Louisiana, and New Mexico. Unfortunately, there is probably no legislative solution to combat the extremely cheap labor available in developing countries. However, SAG's vigorous enforcement of Global Rule One could help in that area, especially if SAG and other industry unions can organize mutually-beneficial solutions.[167] This comprehensive approach could help keep most would-be runaways "Made in the U.S.A."

---

1 Tatiana Siegel, Superman Eschews Longtime Patriot Act, Hollywood Rep., June 30, 2006, available at http://www.hollywoodreporter.com/hr/search/article_display.jsp?vnu_content_id=1002764635.
2 "Independence Day" plot summary, http://www.imdb.com/title/tt0116629/plotsummary (last visited Aug. 13, 2009).
3 "Miracle" plot summary, http://www.imdb.com/title/tt0349825/plotsummary (last visited Aug. 13, 2009).
4 Claire Wright, Fugitive Production, L.A. Daily J., Sept. 12, 2007, at 6, available at http://www.ftac.net/html/claire-art.html.
5 See Mark Dillon, They Couldn't Have Done It Without Us, Playback, March 31, 2003, at 12, available at http://www.playbackmag.com/articles/magazine/20030331/edit.html.
6 Geoff Boucher, Up, Up . . . and Away; Superman May Be Quintessentially American, But It's Cheaper to Film Him in Australia, L.A. Times, Dec. 31, 2005, at E1.
7 Wright, supra note 4, at 6.
8 Throughout this article, the term "film" will be used interchangeably with all types of entertainment productions, including motion pictures, made-for-television movies, and episodic television series.
9 See discussion infra Part III(C).
10 See generally, Pamela Conley Ulich & Lance Simmens, Motion Picture Production: To Run or Stay Made in the USA, 21 Loy. L.A. Ent. L.J. 357 (2001).
11 Martha Jones, California Research Bureau, Motion Picture Production in California 2 (Mar. 2002), http://www.library.ca.gov/crb/02/01/02-001.pdf.
12 Adrian McDonald, Through the Looking Glass: Runaway Productions and "Hollywood Economics," 9 U. Pa. J. Lab. & Emp. L. 879, 900 (2007).
13 Id.
14 Id.
15 Id. Because of the conceptual difference between artistic runaways and productions running away for economic reasons, artistic runaways are not the focus of this article.
16 Jones supra note 11, at 46.
17 See discussion infra Part V(C).
18 Germany, formerly a major player on the runaway scene, has recently enacted legislation hampering its film production. As a result, the German tax fund "party is over." See Schuyler Moore, Film Finance 101: Follow the Money, Hollywood Rep., June 13, 2006.
19 John Horn, Filmmakers Are Swept Away by Romania, L.A. Times, Oct. 2, 2005, at A1.; Megan K. Stack, Down, Dirty in Morocco, L.A. Times, Oct. 16, 2005, at E1.
20 The Monitor Company, The Economic Impact of U.S. Film and Television Runaway Film Production (1999), http://www.dga.org/news/pr_runaway.pdf (last visited Aug. 13, 2009) [hereinafter Monitor Report].
21 Id. at 2.
22 Id.
23 Id.
24 Id. at 2–3.
25 Stephen Katz, The Center for Entertainment Industry Data and Research, The Global Success of Production Tax Incentives and the Migration of Feature Film Production From the U.S. to the World: Year 2005 Production Report (2006), http://www.ceidr.org/2005CEIDRReport.pdf [hereinafter 2005 CEIDR Report].
26 Id. at 2.
27 Monitor Report, supra note 20, at 3.
28 Claire Wright, Hollywood's Disappearing Act: International Trade Remedies to Bring Hollywood Home, 39 Akron L. Rev. 739, 739 (2006).
29 Monitor Report, supra note 20, at 3.
30 Id.
31 Id.
32 2005 CEIDR Report, supra note 25, at 3.
33 1 Thomas D. Selz, et. al., Entertainment Law 3d: Legal Concepts and Business Practices 3–12 (3d ed. 2006).
34 2005 CEIDR Report, supra note 25, at 3.
35 Id.
36 Office of Pub. Affairs, U.S. Dep't of Commerce, Commerce Secretary Mineta Releases Report on the Impact of the Migration of U.S. Film and Television Production 3 (2001), available at http://www.ita.doc.gov/media/migration11901.pdf [hereinafter Commerce Report].
37 Id. at 5
38 Jones, supra note 11, at 1.
39 Statement of Sheldon Presser, Senior Vice President, Warner Bros., Burbank, CA, on behalf of Time Warner, and the Entertainment Industry Coalition for Free Trade, Testimony Before the Full Committee of the House Committee on Ways and Means, April 21, 2005, http://waysandmeans.house.gov/hearings.asp?formmode=view&id=2610 (last visited Aug. 13, 2009).
40 Mark Litwak, Runaway Home, L.A. Lawyer, May 2004, at 26.
41 Commerce Report, supra note 36, at 22 (citing Dallas Film Commission). The report cited an unnamed film, which spent \$420,000 on car rentals, \$136,000 on the rental of a private residence, \$66,000 on cell phone use, \$50,400 on janitorial services, \$22,000 on freeway tolls, and \$6,000 on local transportation. Id.
42 Gail Frommer, Hooray for . . .Toronto? Hollywood, Collective Bargaining, and Extraterritorial Union Rules in an Era of Globalization, 6 U. Pa. J. Lab. & Emp. L. 55, 63 (2003).
43 Jon Garon, Star Wars: Film Permitting, Prior Restraint & Government's Role in the Entertainment Industry, 17 Loy. L.A. Ent. L.J. 1, 8 (1996).
44 Id.
45 Visit Mississippi Homepage, http://www.visitmississippi.org/film/ (last visited Aug. 13, 2009).
46 Jones, supra note 11, at 31 (citing Arthur Andersen LLP, Economic Impact Study for the Chicago Film, Television & Commercial Economic Development Coalition, Sept. 1997.)
47 Boucher, supra note 6.
48 Valerie Yaros, Remembering Ronald Reagan: The SAG Years, Screen Actors Guild Mag., Summer 2004, at 29, available at http://www.sag.org/Content/Public/reagan2004.pdf.
49 Ulich & Simmens, supra note 10, at 358–359.
50 Id. at 360.
51 Id. at 360.
52 Monitor Report, supra note 20, at 16.
53 Id.
54 2005 CEIDR Report, supra note 25, at 2.
55 Monitor Report, supra note 20, at 16. The Monitor Report figures do not include artistic runaways, or wages paid to U.S. workers. Canada commissioned its own study contesting the Monitor Report's total economic loss figures. See Neil Craig Assoc., International Film & Television Production in Canada 1 (2004) [hereinafter Craig Report]. The Craig Report claimed that runaway production to Canada constituted a far smaller loss to the U.S. when considering the \$6.5 billion in broadcast licensing and viewing fees that flowed back into the U.S. from Canada from 1998 to 2003. However, those fees would have been paid regardless of where the film was produced, so it is incorrect to subtract those fees from economic loss figures due to runaways.
56 Monitor Report, supra note 20, at 3.
57 Id.
58 Monitor Report, supra note 20, at 7.
59 2005 CEIDR Report, supra note 25, at 2.
60 Dillon, supra note 5, at 12.
61 Id.
62 Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501 (1952).
63 Ronald Reagan, An American Life 119 (1990).
64 Commerce Report, supra note 36, at 8.
65 James Mangold, Director's Commentary, Walk the Line (20th Century Fox 2005).
66 Boucher, supra note 6.
67 Mary McNamara, Down-Home Directing, L.A. Times, Oct. 9, 2005, at E28.
68 Heidi Sarah Wicker, Note, Making a Run for the Border: Should the United States Stem Runaway Film and Television Production Through Tax and Other Financial Incentives?, 35 Geo. Wash. Int'l L. Rev. 461, 463 (2003).
69 Edward Jay Epstein, The Big Picture 16 (2005).
70 Tatiana Siegel, Unite, State Film Czars Told, Hollywood Rep., Aug. 1, 2005.
71 Harold L. Vogel, Entertainment Industry Economics: A Guide for Financial Analysis 72–73 (2nd ed. 1990).
72 Carl DiOrio & Dave McNary, H'wood's Runaway Train, Variety, Feb. 4–10, 2002, at 1.
73 2005 CEIDR Report, supra note 25, at 70.
74 Horn, supra note 19, at 1.
75 Id. As union control on the industry becomes increasingly tighter, labor-costs for producers continue to rise. Thus, these factors are exacerbated.
76 Id.
77 Relocation, Relocation, Relocation, Economist, July 10–16, 2004, at 77.
78 2005 CEIDR Report, supra note 25, at 8. Romania joined the European Union in early 2007, so minimum wage standards could mitigate this problem in that country. Nevertheless, there are countless poor nations that could provide such cheap labor.
79 Monitor Report, supra note 20, at 4.
80 Craig Report, supra note 55, at 12. For example, the Craig Report found that in 1999, when the Canadian dollar was at its weakest, studios spent \$977 million on Canadian production. Id. However, as the value of the Canadian dollar rose in 2002 and 2003, runaway production continued to rise as well—reaching \$1.17 billion in 2003. Id. This could suggest that exchange rates are simply one factor among many entered into the cost-benefit analysis equation undertaken by studios. Despite the falling U.S. dollar, foreign tax incentives may still be strong enough to lure runaways.
81 John W. Schoen, Should We Be Worried About the Falling Dollar?, http://www.msnbc.msn.com/id/21018869/ (last visited Aug. 13, 2009).
82 2005 CEIDR Report, supra note 25, at 4.
83 Ian Caddell, Residual Effect, Hollywood Rep., Feb. 19, 1999, at 21; David Finnigan, Woe Canada: Guilds Cite \$10B in Lost Prod'n, Hollywood Rep., June 25, 1999, at 1.
84 Selz et. al., supra note 33, at 3-10.
85 See Paul A. Baumgarten, Donald C. Farber & Mark Fleischer, Producing, Financing and Distributing Film 154 (2d ed. 2004); Litwak, supra note 40, at 24.
86 See discussion, infra Part III(E).
87 John W. Cones, 43 Way\$ to Finance Your Feature Film: A Comprehensive Analysis of Film Finance 176 (1995).
88 Canada Revenue Agency, supra note 85.
89 Id.
90 Id.
91 Id.
92 See U.K. Film Council, Filming in the U.K., http://www.ukfilmcouncil.org.uk/filminginuk (last visited Aug. 13, 2009); Commerce Report, supra note 36, at 77.
93 Commerce Report, supra note 36, at 77.
94 See Stuart Kemp, UK Film Biz Gets Tax Break Commitment, Hollywood Rep., Mar. 18, 2004, at 1, 22.
95 Id.
96 Id.
97 See U.K. Film Council, supra note 92.
98 Selz et. al., supra note 33, at 3–13, n. 19.
99 See Australian Film Commission, Ausfilm Factsheet: Screen Production Incentives in Australia, http://www.ausfilm.com.au/images/stories/AusfilmFactsheets/incentives%20may.pdf (last visited Aug. 13, 2009).
100 Id.

Continued on page 12

Continued from page 11

101 Id.
102 See Income Tax Assessment Act of 1936, http://www.ausfilm.com.au/file_banks/ausfilm/misc_pdf/Ausfilm_Incentives_Sticker.pdf; Litwak, supra note 40, at 24; Selz et. al., supra note 33, at 3-14.
103 Income Tax Assessment Citation, supra note 102.
104 Id.
105 Id.
106 Lionel S. Sobel & Donald E. Biederman, International Entertainment Law 280–1 (2003); 2005 CEIDR Report, supra note 25, at 46–50.
107 BC Film Commission, Industry Profile, http://www.bcfilmcommission.com/about_us/industry_profile.htm (last visited Aug. 13, 2009).
108 Commerce Report, supra note 36, at 53-54.
109 Id.
110 Dillon, supra note 5.
111 Id.
112 Allen J. Scott, A New Map of Hollywood and the World, Center for Globalization and Policy Research, School of Public Policy and Social Research, UCLA 22–23 (2002), available at http://www.ersa.org/ersaconfs/ersa02/cd-rom/papers/521.pdf.
113 Id. at 22.
114 Peter Kiefer, Valenti Defends the Right of U.S. Firms to Film O'seas, Hollywood Rep., Apr. 19, 2004.
115 Commerce Report, supra note 36, at 46-56. See discussion, supra Part III(E).
116 In 1998, 90% of the budgets for the top 250 films were spent in the U.S. By 2001, that number had dropped to 76%. Stephen Katz, The Center for Entertainment Industry Data and Research, The Migration of Feature Film Production from the U.S. to Canada and Beyond: Year 2001 Production Report 1, available at http://www.ceidr.org/y2k1report.pdf [hereinafter 2001 CEIDR Report]. Canada's tax incentives caused its percentage of total U.S. film budgets to rise from 10% in 1998 to 24% in 2001. Id. Astoundingly, the U.S. market share of production dollars spent on theatrical releases plummeted from 71% to 47% between 1998 and 2005. 2005 CEIDR Report, supra note 25, at 2. Clearly, the efforts of foreign countries to attract runaway productions are working.
117 Epstein, supra note 69, at 5.
118 See Kiefer, supra note 114.
119 Epstein, supra note 69, at 5.
120 Id.
121 Global Rule One, Frequently Asked Questions, http://www.sag.org/content/global-rule-one (last visited Aug. 13, 2009).
122 See Dave McNary, Cannes Heat on SAG Rule 1, Daily Variety, May 20, 2002, at 5; Peter Kiefer, Rule One, Take One, Hollywood Rep., Feb. 27, 2002, at 1.
123 Id.
124 Id.
125 Overseas Producers Blast SAG's Global Rule One, http://www.imdb.com/news/sb/2002-05-20 (last visited Aug. 13, 2009).
126 Selz et. al., supra note 33, at 3-7.
127 Id. at 3-15.
128 James Bates, Can Sacramento Help Hollywood?, L.A. Times, Oct. 20, 2003, at B1.
129 Kiefer, supra note 114, at 1.
130 McNary, supra note 122; Etan Vlessing, Canadians Support SAG's Global Rule One, Hollywood Rep., Apr. 18, 2002, at 1, James Bates, SAG Calls for Guild Contracts Overseas, L.A. Times, Apr. 29, 2002, at B1; Ray Bennett & Peter Pryor, SAG Implements Global Rule One, Hollywood Rep., May 7, 2002, at 59.
131 The benefits to SAG members are questionable to begin with, as limiting their right to work overseas could indeed be detrimental to all but those actors with the most leverage. See supra note 125 and accompanying text.
132 McNary, supra note 122; Etan Vlessing, Canadians Support SAG's Global Rule One, Hollywood Rep., Apr. 18, 2002, at 1, James Bates, SAG Calls for Guild Contracts Overseas, L.A. Times, Apr. 29, 2002, at B1; Ray Bennett & Peter Pryor, SAG Implements Global Rule One, Hollywood Rep., May 7, 2002, at 59.
133 Selz et. al., supra note 33, at 3-16, n. 33.
134 See McNary, Vlessing, Bates, Bennett & Pryor, supra note 130.
135 Selz et. al., supra note 33, at 3-16, n. 33.
136 Id.
137 American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004)[hereinafter 2004 Act].
138 Selz et. al., supra note 33, at 3-11, n.10.
139 Id.
140 26 U.S.C.A § 181 (2004); 2004 Act, supra note 137. Previously, such costs had to be amortized over a number of years. The 2004 Act allows production companies to take the full deduction in the year the cost is incurred. Thus, the studio saves money up front. See Selz et. al., supra note 33, at 3-14; Gunnar Erickson, Harris Tulchin & Mark Halloran, Independent Film Producer's Survival Guide 113-115 (3d ed. 2005).
141 See Steven C. Beer & Maria Miles, Relief Effort, Filmmaker Mag. (Winter 2005).
142 26 U.S.C.A. § 199(B)(1)(c)(4)(A)(i).
143 The tax deduction increases by year, phasing in at 3% in 2005–06, 6% in 2007–09, and 9% thereafter. See 26 U.S.C.A. 199(B)(1)(a)(1).
144 Productions that "depict actual sexually explicit conduct" as defined by 18 U.S.C.A. § 2257 are not included. See 26 U.S.C.A. §§ 181, 191.
145 2001 CEIDR Report, supra note 116, at 3. .
146 Moore, supra note 18.
147 Missy Schwartz, Southern Comfort, Ent. Wkly., March 24, 2006, available at http://www.ew.com/ew/article/0,,1174193,00.html.
148 H.B. 731, 2005 Reg. Sess. (La. 2005).
149 Id. Again, a tax credit comes dollar for dollar off of the company's tax liability—so it generally represents a greater savings than does a deduction.
150 Schwartz, supra note 147.
151 2005 CEIDR Report, supra note 25, at 65.
152 New Mexico State Investment Council, Film Investment Performance Summary, Sept. 30, 2007, at 5, available at http://www.sic.state.nm.us/PDF%20files/NM_Film_Investment_Program_93007_Final_Revision.pdf.
153 Film and Television Action Committee, About FTAC, www.ftac.net/html/about.html (last visited Nov. 26, 2007)[hereinafter FTAC].
154 Id.
155 Id.
156 Stephen Katz, The Center for Entertainment Industry Data and Research, The Migration of Feature Film Production from the U.S. to Canada: Year 2000 Production Report 5 (2001)[hereinafter 2000 CEIDR Report].
157 FTAC, supra note 153.
158 See discussion supra Part III.
159 2005 CEIDR Report, supra note 25, and accompanying text.
160 2004 Act, supra note 137.
161 Yaros, supra note 48; Ulich & Simmens, supra note 10, at 360.
162 The United States is the only major nation without an organization at the federal level to address the motion picture industry. Commerce Report, supra note 36, at 89.
163 This is the "subsidies to fight subsidies" approach encouraged by the DGA and MPAA. Ulich & Simmens, supra note 10, at 360.
164 Foreign film companies lured to the U.S. by FILMUSA and the falling dollar could also benefit from the tax incentives to the extent they have taxable earnings in the U.S. Therefore, there should be no concern from the World Trade Organization over discrimination of foreign companies filming in the U.S. Indeed, FILMUSA would not differ dramatically from Canadian subsidies, which have already been ruled in compliance with the Trade in Services Agreement. See 2000 CEIDR Report, supra note 156; see FTAC, supra note 153; see generally General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, Legal Texts: Results of the Uruguay Round of Multilateral Trade Negotiations 284 (1999), 1869 U.N.T.S. 183, 33 I.LM. 1167 (1994)[hereinafter GATS].
165 Films with quintessential American themes, like "Superman," "Chicago," and "United 93," would receive greater incentives for filming in the U.S. While this suggestion may raise fair-trade concerns, there are similar provisions in Canada, England, and Australia that have yet to incur WTO disapproval. See Wright, supra note 4 (arguing that, unlike Canadian subsidies, U.S. subsidies are not "trade-distorting," and thus would not invite WTO action).
166 Subject to compliance with the WTO's Trade In Services Agreement. See GATS, supra note 164; but see Wright, supra note 28, at 745 (arguing "the U.S. Government could [under WTO law] also initiate an action to impose countervailing duties on the subsidized films when they are imported into the U.S.").
167 See supra note 131 and accompanying text.