

## **Down The Rabbit Hole: The Madness of State Film Incentives as a “Solution” to Runaway Production**

### **Introduction:**

This article examines the use of tax incentives by state and local governments to attract film and television production to their respective jurisdictions. Traditionally, the term “runaway production” is used to describe this phenomenon, which is typically framed as a negative force within national and local media. Just a few years ago, much of the runaway production discussion in news, academic and government sources concerned the negative effects runaway production on locations whose economies rely heavily on film and television production (i.e. Los Angeles) and how runaway productions may be stemmed, if not prevented. One of the primary policy options discussed in such sources to stop runaway production is the enactment of competing production incentives on par with those offered in Canada and elsewhere, to fight fire with fire so to speak. As this article will show, production incentives do increase film and television production in locales where there had been little, if any, production before. This so-called solution to runaway production, however, is now the major cause of runaway production.

If production incentives are the primary factor causing film and television production to runaway to Canada or elsewhere, then enacting a more attractive incentive would be sufficient in redirecting it from a competing location. This is precisely what is happening now. In 2006, there were relatively few U.S. states (Louisiana and New Mexico, for example, were the first) and international locations (Canada, Australia, New Zealand, South Africa etc.) that offered competitive production incentives. But as places like Louisiana and New Mexico got into the incentive game, other states watched with envy as Hollywood productions setup shop. Having Hollywood in town, so to speak, is politically popular regardless of party affiliation—red and

blue states alike are all on the bandwagon now. As of October 2009, almost every U.S. state<sup>1</sup> offers significant production incentives in the hopes becoming the next “Hollywood North, Hollywood South”...the “Hollywood anywhere”.

The use of production incentives to prevent runaway production, from the U.S. to Canada for example, has become so effective and widespread that the incentives themselves are now the problem. When production incentives are employed to combat the effects of runaway production, they also have the effect of causing runaway production in other locations. In short, one of the so-called solutions to runaway production is now, arguably, the major cause of it. As the race to the bottom of enacting the most generous production incentives ensued, the levels of financial support given to film and television production are so large and expensive, it is unlikely any increase in production the incentive creates will generate enough economic activity to offset the cost. Nevertheless, policy makers have been rushing to enact incentives, which are often huge cash payouts, to highly unstable and mobile industry that simply would not exist in certain areas but for very expensive tax incentives.

Moreover, due to poor oversight and little to no transparency in the dozens of film commissions setup across the U.S. has already proved disastrous. Louisiana’s film office has been investigated by the FBI and one of its former officials plead guilty to bribery charges.<sup>2</sup> Wisconsin prudently suspended its film incentive program after shady oversight of its film incentive program and questionable expenditures on 2008’s Johnny Depp film *Public Enemies*.<sup>3</sup> In September 2009, Iowa’s Governor suspended the state’s ridiculously generous incentives

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<sup>1</sup> For an up to date list of domestic and international production incentives, visit the Entertainment Partners Incentive Group web site *available at* <http://www.entertainmentpartners.com/Content/ProductionIncentives/Jurisdictions/US.aspx> (last visited Nov. 14, 2009).

<sup>2</sup> See the discussion of Louisiana in Part IV *infra*.

<sup>3</sup> P.J. Huffstutter and Richard Verrier, *Filmmaking incentives losing glamour in cash-strapped states*, LOS ANGELES TIMES, September 22, 2009. According to the article, the film “received about \$4.6 million in taxpayer money, including payments that offset part of the \$5,625.16 paid to Depp’s hairstylist, \$16,490 for his makeup artist and \$38,771.40 for two chauffeurs.”

(50% tax credit for in-state spending) after the head of the state's economic development department resigned over an independent audit found the lax rules and oversight allowed for abuse, including the purchase of "luxury vehicles that filmmakers never used in their movies."<sup>4</sup> And while Massachusetts's film program has been scandal free since implementation, the saga of the creation of the incentives included FBI investigations into labor unions and death threats against one would-be film commissioner.<sup>5</sup>

If the United States has a national interest in preventing runaway production to foreign nations, then having all fifty states competing with each other is not only counter productive, but could prove to be financially devastating to numerous state governments unable to sustain the huge amount of funds needed to pay for production incentives. Any hope that film and television production will remain in states with no history in the industry once the production incentives cease is wishful thinking. The race to the bottom, certainly in the United States, must end. The current use of production incentives is creating a public policy disaster that trumps the underlying reason for their creation, a means to fight runaway production.

For some time now, a growing number of academic sources are taking a more sophisticated approach to examining runaway production, which has traditionally been a provincial concern of the United States, specifically the greater Los Angeles area. According to Ben Goldsmith, head of the Center for Screen Studies and Research at the Australian Film, Television and Radio School in Sydney and Tom O'Regan, of the University of Queensland in Australia, runaway production opponents tend to:

[I]gnore or downplay both the benefits that international production brings to American cinema and the variety of perspectives on, motivations for, and experiences of international collaboration outside the United States. International production enriches American cinema through artistic achievement, creative

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<sup>4</sup> *Id.*

<sup>5</sup> See the discussion of Massachusetts in Part IV *infra*.

renewal, and access to sources of production funding, as well as through financial returns and intellectual property rights.<sup>6</sup>

The relatively new, more sophisticated approach to studying film and television production in a globalized age has caused some to re-brand the concept of runaway production as “cross border cultural production.”<sup>7</sup> Greg Elmer and Mike Gasher provide an explanation in a shift towards greater “scholarly reflection”:

While location shooting is as old as cinema itself, the sheer size, the growing intensity, and the persistence of the trend toward moving American film and television production out of Hollywood calls for much more scholarly reflection than we have seen to date and for analysis that includes perspectives of host sites.

For one thing, location production is not as simple a phenomenon as most news reportage and some academic work suggests; understanding it requires consideration, at the macro scale, of economic globalization, screen aesthetics, narrative forms, and reception practices, as well as, at the micro scale, specific production communities, individual films and television programs, and particular audiences....

[T]he transformation of Hollywood from an exclusive and centralized base to a global network of production sites... alters in some fundamental ways the political economy of the commercial film industry... location film and television production does not mean the same thing to all industry actors, and therefore must be analyzed from a variety of viewpoints.<sup>8</sup>

Cross border cultural production, the reality of what international production entails, is a highly complex international economic and cultural field of study. According to Goldsmith and O'Regan:

International production connects film industries in different countries, and in the process it can introduce or create new work practices. Individuals, organizations, and places employed or transformed by the experience of international production, as well as the ever increasing number of employees working to facilitate international production in particular places, often do not wholly share the interests or production norms of American production companies or transnational media corporations. They are, however, not only becoming

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<sup>6</sup> Ben Goldsmith and Tom O'Regan, *International Film Production: Interests and Motivations*, in *CROSS BORDER CULTURAL PRODUCTION: ECONOMIC RUNAWAY OR GLOBALIZATION?* 13, 15 (Janet Wasko and Mary Erikson ed., 2009).

<sup>7</sup> See *CROSS BORDER CULTURAL PRODUCTION: ECONOMIC RUNAWAY OR GLOBALIZATION?* (Janet Wasko and Mary Erikson ed., 2009).

<sup>8</sup> GREG ELMER AND MIKE GASHER, *CONTRACTING OUT HOLLYWOOD: RUNAWAY PRODUCTIONS AND FOREIGN LOCATION SHOOTING 2*, (2005).

increasingly interconnected and simultaneously integrated, informally and formally, into Hollywood's globalizing production system, but also becoming more integrated into each other's national production systems through co-productions and other cooperative arrangements.<sup>9</sup>

Without a doubt, reframing and expanding the study of film policy and runaway production to acknowledge the complexity of runaway production is long overdue. While the academic literature has done an excellent job in elevating the runaway production discussion, there are some flaws.

First, only a small percentage of the discussion in the academic literature discusses the risks and pitfalls governments face attempting to foster a local film and television production industry with the use of film and television production incentives.<sup>10</sup> Virtually none of the literature criticizes the current incentive scheme as a negative, potentially devastating economic policy.<sup>11</sup> One possible explanation is that not everyone in the academic community believes there is, in Janet Wasko's words, a "runaway production problem."<sup>12</sup>

Goldsmith and O'Regan argue international production "both privilege and expand the Hollywood design interest" and view the growth of international and domestic production locations like Toronto, Canada or Wilmington, North Carolina as positive developments.<sup>13</sup> Cornell University's Susan Christopherson, on the other hand, has a less optimistic appraisal of the dispersal of production to international (even domestic) locations--specifically Vancouver, Canada:

Several conclusions emerge out of the Canadian story. First, although subsidies and exchange rates increased the propensity of U.S. producers to use Canadian

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<sup>9</sup> Ben Goldsmith and Tom O'Regan, *International Film Production: Interests and Motivations*, in CROSS BORDER CULTURAL PRODUCTION: ECONOMIC RUNAWAY OR GLOBALIZATION? 13, 15 (Janet Wasko and Mary Erikson ed., 2009).

<sup>10</sup> See generally Ben Goldsmith and Tom O'Regan, *The Film Studio: Film Production in the Global Economy*, Rowman and Littlefield Publishers 2005.

<sup>11</sup> Janet Wasko, to her credit, recognized such a problem in film and media study from a "media economics" approach: "These approaches avoid any kind of moral grounding, as most studies emphasize description (or "what is") rather than critique (or "what ought to be")." JANET WASKO, *HOW HOLLYWOOD WORKS* 6 (2003).

<sup>12</sup> *Id.* at 219.

<sup>13</sup> BEN GOLDSMITH AND TOM O'REGAN, *THE FILM STUDIO: FILM PRODUCTION IN THE GLOBAL ECONOMY* 178 (2005).

regions to reduce costs in particular types of productions, they did not build a sustainable industry in the key region in which the subsidy strategy was deployed, Vancouver. Second, the changing organization of production in the media entertainment industries allowed TNCs to utilize the investments that Canadian citizens made in developing regional production bases over a period of 50 years. Finally, the evidence from the Canadian “success story” suggests that interregional competition has increased the profits of transnational firms rather than building competitive regional industries.<sup>14</sup>

Christopherson appropriately recognized the danger of “interregional competition”, but may have underestimated the efficacy of production incentives vis-à-vis other production considerations as the primary consideration for selecting where to make a movie:

This trajectory of Canadian success is contestable on a number of fronts. First, it ignores the impact of the exchange rate differential. The value of the Canadian dollar lagged the U.S. dollar throughout the 1990s and made the cost of producing in Canada relatively less expensive in the United States. The cost savings did not occur across all categories of production expenditures, however. Only the cost of the “below-the-line” production crew is identified as susceptible to cost savings because of the exchange rate. Outsourcing does not emerge in conjunction with subsidies. In addition to and substantiating the weak link between outsourcing and subsidies, a recent econometric analysis of the impact of subsidies in British Columbia shows only a weak relationship between tax credits and production spending levels.<sup>15</sup>

The notion that the exchange rate is as big a factor to influencing production as tax incentives is tenuous at best.<sup>16</sup> Moreover, the correlation between production incentives and increased production spending is not as weak as Christopherson suggested, given the production

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<sup>14</sup> Susan Christopherson, *Behind the Scenes: How Transnational Firms Are Constructing A New International Division of Labor in Media Work*, in *CROSS BORDER CULTURAL PRODUCTION: ECONOMIC RUNAWAY OR GLOBALIZATION?* 47, 74 (Janet Wasko and Mary Erikson ed., 2009).

<sup>15</sup> *Id.* at 70.

<sup>16</sup> For a discussion of the role the exchange rates play in influencing production decisions see: Adrian McDonald, *Through the Looking Glass: Runaway Production and “Hollywood Economics”*, 9 U. Pa. J. Lab. & Emp. L. 879, 905-906 (2007).

data now available from jurisdictions with recently enacted incentives, which is discussed in Part II herein.<sup>17</sup>

### **A. Scope of Article:**

This Article is divided into five parts. Part I provides a brief discussion of what runaway production is, a brief discussion of its historical role in Hollywood and how the issue is currently framed by industry workers. Part I also discusses the current state of runaway production in the U.S. and the methods for dealing with it, which is primarily the use of production incentives. Just two years ago, there were two main policy options to fight runaway production: trade action to challenge the legality of film subsidies under international trade agreements and the use of incentive to fight incentive or subsidy to fight subsidy approach. Now there is only the latter, as trade remedies by the U.S. have been ruled out for the time being. The history of the ill-fated trade action filing in the U.S. is discussed in detail. Finally, Part I details the nature of production incentives and the astonishing rate at which they have been enacted across the U.S. in recent years.

Part II provides an overview of the financial health of the motion picture industry.<sup>18</sup> Major revenue streams for the industry (box office performance, DVD sales and rentals etc.) and their performance are analyzed. Specifically, Part II touches upon the increasing importance and profitability of international markets on the film and television industries.

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<sup>17</sup> To Christopherson's credit, she and Ned Rightor's recent work addresses the pivotal role production incentives are now playing across the U.S. and the potential consequences: "As subsidies to film and television producers have spread (43 states across the US now offer them in some form) and state budgets have come under increasing pressure, questions are being raised about the use of public tax money to lure media producers. Skeptics ask whether the cost of attracting media producers is worth it. Does the state's economy benefit enough to warrant taking money from other important activities, such as education or infrastructure or the arts? Can new, sustainable industries really be built in cities and states that have no history of media industry investment nor a sizable skilled production workforce." Susan Christopherson and Ned Rightor, *The Creative Economy as Big Business*, 2009 Press Release (on file with author).

<sup>18</sup> Throughout this Article, the term motion picture industry is used interchangeably with film and television industry, film industry and movie industry etc.

Part III explores the economic impact of the motion picture industry in the U.S. and the fundamental importance of the industry to the U.S. economy. Much of the focus in Part III concerns film and television employment statistics, which should be paramount in the minds of policy makers in the current economic environment.

Part IV provides an in-depth discussion and analysis of several U.S. states (California, Massachusetts and Louisiana) that have recently, (California in 2009, Massachusetts in 2006 and Louisiana first in 2002) enacted financial incentives and other policies to lure and retain film and television production. The dynamics behind the formulation and implementation of each states production incentive scheme are complex, if not colorful and engaging. An examination of the dynamics in each state is useful in understanding why production incentives became public policy in the respective location. California, was selected because of the critical role the film and television industry plays in the state's economy. Massachusetts was selected because of the lurid and shady history of filmmaking in that state, which is exemplified by the production of Martin Scorsese's 2006 film *The Departed*, a film title that could not be more perfect for a discussion of runaway production. Finally, Louisiana was selected because of it's "success" in pioneering the modern (i.e. very generous) production incentive scheme in the U.S. The cost-benefit analysis of the production incentives in Louisiana and Massachusetts is explored in detail as well as the justification of film incentives based on cultural grounds.

Finally, Part V summarizes the issues raised and problems presented in this paper with the efficacy of film incentives. Given the state of the motion picture industry, the conclusion of this paper is that the incentive schemes enacted in many states, beginning in 2002, have stemmed, if not stopped and perhaps reversed runaway productions from leaving the nation. While this is an overall gain for the U.S. economy or individual worker, it comes at an ever increasing price. With more than 40 states now competing with each other (in 2002, there were only two- Louisiana and New Mexico) to lure film and television production. The competition has sparked

an arms race of competing incentives. This race to the bottom is a catastrophe waiting to happen, and some damage has already occurred. States with aggressive incentive programs, while effective at luring productions, are increasingly saddled with outrageously expensive capital outflows from their respective treasuries that, in many cases, were spending more money than they took in even before the film incentives were enacted. Federal legislation could end the race to the bottom by replacing the competing state incentives and replacing them with a single national incentive. Such a national incentive would refocus the issue of runaway production as a national problem and allow the U.S. to compete more effectively in the global marketplace. As such, Part V proposes a basic model of such federal legislation.

### **I. Runaway Production in the U.S. in 2009**

While definitions of runaway production vary, the following offers a sufficient description:

Runaway production refers to 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 other states is runaway.<sup>19</sup>

In general, there are three different categories of runaway productions (1) artificial economic runaways, (2) natural economic runaways, and (3) artistic runaways:

Artificial economic runaways are films shot abroad because of artificial, or legislatively created, incentives designed to lure productions. Natural economic runaways are films that shoot abroad to take advantage of natural economic occurring phenomenon—cheap labor—that lower production costs. Artistic runaways are films that shoot abroad to artistically service the story—a film about Paris that shoots in Paris.<sup>20</sup>

#### **Framing Runaway Production: Part of Hollywood History or National Problem?**

Runaway production has a long history in Hollywood. In 1956, for example, 18 of 39 films then in production shot on location in “Europe, Japan and Cuba” as well as four states other

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<sup>19</sup>Martha Jones, *supra* note 31, at 10. Runaway films can be “artistic runaways” or “economic runaways.” Most industry insiders, however, will readily admit the vast majority of runaways are for economic reasons.

<sup>20</sup> Adrian McDonald, *Through the Looking Glass: Runaway Productions and “Hollywood Economics”*, 9 U. Pa. J. Lab. & Emp. L. 879, 900 (Summer 2007).

than California, according to *The Hollywood Reporter*, leaving “dozens of Hollywood soundstages in the dark.”<sup>21</sup>

Whether a production shot abroad for “creative or economic reasons” in the 1950’s, they shared similar difficulties such as “language barriers, cultural divides, varying regulations and fees, inadequate facilities and services, and inexperienced (or uncooperative) crews.”<sup>22</sup> These “difficulties,” according to *The Hollywood Reporter*, were “much the same as they are today, as was the controversy.”<sup>23</sup>

In response to runaway production during the 1950’s, the Hollywood Film Council of the American Federation of Labor launched a public relations campaign, in 1952, to end the practice.<sup>24</sup> The group was not opposed to runaway production for artistic reasons, but wanted to “stop the growing tendency here among Hollywood producers, especially in television, to do their shooting in foreign countries principally to cut costs. Hollywood employment already has been considerably decreased by these activities.”<sup>25</sup> This too is “much the same today.”

In 1959, Hollywood labor unions claimed 35-50% of American feature films shot abroad.<sup>26</sup> Some producers were tired of the complaints. Producer Ted Richmond said, “The choice is simple. Either you make these spectacle pictures abroad or you don't make them at all.”<sup>27</sup> At the time, Richmond had just produced a film in Spain because of “the prohibitive cost of shooting in Hollywood.”<sup>28</sup>

Despite the campaign against runaway production, “The protests did nothing to halt the exodus.”<sup>29</sup> And despite “the exodus” of more runaway productions each year,

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

“doomsday...never came” because “the local production economy continued to thrive.”<sup>30</sup> And thrive it did. From 1980 to 1997, motion picture and “service activities in Los Angeles County grew at a rate of 194% for employment and 248% for businesses.”<sup>31</sup>

In recent years, there has been a “loud chorus of complaints” warning that Southern California’s unmatched film infrastructure is slowly eroding as production shifts to foreign nations.<sup>32</sup> One sign that such erosion is taking place was the number of shooting days in Los Angeles, which “decreased nearly 40% from 1997-2007.”<sup>33</sup> Given the long history of runaway production in Hollywood over the years, a rhetorical question was posed: “Is the sky really going to fall on Hollywood this time?”<sup>34</sup>

According to director Richard Donner, who helmed 1978’s *Superman* and *Lethal Weapon* franchise among others, the answer is no, “it won’t. It’ll go and come and go and come and build and fall. It’s been that way forever.”<sup>35</sup> Donner’s words are not reassuring. Donner shot much of the original *Superman* film in Canada and England.<sup>36</sup> Donner was also a producer<sup>37</sup> on the first *X-Men* film, which shot entirely in Canada<sup>38</sup>, and an executive producer on 2009’s follow-up, *X-Men Origins: Wolverine*, which shot primarily in Australia.<sup>39</sup>

Shooting *Wolverine* in Australia was objectionable for some long-time fans of the comic book character, who is, ironically, Canadian. Bryan Singer, who directed the first two *X-Men* films<sup>40</sup>, was conscious of the moral dilemma of shooting in Canada over the U.S. While shooting *X-Men*, filming was briefly halted because “some crazy guy” driving to his home on the

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Superman* (1978) - Filming locations, <http://www.imdb.com/title/tt0078346/locations> (last visited May 18, 2009).

<sup>37</sup> Richard Donner, <http://www.imdb.com/name/nm0001149/#producer> (last visited May 18, 2009).

<sup>38</sup> *X-Men* (2000) - Filming locations, <http://www.imdb.com/title/tt0120903/locations> (last visited May 18, 2009).

<sup>39</sup> Richard Donner, <http://www.imdb.com/name/nm0001149/#producer> (last visited May 18, 2009); *X-Men Origins: Wolverine* (2009) - Filming locations, <http://www.imdb.com/title/tt0458525/locations> (last visited May 18, 2009).

<sup>40</sup> Bryan Singer, <http://www.imdb.com/name/nm0001741/> (last visited May 18, 2009).

evening commute became angered over a long traffic delay caused by the production.<sup>41</sup> The event prompted Singer's associate, Brian Peck, to joke, "It was probably a grip from America upset at runaway production. Why are you taking all the work to Canada?"<sup>42</sup> Singer's response showed he was uneasy about the shoot:

Normally I wouldn't be so quick to shoot in another country, but much of the X-Men history and Wolverine's history is steeped in Canada. And so if we had to go out of the country to try to save money, Canada was the most responsible destination.<sup>43</sup>

Donner's wife, Laura Shuler-Donner, was a producer on all of the Canadian-filmed X-Men films<sup>44</sup> as well as the Wolverine film.<sup>45</sup> Moreover, Shuler-Donner was also a producer on 2003's *Timeline*, directed by her husband and filmed in Canada and The Czech Republic.<sup>46</sup> Thus, Donner's claim that the "sky isn't falling" on the U.S. motion picture industry is suspect. He is not a neutral observer of the runaway production phenomenon, he is an active participant perpetuating it.

Runaway production is good for the Donner family business, however, and the powerful Hollywood couple can't be blamed for taking advantage of it. Donner's remark that "it's [runaway production] been that way forever" would have us believe that runaway production is an institutionalized part of the motion picture industry.<sup>47</sup> Perhaps it is.

Many of Donner's films are artificial economic runaways.<sup>48</sup> Therefore, if economic runaways have always been part of the industry, it's because filmmakers like Donner go after

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<sup>41</sup> Bryan Singer Director Commentary X-Men

<sup>42</sup> Bryan Singer Director and Brian Peck Commentary X-Men

<sup>43</sup> Bryan Singer Director and Brian Peck Commentary X-Men

<sup>44</sup> "X-Men," "X2: United," and "X-Men: The Last Stand."

<sup>45</sup> Lauren Shuler Donner, <http://www.imdb.com/name/nm0795682/> (last visited May 18, 2009).

<sup>46</sup> *Timeline* (2003) - Filming locations, <http://www.imdb.com/title/tt0300556/locations> (last visited May 18, 2009).

Lauren Shuler Donner, <http://www.imdb.com/name/nm0795682/> (last visited May 18, 2009); Richard Donner, <http://www.imdb.com/name/nm0001149/#producer> (last visited May 18, 2009)

<sup>47</sup> Todd Longwell, *Runaway Production Part of Industry History*, THE HOLLYWOOD REPORTER October 30, 2008.

<sup>48</sup> Donner's most recent production, "X-Men Origins: Wolverine" is so plainly an economic runaway that any argument that creative or artistic reasons were behind shooting in Australia would be a total farce. As the artistic place to shoot would have been in Canada, as Wolverine is a Canadian and the vast majority of his origin story took place entirely in Canada.

them. Which is not to suggest that Donner should be criticized, if anything, he is a shrewd filmmaker skillfully navigating the realities of film production. Donner did not enact incentives, he just takes advantage of them.

Not everyone in Hollywood share Donner's take on runaway production. Director and Producer Michael Bay, well known for flashy big budget summer blockbusters, including *Transformers* and *Transformers 2: Revenge of the Fallen*, has expressed solidarity with his film and television colleagues in California. Bay claimed he could not make *Transformers* in Canada, because he only had faith in his experienced 16-year crew to make such a technical and special effects driven project, which was nothing short of spectacular in terms of visual effects. In order to stay "loyal" to his crew, Bay agreed to waive 30% of his fee to compensate for the alleged cost-savings the studio sought from shooting in Canada or Australia:

I do like to have a good environment on the set and especially work with people [that look at it [their work on films] as a career, not as a job. A director is only as good as his or her crew. And the studio wanted to ship me off to Australia and then to Canada. I went to check out Canada and thought that Australia was too far away, and went up to Canada and I was like oh my god, I was trying to make it work, trying to make it work, looking around, scouting....I realized this would be a waste of money...there is no way the crew could do the serious kind of stunt work that we really do on our sets, because they just don't have a lot of great stunt work up there and you have to ship in too many people and it just would be a lost cause. So, the studio gave me some grief for not going up there, so I ended up giving 30% of my fee so I could shoot with my crew in America and that's because I am loyal to my crew and their just, I think, the best.<sup>49</sup>

Indeed, the importance of having a skilled crew base is a critical factor often overlooked in explaining runaway production.<sup>50</sup> In Bay's case, the value of a experienced group of career industry workers trumped all financial considerations. Had Bay filmed abroad, much of his

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<sup>49</sup> Michael Bay, Director's Commentary, *Transformers* (Paramount Pictures, 2007).

<sup>50</sup> Andrew Stanton, director of 2008's *Wall-E*, echoed Bay's words regarding the critical advantage an experienced talent base brings to the table:

I lucked out that they were at the top of their game. A lot of these guys I have worked with, have been fellow employees for over 10-15 years, some of them. And I just feel like they've just become Olympic level champions at whatever is they do and to watch them do their job, see them excel at stuff they were struggling with or starting to do early in their career and just to be professionals, masters of their crafts now is really exciting. And to benefit from that is the best. (Andrew Stanton, Director's Commentary, *WALL-E* (Walt Disney Pictures, 2008).

long-time crew would have been left to find other projects, if available. Over time, if experienced film crews sit idle, unable to find local work, the talent base will diminish along with the advantage of institutional “know how” California film workers possess.

The availability of an experienced talent base, which are highly compensated for their skills in places like Canada and the U.S. does not always trump bottom-line concerns. Director Paul WS Anderson discussed the economics of producing his 2003 film, *Aliens vs. Predator*:

To talk about the economics of film...we budgeted this movie, just to build the sets, the construction budget, just for the sets alone, if we had done the sets in L.A. it would have cost \$20 million dollars; to do it in Vancouver, it was \$15, to do it in Berlin it was \$5 million and we built exactly the same sets in Prague for \$2 million dollars....It's one of the reasons the movie has a huge look, but we were able to do it on a contained budget.

That was an important thing to the studio, because they were there kind of looking at the bottom line of what the last couple of Alien movies and the last Predator movie had done, they had not been financial successes.<sup>51</sup>

The low cost of labor in Prague for Anderson's production was a factor that played a role in causing a natural economic runaway; the government did not take action to artificially lower labor costs.

Donner's choice of words that runaway production will “come and go” and that “It's been that way forever” signals a mentality that should be cause for concern if it is widely held. Donner's quip that “It's [runaway production] been that way forever” line is indicative of a larger problem facing the motion picture industry—complacency.

First, the motion picture industry is a modern industry that did not exist just over 100 years ago. To attach the notion of “forever” to an industry younger than some Americans creates a false impression that Hollywood has always been here and always will be. This belief may stem from ignorance or arrogance or both. Either way, millions of Americans, at one time, viewed the automobile industry, the steel industry and others in the same false light. There is

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<sup>51</sup> Paul WS Anderson, Director's Commentary, *ALIENS VS. PREDATOR*, (20<sup>th</sup> Century Fox, 2003).

nothing “forever” about the motion picture industry. It can evaporate. What Donner seems unaware of is that runaway production is a vehicle for such evaporation. The only certainty in Hollywood is uncertainty.

**Hollywood Labor Efforts to Combat Runaway Production in Recent Years: The Failure of the Film and Television Action Committee’s Section 301 Filing with The U.S. Trade Representative**

On September 4, 2007, a significant coalition of industry workers trying to end the negative consequences of runaway production and prevent losing their trade, craft, job, career—way of life--had two viable options to fight runaway production, which they considered outsourcing: 1) petitioning the United States Trade Representative (USTR) to determine the legality of foreign film incentives or; 2) lobbying for film incentives at the state and local levels, in addition to the federal government. On September 4, 2007, a group called the Film and Television Action Committee (FTAC), a coalition composed of unions, municipalities and individuals whose livelihood and economic security depend on the film and television production industry, filed a petition with the USTR under Section 301 of the Trade Act of 1974.<sup>52</sup> In the petition, FTAC argued that subsidies offered by Canada to lure production and filming of U.S.-produced television shows and motion pictures were “inconsistent with Canada’s obligations under the World Trade Organization.”<sup>53</sup>

Less than two months later, on October 16, 2007, the two options for fighting runaway production were reduced to one; the USTR rejected FTAC’s petition and offered the following:

As provided under USTR regulations, the petition was reviewed by an interagency committee of trade and economic experts. Based on a thorough review of the economic data, other facts, and legal arguments set out in the petition, the interagency committee unanimously recommended that the USTR not accept the petition because a dispute based on the information and arguments

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<sup>52</sup> Press Release, “Statement from Gretchen Hamel, Deputy Assistant USTR for Public and Media Affairs, regarding Section 301 Petition on Canadian Film Subsidies,” USTR office, October 19, 2007.

<sup>53</sup> *Id.*

set out in the petition would not be effective in addressing the Canadian subsidies.<sup>54</sup>

In response to this author's Freedom Of Information Act (FOIA) request for any and all documentation relating to FTAC's petition, the USTR provided just four pages. One page was the USTR press release. Another page informed that four pages were withheld as privileged and the final two pages were heavily redacted.

On October 17, 2007, William Busis, "Chair, Section 301 Committee," sent a memorandum to then-USTR Ambassadors Susan C. Schwab. The memorandum section for "Interagency Views" is redacted.<sup>55</sup> Without providing any more information, the memorandum advised Schwab to reject FTAC's petition.<sup>56</sup> A general background of Section 301 is provided, but the discussion section is redacted. Whatever merits the petition had, they were not enough to influence the USTR, whose decision was based on an intergovernmental committee recommendation, and the committee deliberations were redacted. Imperfect as that may be, the new reality was that only viable option left to stop runaway production was to "fight subsidy with subsidy," a position taken by former actor Charlton Heston and leaders of the Screen Actors Guild (SAG) at a 1961 Congressional Hearing regarding runaway production.<sup>57</sup>

### **Combating Runaway Production in 2009: "Subsidy to fight Subsidy"**

In 2002, Louisiana and New Mexico became the first states to enact film and television production incentives on par with the generous incentives offered in Canada since 1997.<sup>58</sup> The success of the incentives in Louisiana and New Mexico in attracting production was astonishing. It came as no surprise, in January 2007, when the Motion Picture Association of America

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<sup>54</sup> *Id.*

<sup>55</sup> William Busis, "Memorandum for Ambassador Susan C. Schwab," October 16, 2007 (on file with author).

<sup>56</sup> *Id.*

<sup>57</sup> Pamela Conley Ulich & Lance Simmens, *Motion Picture Production: To Run or Stay Made in the U.S.A.*, 21 LOY. L.A. ENT. L. REV. 357, 360 (2001).

<sup>58</sup> 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 34, (2006).

(MPAA) released a report on the economic impact of the motion picture and television industry on the United States, that Louisiana and New Mexico were both in the top ten “production states” for 2005.<sup>59</sup>

Louisiana and New Mexico reaped tremendous benefit as first movers among U.S. states to offer film incentives, which established robust film and television production activities in those states. As other states noticed the success New Mexico and Louisiana enjoyed, they began enacting their own film incentive programs, hoping to benefit from similar gains. By August 2005, according to *The Los Angeles Times*, roughly 15 states had enacted film incentives.<sup>60</sup> By October 2009, that number jumped to over 40 states, with each incentive getting larger to be, or stay, competitive.<sup>61</sup>

The effort to stop runaway productions from leaving the U.S., primarily to Canada, through the use of competing subsidies can only be effective if the competing subsidies are offered by the federal government alone; one nation, one film incentive. The goal of such an approach would be to keep the industry in the United States. Admittedly, much of the production, under a single federal incentive, would gravitate back towards its traditional base, greater Los Angeles. The states with incentives did not enact them in the national interest of preventing runaway production abroad, state lawmakers enacted the incentives for their own provincial gain.

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<sup>59</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THE ECONOMIC IMPACT OF THE MOTION PICTURE AND TELEVISION PRODUCTION INDUSTRY ON THE UNITED STATES12 (2006) [hereinafter 2006 MPAA Economic Impact Report] (on file with author).

<sup>60</sup> Los Angeles Times, *Hollyworld: Runaway Production Map*, Available at: <http://www.calendarlive.com/printedition/calendar/qtakes/cl-na-louisana17aug17,0,4643070.story> (last visited May 27, 2009).

<sup>61</sup> For a complete and up-to-date listing of state film incentives, see Entertainment Partners Production Incentive Group web site at: [http://www.entertainmentpartners.com/products\\_and\\_services/services/tax\\_incentives/](http://www.entertainmentpartners.com/products_and_services/services/tax_incentives/) (last visited Oct. 27, 2009).

The current race to the bottom is unsustainable and could have catastrophic public policy ramifications on state budgets, employment and the motion picture industry in the U.S. as a whole. There early signs this is already happening.

In June 2009, the economic toll of the race to the bottom was staggering, according to a three-year study conducted by *The Associated Press*, the major findings of which are set forth in Chart 1 below.<sup>62</sup> From 2006 to 2008, the study tracked 41 states with film incentives; in that period, film incentive states spent a combined total of \$1.8 billion on film tax credits, rebates and other incentives.<sup>63</sup> More than half of the total, \$1 billion, was paid out in 2008 alone.<sup>64</sup>

To be fair, total in-state spending by film and television productions was roughly \$10 billion for the same period.<sup>65</sup> In 2008 alone, total in-state film spending was \$5.6 billion, almost three times higher than 2006.<sup>66</sup> This dichotomy is now at the center of the debate over the efficacy of film incentives. Do the incentives generate enough economic activity to pay for themselves? Does the cost matter, if it results in jobs for Americans? For the most part, states have not been concerned with such questions as they have rushed to enact competing incentives.

#### Chart 1

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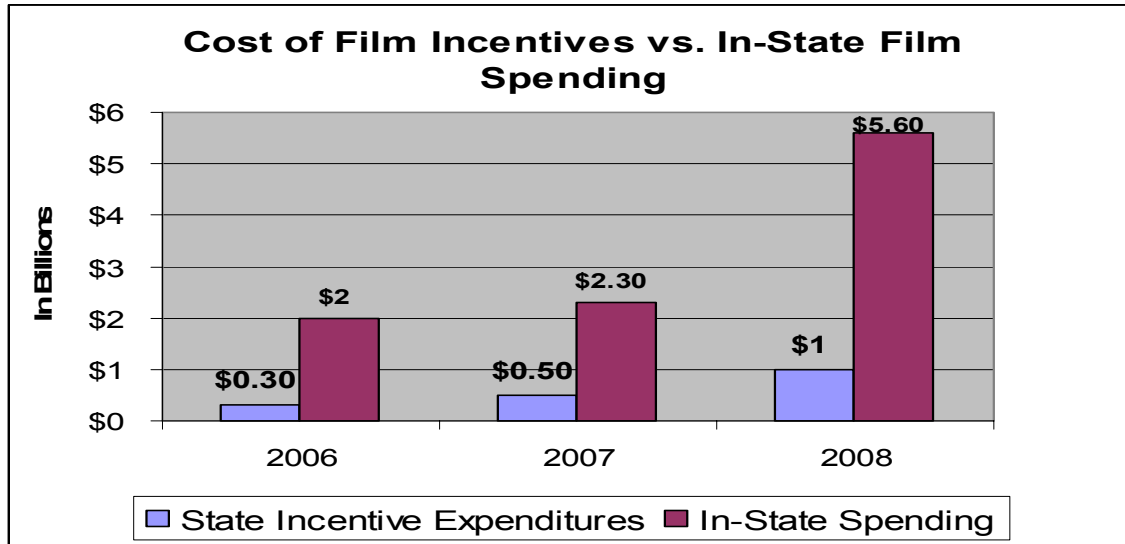
<sup>62</sup> Ben Nickols and Martha Waggoner, *States Give Hollywood a Fortune in Tax Breaks*, ASSOCIATED PRESS, June 2, 2009.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*



### Film Incentives As Weapons in The Race to the Bottom:

In February 2009, Economic Research Associates (ERA) prepared a 90-page report on entertainment industries in Louisiana for the Louisiana Economic Development Department. The following table<sup>67</sup> provides an overview of the types of film incentives commonly used in the U.S. according to ERA:

Incentive Type	Description
Production Grants	A production grant is directed toward a percentage of the total production cost of a project spent. This type of incentive differs from a (refundable) production tax credit since it can be disbursed to the production company prior to the start of filming a project, thereby reducing financing costs.
Production Tax Credits	Production tax credits are tax credits that are generally based on a percentage of labor costs, and/or a combination of materials, services and other costs related to production. These credits may or may not be transferable. These credits usually have a minimum state/provincial spend, may be capped per production or per employee, might require a minimum percentage of the total production be shot in the state/province and generally apply to certain types of productions (e.g., feature films, television, commercials, etc.).
Labor Rebates	Labor rebates differ from labor-based production tax credits since they allow for funds to be dispersed during production. In this respect they are similar to grants and do not require a waiting period.
Regional Incentives	Regional incentives are generally offered for film and television projects that are undertaken outside of a metropolitan area and provide a "bonus" production or labor tax credit.
Training Incentives	Similar to regional tax credits, a training incentive acts as a bonus. Digital Incentives The newest type of incentives being offered, digital incentives provide

<sup>67</sup> Economic Research Associates, Louisiana Motion Picture, Sound Recording and Digital Media Industries 73, (February 2009).

	a tax credit for the production of digital images.
Digital Incentives	The newest type of incentives being offered, digital incentives provide a tax credit for the production of digital images.
Investments in or Loans to Productions	Select jurisdictions may provide investments or loans to selected types of production projects.

ERA claimed common incentive packages offered by states “apply either tax credits or rebates to local qualifying expenditures.”<sup>68</sup> ERA noted the important difference between a tax credit and a tax rebate:

A rebate is money back from the state, whereas a tax credit is a reduction in the filmmaker’s overall tax liability. The difference between a refundable tax credit and a transferable tax credit is a crucial one, but it is often overlooked. Refundable tax credits are far more lucrative to filmmakers. When productions have tax liability, a refundable tax credit entitles them to a check from the state for their out-of-pocket liability. In the instance of a transferable credit, however, the production company must sell its remaining tax credits to other taxpayers (often wealthy individuals or companies).<sup>69</sup>

Moreover, ERA said transferable credits (which Louisiana has)<sup>70</sup> are “less desirable to filmmakers” for several reasons:

First, buyers of these transferable tax credits do not pay the full value of the tax credits – they buy them at a discount. Second, the process involves accountants, lawyers and other middlemen, who also must be paid for their time. Third, the process can be an administrative burden and often takes many months for the production to claim the proceeds of their remaining tax credits. Every step in this process chips away some value from the incentive. This contrasts with a refundable tax credit, whereby productions often get a check for their full liability within 30 days of ending their production.<sup>71</sup>

In ERA’s 2009 report, New Mexico, Connecticut, Georgia, Michigan and New York, in addition to Louisiana, were designated the most aggressive states (in terms of competitive film incentives) in the U.S.; Michigan, whose incentives include a 42% refundable tax credit on in-

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 72.

<sup>70</sup> That ERA did not shy from informing Louisiana that their scheme was “less desirable” helped establish the reports credibility and mollified this authors concern that ERA’s economic impact reports were biased.

<sup>71</sup> *Id.* at 73.

state expenditures, was deemed the most aggressive.<sup>72</sup> In ERA's 2006 report, Louisiana, South Carolina, New Mexico, Florida, Rhode Island, Connecticut and Georgia were the designated "aggressive incentive states" and South Carolina's, which offered a 30% refundable tax credit, was the most aggressive.<sup>73</sup>

That Michigan supplanted South Carolina as the most aggressive film incentive state illustrates a fundamental problem with the current incentive scheme in the U.S. In just three years, South Carolina standing as the most aggressive film incentive state in 2006 was not only supplanted by Michigan's enormous 42% rebate, it did not even get mentioned in ERA's 2009 report as being "aggressive". The speed of the race to the bottom has been breathtaking.

The "aggressive states" in ERA's 2006 and 2009 reports (seen in table 1.2 below) were not aggressive enough, however, to make it on to the MPAA's top ten film and television production states, according to the association's 2006 and 2009 economic impact reports.

The MPAA's 2006 economic impact report ranked California and New York one and two, respectively, of the top "production states in 2005."<sup>74</sup> The other states on the list, in descending order, were Nevada, Arizona, North Carolina, Montana, New Jersey, Louisiana, New Mexico and Illinois.<sup>75</sup>

In the MPAA's 2009 economic impact report, the top ten production states (after California and New York) were: Illinois, Texas, Florida, Georgia, Pennsylvania, New Jersey,

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<sup>72</sup> *Id.* at 77. Michigan's complete incentive package includes: "(1) 40% refundable tax credit, across the board on Michigan expenditures, with an extra 2% if filming in one of the 103 Core Communities in Michigan. (Labor and Crew: 40%-42% Resident Below the Line. 40%-42% Above the Line regardless of domicile. 30% Non-resident Below the Line).2 (2) A 25% tax credit on infrastructure investments of > \$250,000, up to \$10 million. (3) A 50% refundable job training tax credit to provide on-the-job training for Michigan residents in advanced below-the-line crew positions on qualified productions. (4) A 0% investment loan program is available for up to \$15 million per project, with back end participation in lieu of interest." *Id.* at 78.

<sup>73</sup> Economic Research Associates, *Trends in Film, Music and Digital Media* 49, (December 2006).

<sup>74</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THE ECONOMIC IMPACT OF THE MOTION PICTURE AND TELEVISION PRODUCTION INDUSTRY ON THE UNITED STATES 11-12, (2006) [hereinafter 2006 MPAA Economic Impact Report] (on file with author).

<sup>75</sup> *Id.*

North Carolina, Louisiana, Tennessee and Massachusetts.<sup>76</sup> While the 2009 report bumped Arizona and New Mexico from the top ten list, both states, in addition to Michigan, Utah and Connecticut were deemed “States to Watch” based on “2008 production levels, tax incentives, and economic impact of the industry, amount of productions industry-wide; production employees and wages; and the total number of vendors and vendor payments made by MPAA studios during 2007.”<sup>77</sup>

**Table 2**

ERA’s “aggressive incentive” states (2006 & 2009) and the MPAA’s “Top Production States” (2006 & 2009)<sup>78</sup>

2006 ERA Report	2009 ERA Report	2006 MPAA Report <sup>79</sup>	2009 MPAA Report
Louisiana	Louisiana	California	Illinois
<b>South Carolina (ERA’s most aggressive)</b>	Connecticut	New York	Texas
New Mexico	Georgia	Nevada	Florida
Florida	<b>Michigan (ERA’s most aggressive)</b>	Arizona	Georgia
Rhode Island	New York	North Carolina	Pennsylvania
Connecticut	New Mexico	Montana	New Jersey
Georgia		New Jersey	North Carolina
		Louisiana	Louisiana
		New Mexico	Tennessee
		Illinois	Massachusetts

### **Effectiveness of Film Incentives in Luring Production and Stopping Runaway Production to Other Nations**

With over 40 states offering substantial film incentives in 2009, the obvious question is: has the cumulative effect the state incentives stopped or slowed runaway production to other nations, primarily Canada,? The answer is unclear.

<sup>76</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THE ECONOMIC IMPACT OF THE MOTION PICTURE AND TELEVISION PRODUCTION INDUSTRY ON THE UNITED STATES 9, (2009) [hereinafter 2009 MPAA Economic Impact Report] (on file with author).

<sup>77</sup> *Id.*

<sup>78</sup> In the MPAA’s 2009 report, California & New York were not included in the top ten, but would have been number 1 & 2 respectively had they been.

<sup>79</sup> Remember, the 2006 report is based on 2005 data. The 2009 report is based on 2007 data.

Table 2 and Chart 2 show the number of films shot in both the U.S. and Canada from 1999-2008, based on data available from Baseline Studio Systems Film Tracker database.<sup>80</sup> From 1999 to 2004 the number of films shot in the U.S. declined every year, from 257 in 1999 to 169 in 2004, a 34% decline. Beginning in 2005, however, the number of films shot in the U.S. had an overall increase from 2005-2008. The 217 films shot in the U.S. in 2005 was an increase of 28% from the 169 in 2004. The decline from 1999-2004 can be attributed, in part, to the Canadian incentives introduced in 1997. Similarly, the increase of films shot in the U.S. beginning in 2005 can, perhaps, be attributed to the proliferation of film incentives in dozens of states.

Conversely, for every year there was a decline of films shot in the U.S., there was an increase of films shot in Canada. This correlation, however, is far from conclusive.

**Table 2: Number of Films Released in U.S. & Canada Each Year that Filmed In the Two Nations**

<b>Year</b>	<b>United States</b>	<b>Canada</b>
1999	257	39
2000	244	54
2001	226	42
2002	225	47
2003	181	32
2004	169	38
2005	217	49
2006	230	38
2007	213	60
2008	226	51

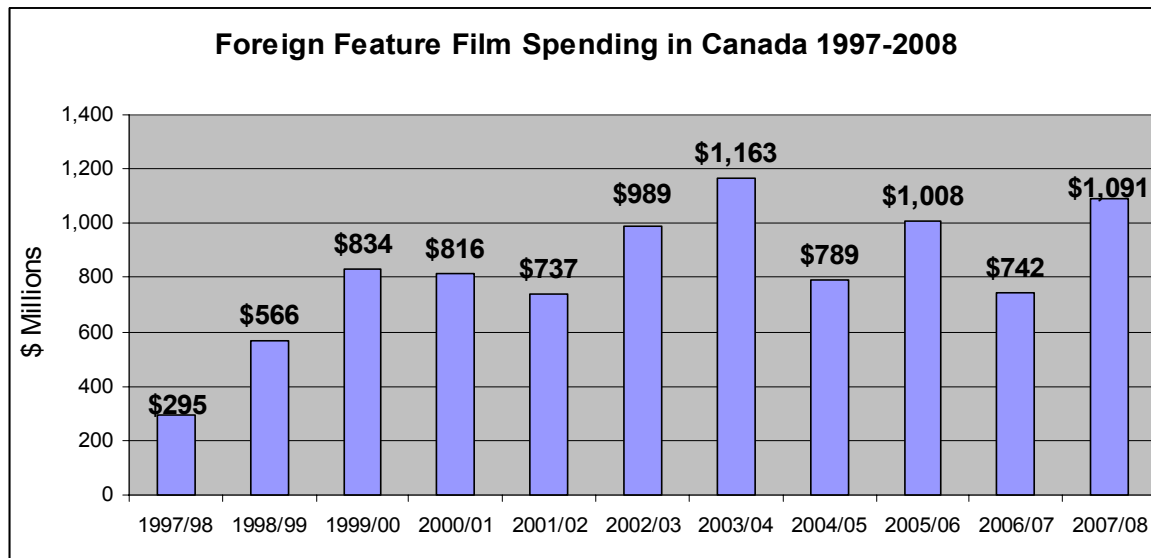
### **Impact of State Film Incentives on Foreign Film Production on Canada:**

Data contained in the 2009 Department of Canadian Heritage economic report on the Canadian film industry revealed the amount of foreign location spending in Canada increased after two years of steep declines. The first decline, shown in Chart 2, occurred between 2004

<sup>80</sup> Baseline Studio Systems is a subsidiary of the New York Times Corporation. The company claims the Film Tracker Database “benefits from the premium-grade intelligence, industry reach and exceptional customer service that are hallmarks of its parent company, which widely considered to be the most comprehensive film and television database in existence.” See Baseline Studio System’s web site, About Us - Our History - InBaseline, [http://www.inbaseline.com/aboutus/our\\_history.aspx](http://www.inbaseline.com/aboutus/our_history.aspx) (last visited July 9, 2009).

and 2005, when foreign spending on feature film production in Canada dropped from over \$1.1 billion to \$789 million.<sup>81</sup> From 2005 to 2006, foreign location spending rebounded to \$1 billion, but then dropped again, to \$742 million, the next year.<sup>82</sup> Finally, foreign location spending by foreign feature films increased to just over \$1 billion from 2007 to 2008.<sup>83</sup>

Chart 2:



The Canadian Department of Cultural Heritage speculated the rise in value of the Canadian dollar compared to the U.S. dollar could have contributed to the first decline in foreign production spending, but not the second:

The total volume of FLS (Foreign Location Spending) production dropped sharply in 2004/05, one year after the Canadian dollar started to rise in value from below 70 U.S. cents. However, Canada's volume of FLS production did not fall any further after 2004/05, even as the Canadian dollar rose by another 20 U.S. cents to close to parity with the U.S. dollar. The fact that most provincial and territorial governments moved quickly to modify their respective funding support programs appears to have helped cushion the rise of the Canadian dollar to some extent. As well, it would appear that Canada's numerous purpose-built studios, quality crews and proven track record of delivering films on-time and on-budget have allowed it to develop into more than just a low-cost location for Hollywood production.<sup>84</sup>

<sup>81</sup> DEPARTMENT OF CANADIAN HERITAGE, *09 Profile: An Economic Report on the Canadian Film and Television Production Industry* 81, (2009).

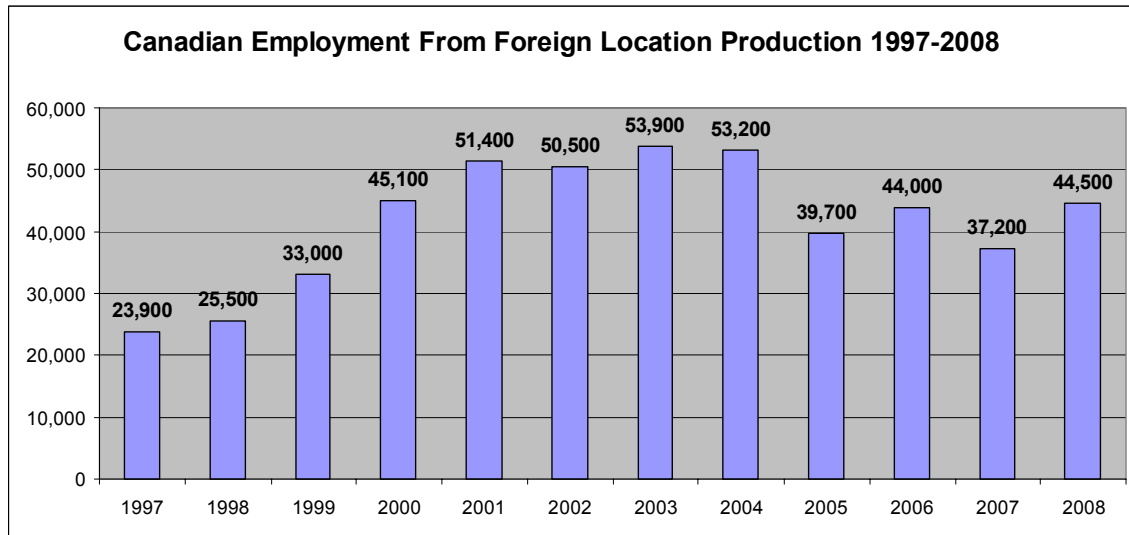
<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 78.

Employment for foreign location production in Canada has also been on the rise since 2004, shown in Chart 3.<sup>85</sup> The number of jobs created by foreign location shooting, at 44,500 in 2008, was the highest since the drop-off after 2004.<sup>86</sup>

**Chart 3:**



Based on available information, an evaluation on the impact of U.S. film incentives on Canada is inconclusive. On the one hand, foreign location spending and the number of jobs created by foreign productions in Canada. On the other hand, the U.S. saw the number of feature film productions increase, while it decreased in Canada. Industry employment, however, increased in both nations.

### **Efficacy of Film Incentives Enacted in U.S. States:**

If the efficacy of film incentives were judged solely on whether film production increased in states with new, or recently enacted, film incentives, New Mexico and Louisiana's success is breathtaking. The number of feature films shot (entirely or partially) in the two states increased astronomically, after their respective incentives were enacted in 2002, as shown in Table 3.

Louisiana had an unbelievable 1,550% increase in the number of films shot in the state, going

<sup>85</sup> DEPARTMENT OF CANADIAN HERITAGE, *09 Profile: An Economic Report on the Canadian Film and Television Production Industry* 79, (2009).

<sup>86</sup> DEPARTMENT OF CANADIAN HERITAGE, *09 Profile: An Economic Report on the Canadian Film and Television Production Industry* 79, (2009). It's important to note that these totals include both direct and indirect jobs.

from two films in 2002 to 33 in 2008; New Mexico saw a 320% increase, going from five films in 2002 to 21 in 2007.

**Table 3**

**Number of Films Shot in New Mexico and Louisiana based on Data From Film Tracker<sup>87</sup>**

State	2002	2003	2004	2005	2006	2007	2008	2009
Louisiana	2	5	13	15	14	32	33	31
New Mexico	5	4	8	16	19	21	14	12

The success enjoyed by New Mexico and Louisiana has been matched by Michigan's "aggressive" incentives. Other states, however, with recently enacted production incentives, have not have similar production gains. Table 4<sup>88</sup> shows several states that have enacted aggressive film incentives and the level of production in each after the incentives became effective. Connecticut had an impressive 223% initial increase in 2007, but saw a 23% decline in 2008. Massachusetts had a 100% increase, going from 6 to 12 feature film productions, but declined to 10 in 2009.

**Table 4:**

**States that have enacted film incentives and the change in production levels**

State/Year Incentive Enacted/ Modified	2005	2006	2007	2008	2009	Increase/Decrease
Michigan 2007	2	6	1	14	22	1300% one-year increase
Massachusetts 2006	4	6	12	13	10	100% increase in first year
Connecticut 2006	N/A	4	13	10	1	223% one-year increase followed by 23% decline
Pennsylvania 2007	4	8	10	16	11	60% one-year increase
Georgia 2006	5	10	10	6	17	No increase after one-year; 30% decrease in 2008
Illinois 2005, 2008	13	19	18	11	7	46% one-year increase followed by 42% decline in

<sup>87</sup> FilmTracker.com is the Internet's premier destination for filmmakers, independent producers and development executives seeking industry intelligence, emerging talent and available intellectual property. As part of the Baseline StudioSystems family of professionally-gearred web sites, FilmTracker benefits from the premium-grade intelligence, industry reach and exceptional customer service that are hallmarks of its parent company, which widely considered to be the most comprehensive film and television database in existence.

<sup>88</sup> Data Provided by filmtracker.com.

						2008
New Jersey 2005	7	11	18	8	5	57% one-year increase followed by 27% decline in 2008
Iowa 2007, Suspended September 2009	0	1	3	2	9	

Table 5<sup>89</sup> shows the number of feature film productions shot (entirely or partially) in California and New York (the top two production centers in North America) as well as the three major film centers in Canada (Vancouver, Toronto and Montreal). If the 2009 data for California is accurate, it represents a drop of 69% from the high in 2004 and a drop of 38% from 2008, which was also a bad year for the state. Despite a popular incentive program, the number of feature film productions in New York were also down in 2008 and 2009, as were the number of productions in the Canadian cities. Given the across the board decrease in these locations and the simultaneous increases in states with new incentives, it is hard to argue production incentives are not the sole cause for the declines elsewhere.

**Table 5:**  
**Feature Film Production in California, New York, Vancouver, Toronto & Montreal**

State/City	2003	2004	2005	2006	2007	2008	2009
California	151	257	161	204	203	127	79
New York	66	95	70	114	92	51	61
Vancouver	23	25	33	36	23	22	21
Toronto	18	22	29	35	21	7	9
Montreal	13	3	6	8	10	2	3

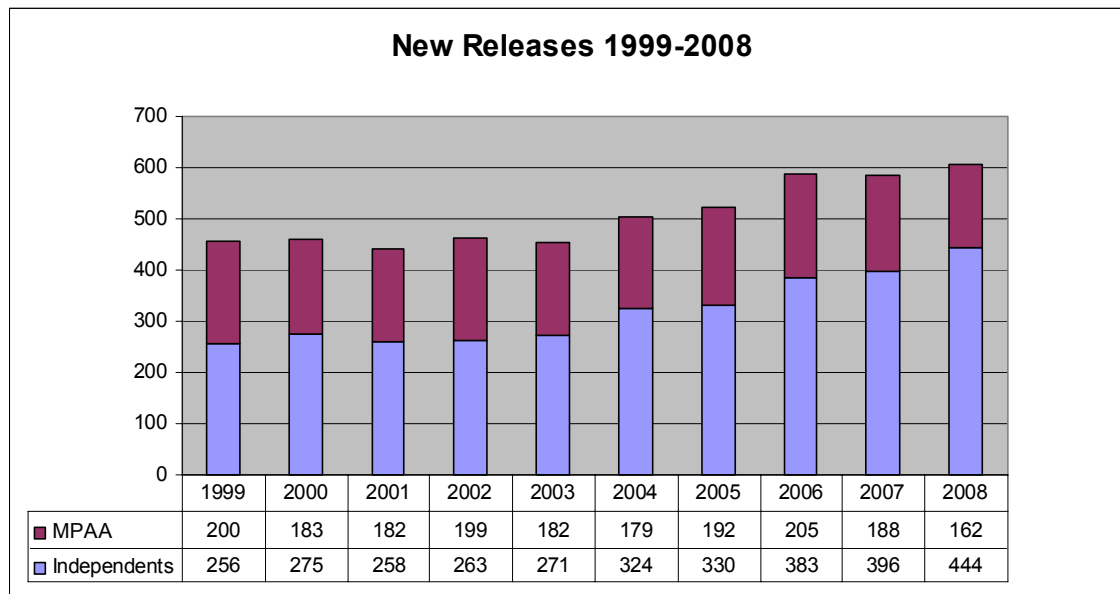
There are two likely explanations that states with recently enacted film incentives have not seen the same level of feature film productions gains enjoyed by New Mexico, Louisiana and Michigan. First, with 40 states now offering competitive incentives, the market is oversaturated.

<sup>89</sup> Data Provided by filmtracker.com.

With so many substantial incentives to choose from, it's not possible for any one state to duplicate the success of New Mexico and Louisiana. Michigan is the exception to this, likely due to the enormous size of the incentive. Second, there is a finite number of films that get released each year. With so many state incentives that effectively slash the cost of producing a movie by 25-40%, one might expect the raw number films that get produced to increase. This has not been the case.

The number of films released by MPAA member studios has declined every year since 1999, going from 200 (1999) to 162 (2008), as seen in Chart 4.<sup>90</sup> The number of independent films, however, has steadily increased over the same period. In 1999, 456 new films (as opposed to re-issues) were released, compared to 606 in 2008, an increase of 33 percent overall.<sup>91</sup> Most of the growth came from non-MPAA affiliated independents, which saw a 77 percent increase from 1999-2008.<sup>92</sup> For the same time the number of new MPAA films decreased 19 percent.<sup>93</sup>

**Chart 4:  
The Decline of MPAA Releases vs. The Increase of Independent Films**



<sup>90</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2008 5, (2009) (on file with author).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

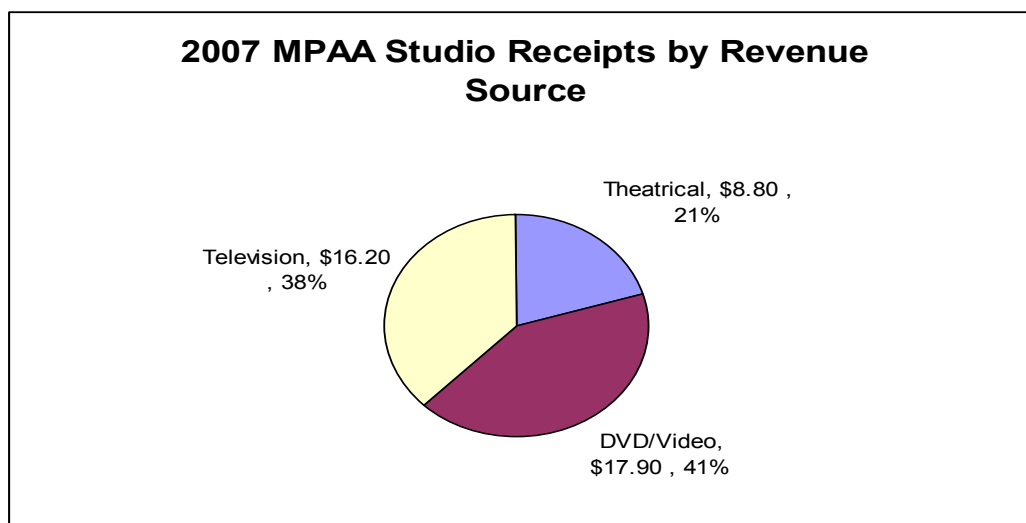
State tax incentives have become so generous, they may be creating a reverse runaway production.<sup>94</sup> For example, two of India’s “Bollywood” films are shooting in the U.S. and Michigan’s film commission has been contacted by producers in Russia, Romania and the Czech Republic--all nations that have been on the receiving end of runaway production in the past.<sup>95</sup> The cost-benefit analysis of the numerous film incentives for the enacting jurisdictions is unclear and is discussed in Part 3 and Part 4 (particularly in Louisiana). Before the value of film incentives is weighed, however, it is important to recognize the size, value and economic importance of the industry they seek to attract.

## II. State of The Motion Picture and Television Production Industry

### Revenue Streams

In 2007, worldwide receipts for the six major studios was \$42.9 billion from all revenue sources.<sup>96</sup> The revenue sources include rental fees from movie theatres, television fees and DVD rentals and sales; the break down of each category is provided in Chart 5.<sup>97</sup>

**Chart 5:**



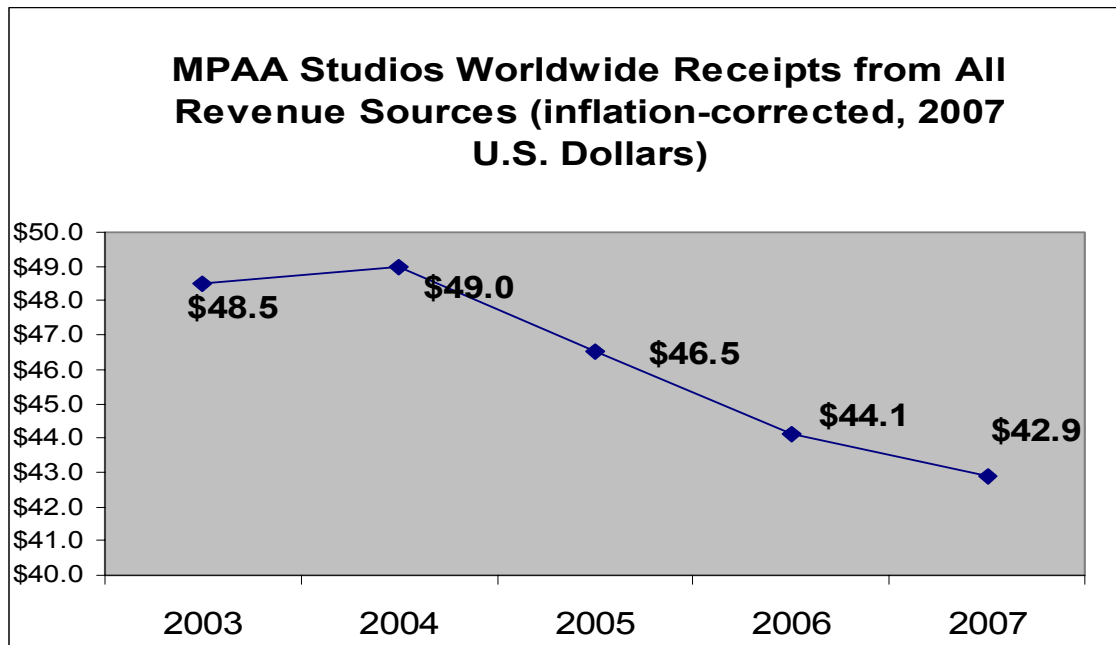
<sup>94</sup>Todd Longwell, *Runaway Production Part of Industry History*, THE HOLLYWOOD REPORTER (October 30, 2008).

<sup>95</sup> Id.

<sup>96</sup> Hy Hollinger, *Media Sales Flat in 2007*, THE HOLLYWOOD REPORTER (May 2, 2008).

<sup>97</sup> MPA2007, <http://www.edwardjayepstein.com/MPA2007.htm> (last visited May 20, 2009). The source of Edward Epstein’s data are the MPAA’s confidential “All Media Revenue Reports”.

As illustrated in Chart 6, the total revenue for the major studios decreased 12.5 percent (inflation-corrected for 2007 U.S. dollar value) from 2004 to 2007.<sup>98</sup>



### U.S. Performance

The U.S. market accounts for roughly half of the total worldwide revenue from all sources, but the domestic market has been shrinking recently. From 2006 to 2007, U.S. receipts declined eight percent from \$24.5 billion (2006) to \$22.7 billion (2007).<sup>99</sup>

In 2008, theatrical box-office sales reached \$9.8 billion domestically<sup>100</sup>, which is the highest year on record and 33.9% greater than 1999.<sup>101</sup> In the last six years, however, domestic

<sup>98</sup> *Id.*

<sup>99</sup> Hy Hollinger, *Media Sales Flat in 2007*, THE HOLLYWOOD REPORTER, May 2, 2008. The decline is not across the board, however.

<sup>100</sup> The domestic box office includes the United States and Canada.

<sup>101</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2008 3, (2009) (on file with author); MOTION PICTURE ASSOCIATION OF AMERICA, 1999 U.S. ECONOMIC REVIEW 1, (1999) (on file with author); MOTION PICTURE ASSOCIATION OF AMERICA, U.S. ENTERTAINMENT INDUSTRY: 2004 MPA MARKET STATISTICS 4, (2004) (on file with author); There was some discrepancy in the MPAA's box office numbers. All of the annual reports from 2002-2006 show domestic box office sales for 2000 were \$7.66 billion. The 2007 and 2008 reports, however, both show the amount for 2000 was \$7.46 billion.

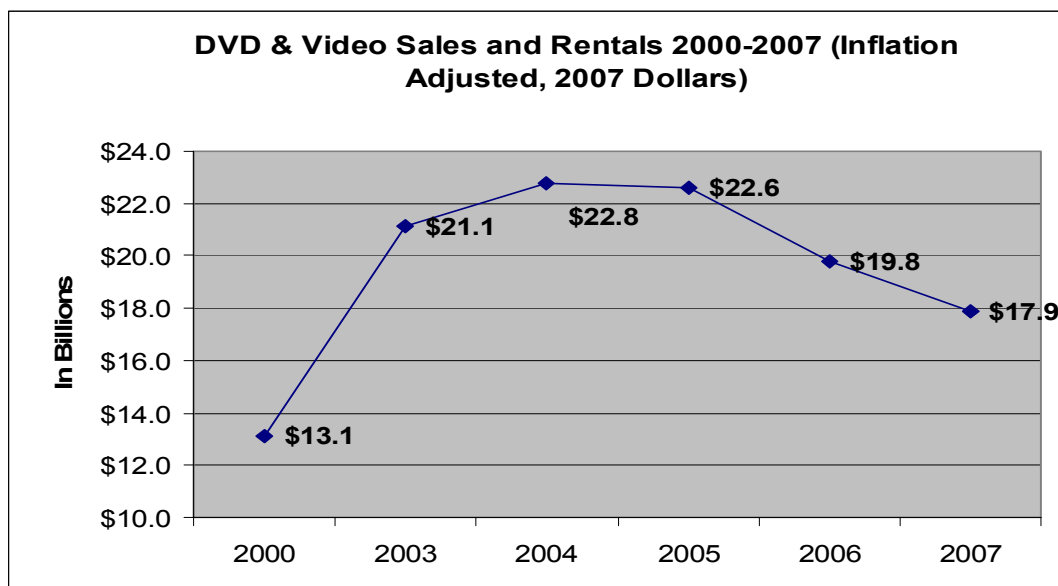
box office sales have been static.<sup>102</sup> In 2002, domestic box office sales were \$9.3 billion, and grew just 5.6% to \$9.8 billion in 2008, the record setting year.<sup>103</sup>

In terms of attendance, based on the number of tickets sold, the domestic market has been static for the last five years. In 2004, 1.48 billion tickets were sold as opposed to 1.36 billion in 2008.<sup>104</sup> However, the number of tickets sold internationally is also static, going from 5.58 billion in 2003 to 5.64 billion in 2007.<sup>105</sup>

### Rise and Fall of the DVD

As shown in Chart 5 above, DVD sales and rentals are the leading source of revenue for the MPAA member studios and more than double the amount of theatrical box office sales. DVD revenue has been the bread and butter for the studios for many years and, much to Hollywood's chagrin, they have been declining. Chart 6<sup>106</sup> shows DVD/video sales and rentals, adjusted for 2007 inflation in U.S. dollars from 2000 to 2007.

**Chart 6:**



<sup>102</sup> *Id.*

<sup>103</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2008 3, (2009) (on file with author); MOTION PICTURE ASSOCIATION OF AMERICA, U.S. ENTERTAINMENT INDUSTRY: 2004 MPA MARKET STATISTICS 4, (2004) (on file with author).

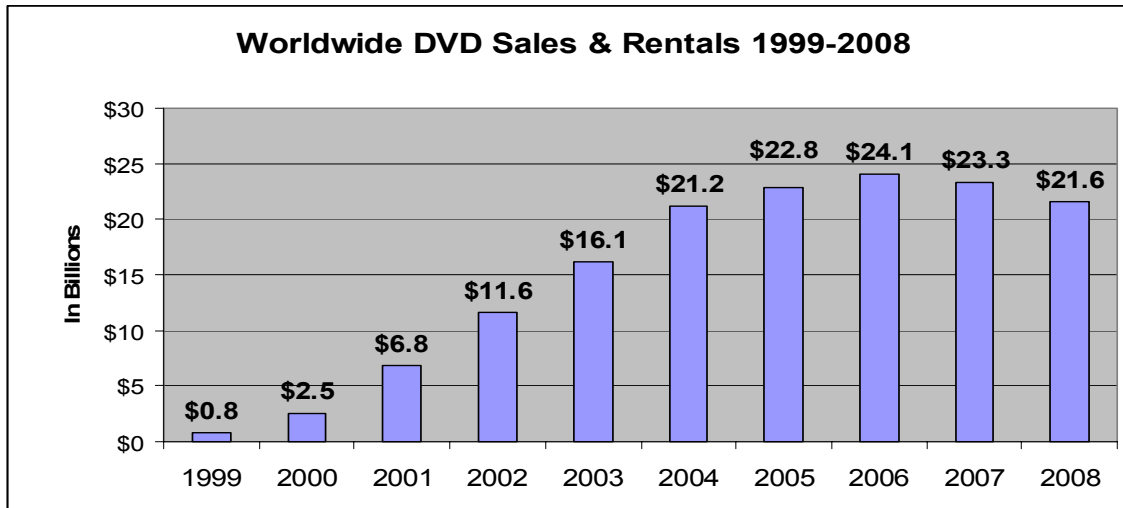
<sup>104</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2008 3, (2009) (on file with author).

<sup>105</sup> MOTION PICTURE ASSOCIATION OF AMERICA, INTERNATIONAL SNAPSHOT, (2007) (on file with author).

<sup>106</sup> MPA2007, <http://www.edwardjayepstein.com/MPA2007.htm> (last visited May 20, 2009).

While other sources vary slightly in yearly sales numbers, they confirm the decline noted above. Chart 7<sup>107</sup>, for example, contains data from the Digital Entertainment Group, whose yearly numbers are slightly higher than Chart 6 and are not adjusted for inflation:

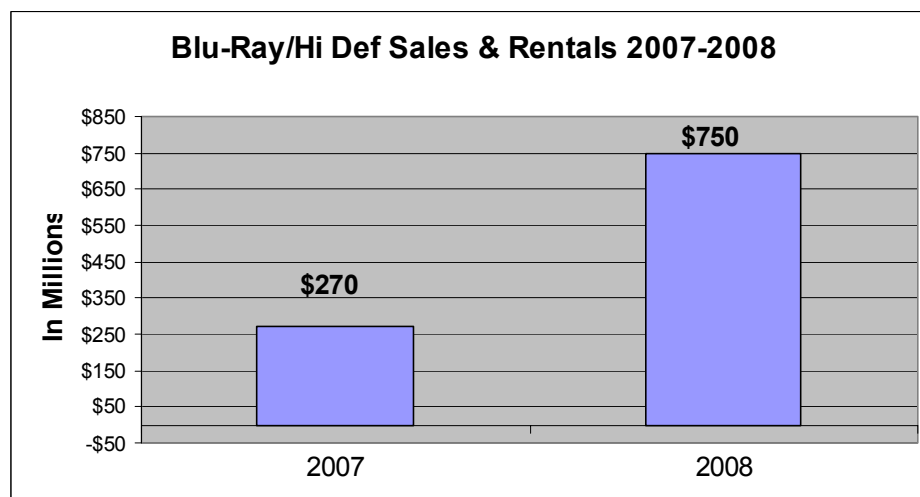
**Chart 7:**



### Blu-ray...of hope?

The only growth in physical media sales were for high-definition Blu-ray disks, developed by Sony to replace DVDs:<sup>108</sup>

**Chart 8**



<sup>107</sup> DVD Entertainment Group, <http://www.dvdinformation.com/News/press/CES2009yearEnd.htm> (last visited May 20, 2009).

<sup>108</sup> DVD Entertainment Group, <http://www.dvdinformation.com/News/press/CES2009yearEnd.htm> (last visited May 20, 2009).

While Blu-ray growth is impressive standing alone, it does not offset the declines seen elsewhere.

### **Rising Importance of a Global Hollywood**

In 2007, total receipts from foreign markets were \$20.2 billion, nine percent higher than 2006 (\$18.5 billion).<sup>109</sup> Worldwide revenue from DVD sales and rentals was \$17.9 billion in 2007; in 2006, it was \$19.8 billion (inflation corrected for 2007 dollars).<sup>110</sup>

Internationally, box office sales were \$18.3 billion in 2008, which, like the domestic number, is the highest on record.<sup>111</sup> In 2008, the combined worldwide (domestic and international) box office sales were \$28.1 billion.<sup>112</sup> In terms of growth, international box office sales are astonishing. In 2001, international box office sales were \$8.6 billion and accounted for 51% of the worldwide total that year (\$16.7 billion); domestic box office sales in 2001 were slightly less at \$8.1 billion.<sup>113</sup> In 2008, international box office sales were \$18.3 billion, a 113% increase since 2001.<sup>114</sup> In 2001, international box office sales were 51% of the worldwide total (\$16.7 billion).<sup>115</sup> By 2008, international box office sales were 65% of the worldwide total (\$28.1 billion).<sup>116</sup>

The rapid ascent of international box office sales are significant in many ways. First, higher international ticket sales are a source of revenue, whose growth rate far surpasses the domestic box office. Second, international box office sales contribute to the motion picture

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<sup>109</sup> Hy Hollinger, *Media Sales Flat in 2007*, THE HOLLYWOOD REPORTER (May 2, 2008).

<sup>110</sup> Epstein, *Worldwide Studio Receipts 2007*.

<sup>111</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2008 3, (2009) (on file with author).

<sup>112</sup> *Id.*

<sup>113</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2007 3, (2008) (on file with author).

<sup>114</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2008 3, (2009) (on file with author).

<sup>115</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2007 3, (2008) (on file with author).

<sup>116</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THEATRICAL MARKET STATISTICS 2008 3, (2009) (on file with author).

industry's trade surpluses. And third, since international ticket sales were 65% (\$18.3 billion) of the worldwide total in 2008, the importance of the domestic box office is rapidly diminishing.

### **III. Economic Impact of the Motion Picture Industry on the United States**

#### **The Value and Reliability of Economic Impact Reports**

Before the explosion of film incentives in U.S. states in recent years, few economic impact reports about the film and television production industry were available. Since 1999, there have been several key reports about runaway production specifically.<sup>117</sup> The accuracy and methodology of such reports were heavily scrutinized. Such scrutiny is important for a host of reasons, not the least of which is to have an accurate picture of runaway production and its effects--especially when such reports may influence policy makers.

In 2006, University of Texas professor John L. Crompton published an article about the value of economic impact reports.<sup>118</sup> Crompton was highly critical of economic impact reports, which he called "instruments for political shenanigans":

Economic impact analyses have an obvious political mission. They invariably are commissioned by tourism entities and usually are driven by a desire to demonstrate their sponsors' positive contribution to the economic prosperity of the jurisdiction that subsidizes their programs or projects.<sup>119</sup>

Crompton rejected the notion that economic impact reports "have a legitimate political role in informing both elected officials and taxpayers" about the economic contributions a certain policy or program has on the communities prosperity:

However, this legitimacy is predicated on the studies' being undertaken with integrity. Because the motivation under girding them usually is to prove the legitimacy of the sponsor's economic case, the temptation to engage in mischievous practices is substantial. In some cases the practices are the result of

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<sup>117</sup> The key reports include The Center for Entertainment Industry Data Recording (CEIDR) 1999, 2000, 2001 and 2005 reports on runaway production, The Monitor Report prepared in 1999 for the Screen Actors Guild (SAG) and the Directors Guild of America (DGA) about runaway production and The United States Commerce Department's 2001 report about Runaway Production.

<sup>118</sup> John L. Crompton, *Economic Impact Studies: Instruments for Political Shenanigans?* 67, *Journal of Travel Research*, Vol. 45, August 2006.

<sup>119</sup> *Id.*

ignorance and are inadvertent, but to often they are deliberate and enacted with intent to mislead and distort.<sup>120</sup>

Crompton's skepticism is shared by Los Angeles attorney Schuyler M. Moore, who specializes in "entertainment, tax and corporate law."<sup>121</sup> Moore said film commissions which have released economic impact reports "know the truth in their hearts," which is that production incentives are an economic drain and "the reports are just to give the state legislature something to point to."<sup>122</sup>

Thus, economic impact reports should be approached with skepticism, but it is also fair to give the author(s) of economic impact reports the benefit of the doubt. For example, Economic Research Associates (ERA), a company that prepares economic impact reports for many state and local governments, has exhibited refreshing honesty in some of their reports. In 1995, for example, ERA prepared a report on the value of major league sports franchises to a community that began:

Why in the world would any city these days want to attract (or retain) a major league sports franchise? Hasn't the game recently degenerated to nothing more than a bunch of whining millionaires arguing with each other? There must be some magical allure, because a number of communities have just paid big bucks to attract major league sports.<sup>123</sup>

If Crompton's cynicism regarding economic impact reports is followed, ERA's report might not get read and/or one might assume the report would find positive economic results from sports franchises. On the contrary, ERA's report does not pretend sports franchises have a

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<sup>120</sup> John L. Crompton, *Economic Impact Studies: Instruments for Political Shenanigans?* 67, *Journal of Travel Research*, Vol. 45, August 2006.

<sup>121</sup> Stroock & Schuyler M. Moore, <http://www.stroock.com/sitecontent.cfm?contentID=49&itemID=278> (last visited June 22, 2009).

<sup>122</sup> Shuyler response to email questions on June 23, 2009.

<sup>123</sup> Stephen Spickard, *Value of a Major League Sports Franchise to a Community* 1, Economic Research Associates, November 6, 1995.

positive economic impact; instead ERA's report claimed "in many cases, the fiscal impacts of major league sports are a net negative."<sup>124</sup>

One of the major obstacles to researching information about the motion picture industry is the lack of data and the tight grip the major studios keep on production expenses and revenue. Therefore, while certain economic impact reports may be flawed, they are one of the only substantive sources of economic data available.

### **Economic Impact of the Motion Picture Industry in the United States**

Since 2007, the MPAA has released two reports on the economic impact of the motion picture and television production industry on the United States.<sup>125</sup> Table 6 provides the "report highlights" for each.<sup>126</sup>

**Table 6:  
Highlights from the MPAA's 2006 & 2009 Economic Impact Reports**

<b>2005</b>	<b>2007</b>
1.3 million jobs	2.5 million jobs
\$73,000	\$74,500
\$30.24 billion paid out as wages	\$41.1 billion paid out as wages
\$30.2 billion in payments to U.S. vendors and suppliers	\$38.2 billion in payments to U.S. vendors and suppliers
\$10 billion in income and sales taxes	\$13 billion in income and sales taxes
\$9.5 billion trade surplus	\$13.6 billion trade surplus

The statistics from the reports are impressive, if assumed accurate. From 2000 to 2005, motion pictures as audiovisual exports increased 20 percent.<sup>127</sup> Indeed, the motion picture industry "is one of the few industries that consistently generates a positive balance of trade."<sup>128</sup>

The \$9.5 billion trade surplus in 2005 was "larger than the combined

<sup>124</sup> Stephen Spickard, *Value of a Major League Sports Franchise to a Community* 3, Economic Research Associates, November 6, 1995.

<sup>125</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THE ECONOMIC IMPACT OF THE MOTION PICTURE AND TELEVISION PRODUCTION INDUSTRY ON THE UNITED STATES, (2006); MOTION PICTURE ASSOCIATION OF AMERICA, THE ECONOMIC IMPACT OF THE MOTION PICTURE AND TELEVISION PRODUCTION INDUSTRY ON THE UNITED STATES, (2009). The 2007 report is based on data for 2005; the 2009 report is based on data from 2007.

<sup>126</sup> *Id.*

<sup>127</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THE ECONOMIC IMPACT OF THE MOTION PICTURE AND TELEVISION PRODUCTION INDUSTRY ON THE UNITED STATES 11, (2006).

<sup>128</sup> *Id.*

positive trade balance for telecommunications and computer and information services and was 12 percent of the entire private sector service trade surplus.”<sup>129</sup> In 2007, the industry trade surplus, at \$15 billion in audiovisual exports, was the highest on record since tracking began in 1992 and 23 percent higher than 2006.<sup>130</sup>

### **Motion Picture Industry Employment Statistics**

The confusion, reliability and complexity of employment statistics in the motion picture industry was discussed and analyzed at length in 2007.<sup>131</sup> Since 2007, employment numbers are somewhat more consistent.

Table 7 shows the employment data from the MPAA’s 2006 and 2009 economic impact reports, which studied job numbers for 2005 and 2007 respectively.<sup>132</sup>

**Table 7:  
Film and Television Production Employment in 2005 & 2007 according to MPAA**

<b>2005</b>	<b>2007</b>
180,000 (core industry supply staff) <sup>133</sup>	285,000 (core) <sup>134</sup>
231,000 (freelance) <sup>135</sup>	478,000 (distribution) <sup>136</sup>
1,000,000 (indirect)	1,700,000 (indirect)

<sup>129</sup> *Id.*

<sup>130</sup> MOTION PICTURE ASSOCIATION OF AMERICA, THE ECONOMIC IMPACT OF THE MOTION PICTURE AND TELEVISION PRODUCTION INDUSTRY ON THE UNITED STATES 7, (2009).

<sup>131</sup> See Adrian McDonald, Through the Looking Glass: Runaway Productions and 'Hollywood Economics, 9 U. Pa. J. Lab. & Emp. L. 879, 13-915 (Summer 2007).

<sup>132</sup> MPAA “The Economic Impact of the Motion Picture & Television Production Industry on the United States,” 2006 Report 5 (2006); MPAA “The Economic Impact of the Motion Picture & Television Industry on the United States,” 2009 Report 5 (2009).

<sup>133</sup> Over 180,000 people were directly employed as studio, independent production company, or core industry supplier staff. Core industry suppliers include film labs, special effects and digital studios, location services, prop and wardrobe houses, research services and film stock houses, video duplicating services and stage rental facilities among others. MPAA “The Economic Impact of the Motion Picture & Television Production Industry on the United States,” 2006 Report 6 (2006).

<sup>134</sup> Over 285,000 people are employed in the core business of producing, marketing, manufacturing and distributing motion pictures and television shows, including full, part time and free-lance workers at major studios, independent production companies, and core industry suppliers like film labs, special effects and digital studios, location services, and prop and wardrobe houses dedicated to the production industry, among others. The industry employs workers in every major occupational group, including actors, accountants, agents, animators, camera operators, casting directors, computer specialists, directors, editors, engineers, graphic designers, marketers, producers, special effects, technicians, writers, and many, many more. MPAA “The Economic Impact of the Motion Picture & Television Industry on the United States,” 2009 Report 6 (2009).

<sup>135</sup> This number includes “freelance workers, including actors, directors, writers, and technical or craft specialists. While freelance employees account for more than half of the industry’s workforce, it’s important to note that freelance is not synonymous with “part-time” as many work full time.” *Id.*

<sup>136</sup> This includes workers at movie theaters, video rental operations, television broadcasters, cable companies, and new dedicated online ventures like Hulu and TV.com. *Id.*

Total:	<b>1,411,000</b>	Total:	<b>2,463,000</b>
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When the “indirect” job numbers are removed for each year, the remaining number of “direct” jobs was 411,000 in 2005 and 763,000 in 2007. The vast discrepancy between these two numbers is explained by the different definitions of industry job categories (core, distribution, freelance etc.) used in the two reports, which were not prepared by the same individuals.<sup>137</sup> The number of indirect jobs in each report was calculated using a multiplier derived from RIMS II model created by the Bureau of Economic Analysis. The exact number of the multiplier was not supplied in the MPAA reports, but the U.S. Commerce Department reported that the highest multiplier used in such reports was 3.71 and the lowest was 1.79.<sup>138</sup>

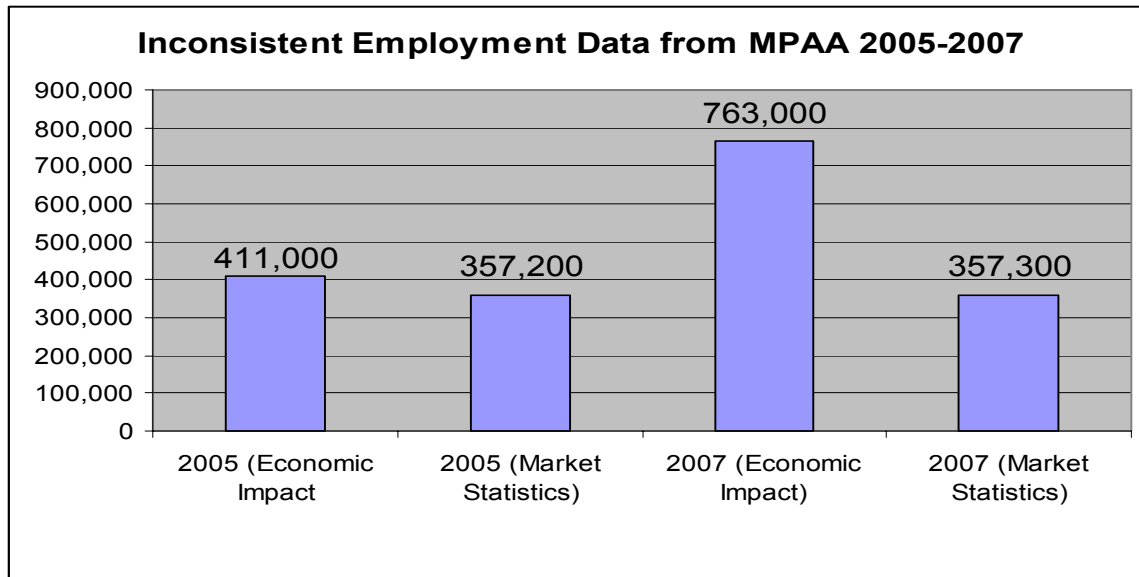
The numbers in the MPAA’s two economic impact reports also conflicts with the employment numbers reported in the associations annual market statistics reports. However, the annual market reports only supply raw employment numbers from the BLS and do not account for multipliers or indirect impacts etc. According to the most recent market statistic report, the total number of jobs in the motion picture industry for 2006 was 354,400; in 2007, the total was 357, 300.<sup>139</sup> Chart Nine shows the difference between data reported in the MPAA annual market statistic reports, which list only BLS data (NAICS 5121), and the economic reports. When the MPAA applied an economic multiplier to the data in its 2009 economic impact report, and indirect employment is factored in overall employment, the number of industry supported jobs spiked.

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<sup>137</sup> Phone interview with MPAA, Henry 5/15/09.

<sup>138</sup> U.S. Department of Commerce, The Migration of U.S. Films and Television Production 23, (March 2001).

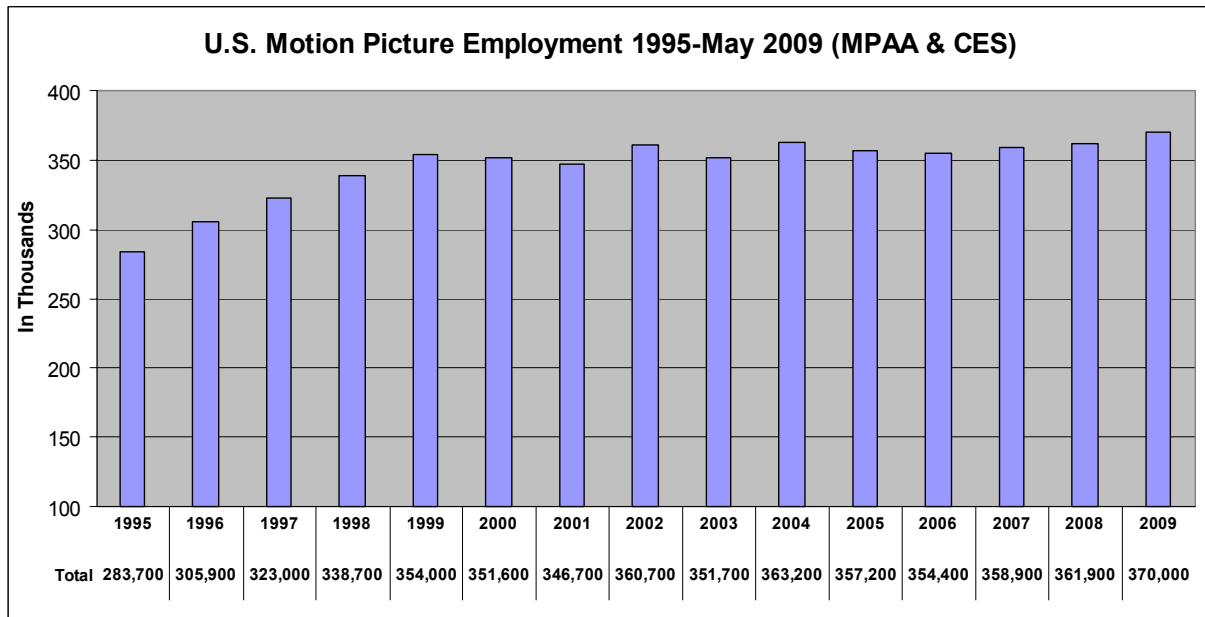
<sup>139</sup> MOTION PICTURE INDUSTRY ASSOCIATION OF AMERICA, ENTERTAINMENT INDUSTRY MARKET STATISTICS 2007 23, (2008). <sup>139</sup>

**Chart 9:**

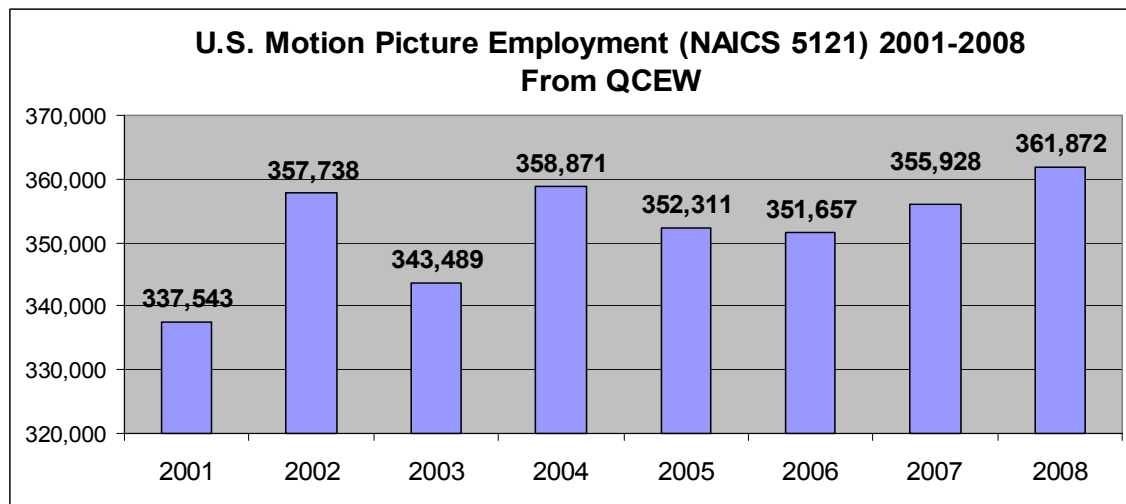
In the absence of any other source of consistent annual employment data, the BLS numbers are the de facto authority for the number of people “directly” employed by the motion picture industry.

Chart 10<sup>140</sup> shows the number of direct jobs in the motion picture industry from 1995-May 2009 according to the BLS Current Employment Statistics (CES), which is the same data the MPAA uses in its annual reports:

<sup>140</sup> Bureau of Labor Statistics Data, <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet> (last visited May 28, 2009); Motion Picture Association of America, Worldwide Market Research, U.S. Entertainment Industry: 2004 MPA Market Statistics 27 (2004); Motion Picture Association of America, Worldwide Market Research, U.S. Entertainment Industry: 2007 MPA Market Statistics 23 (2007).

**Chart 10:**

The employment data from the CES, however, is not perfectly consistent with the data from the BLS Quarterly Census of Employment and Wages (QCEW), which is generally several thousand jobs less than the CES, as seen in Chart 11.<sup>141</sup>

**Chart 11:**

As CES data (Chart 10) shows, motion picture industry employment grew dramatically from 1995 (283,700) to its peak in 2004 (363,300). In 2005, total employment fell to 357,200

<sup>141</sup> Bureau of Labor Statistics Data, <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet> (last visited Nov. 10, 2009).

and fell again, in 2006, to 354,400. Since 2006, total employment increased each year and, as of July 2009, was at 372,300.<sup>142</sup>

The dramatic increase in industry employment was also tracked closely by Allen J. Scott's survey of employment from January 1983 until December 2002.<sup>143</sup> Using SIC 78 (Standard Industrial Classification) to measure employment in Los Angeles County, Scott noted a large and steady increase in motion picture employment that peaked in 1998 and declined each year until 2002, which was the extent of available data.<sup>144</sup> Scott was unable offer a comprehensive explanation for the decline, but acknowledged runaway production played a part.<sup>145</sup>

The BLS change from the old SIC classifications to the current NAICS system has been problematic. For example, under the old SIC 78, motion picture employment was 408,000 in 1990 and jumped to 594,000 in 2000<sup>146</sup>, which is much higher than the NAICS data currently used. Indeed, employment numbers are inherently confusing. That said, it is critical that industry observers, policy makers, or anyone involved in the motion picture industry have a rudimentary understanding of the employment statistics, imperfect as they may be. Such an understanding could prevent policy makers from being misled by reports that slant information to provoke an alarmist response to a problem that may not even exist. This is not to say that runaway production is a fictional problem that requires no action by policy makers. In fact it does, but any response to stop runaway production, must be informed and measured; such an ideal, however, is not always lived up to in the numerous states with generous film incentives, three of which are discussed in detail in the next section.

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<sup>142</sup> Bureau of Labor Statistics Data, <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet> (last visited Nov. 10, 2009).

<sup>143</sup> Allen J. Scott, *On Hollywood* 123 (2005).

<sup>144</sup> *Id.* at 122-123.

<sup>145</sup> *Id.* at 122.

<sup>146</sup> Martha Jones, *Motion Picture Production in California*, California Research Bureau, March 2002 at 21.

## IV. Incentive Programs in Key U.S. States

This section discusses the history of runaway production and the respective legislative actions taken in three states: California, Massachusetts and Louisiana. California, the epicenter of the entertainment industry was selected for obvious reasons. Louisiana and New Mexico were the first-mover states in the U.S. to enact production incentives on par with those in Canada and elsewhere. Louisiana was selected over New Mexico<sup>147</sup> because the state has a more colorful and interesting narrative behind its incentive program and also because it is now the third largest filming location in the U.S. behind California and New York. Massachusetts has one of the most generous film incentives available at this time, but the primary reason it was selected was because of the back-story that led to the incentive and the perfect movie with the perfect story with the perfect title for an article about runaway production: *The Departed*.

Understanding the motivations in each state for enacting film incentives provides useful insight into how each public policy was shaped by certain factors unique to each state. The production decisions regarding the filming decisions on movies (*The Departed* and *The Curious Case of Benjamin Button* specifically) is also explored and should prove useful to policy makers wanting to understand what film and television producers are looking for when deciding on where to shoot; of late, the primary factor motivating location selection is choosing locales with the largest incentives, which thereby reduces the financial risk of producing a major production if it does not perform well upon release.

### A. California:

#### State of the Industry in 2009: Employment

California, home to Hollywood, is arguably the most significant cultural production center in the world. No other location on earth, past or present, can match the global cultural influence that Hollywood and, by extension, California can lay claim to, if only in terms of the

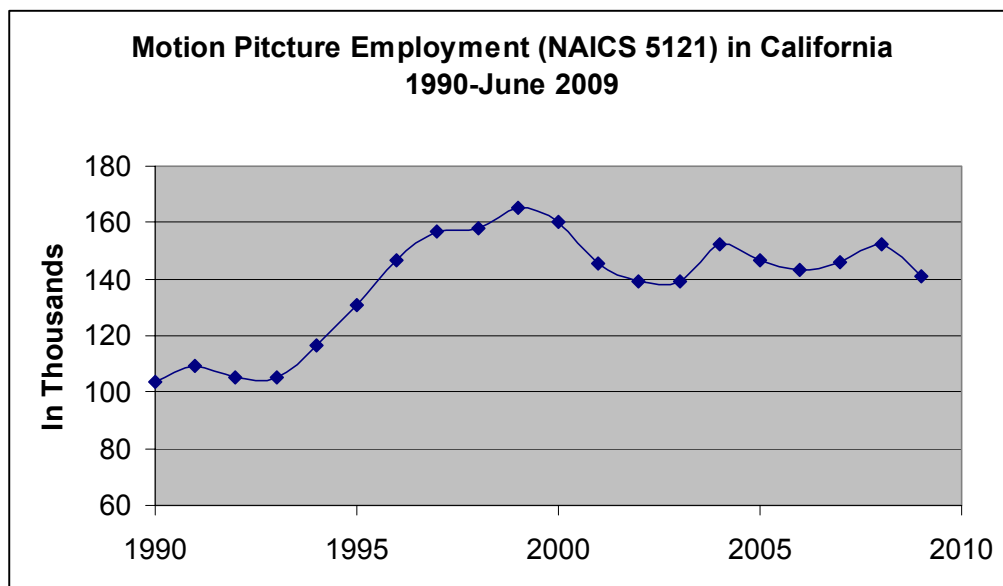
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<sup>147</sup> To be sure, New Mexico runs a model incentive program and other states should emulate their program.

sheer number of people it reaches. In addition to being the Mecca of the motion picture industry, California captures large swaths of the recording industry and is home to Silicon Valley, whose digital and high-tech advancements are employed by the film and television to create groundbreaking special effects and filming techniques that were simply impossible to do 15, perhaps just 10 years ago. California offers unmatched depths of talent. Despite these advantages, continued hegemony is anything but certain.

In terms of jobs, the motion picture industry employed roughly 152,000 people within California in 2008, a decrease of 13,500 since 1999.<sup>148</sup> Chart 12 contains the total motion picture employment (NAICS 5121) numbers in California from 1990 to June 2009, according to CES provided by the BLS.<sup>149</sup>

**Chart 12:**

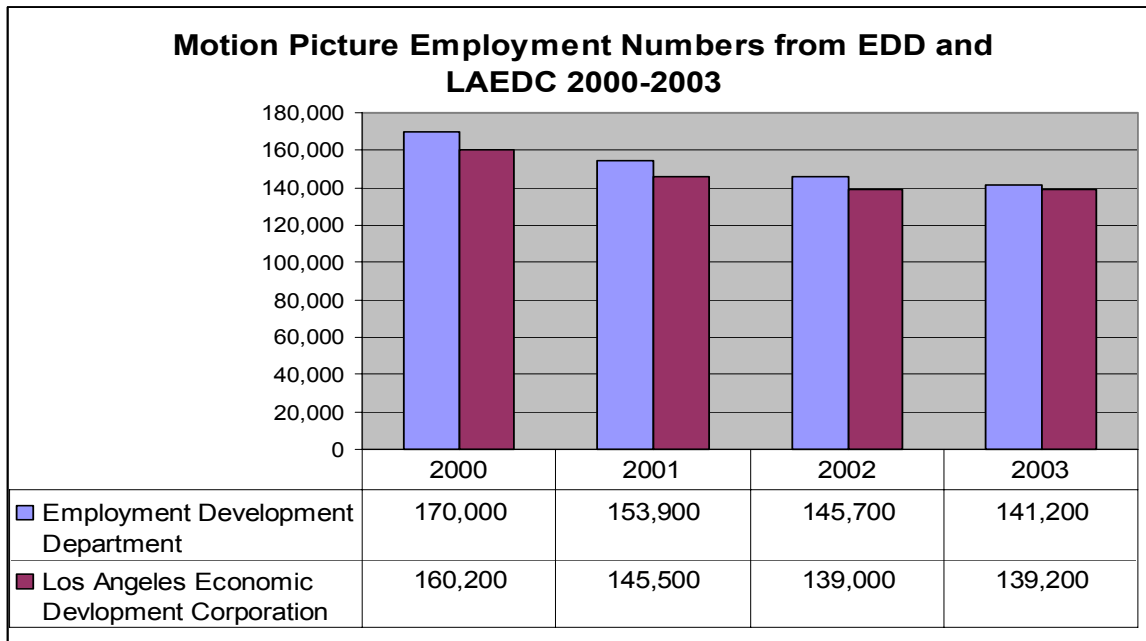


<sup>148</sup> Bureau of Labor Statistics Data, <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet> (last visited Nov. 10, 2009).

<sup>149</sup> *Id.*

The BLS data conflicts with employment data reported by California’s Employment Development Department (EDD) and the Los Angeles Economic Development Corporation (LAEDC), as illustrated in Chart 13.<sup>150</sup> The reason for the discrepancies is unknown.

**Chart 13:**



To put California’s employment numbers in a sharper perspective is Susan Christopherson’s finding that “core” industry workers, whose income derive entirely from the entertainment industry, “declined as a share of the total workforce, from 38% in 1991 to 33% in 2002”.<sup>151</sup> As the number of core workers as a percentage of the overall workforce decreased, so to did the influence of Hollywood’s labor unions:

One common complaint is that producers attempting to cut costs will reduce shooting days by requiring overtime work from the production crew. While long working hours are legendary in the media entertainment industry, the boundaries that circumscribed abuse appear to have broken down as unions have lost power over industry practices and with an increase in the proportion of productions made on ‘shoestring’ budgets.<sup>152</sup>

<sup>150</sup> The Employment Development Department (EDD), Report to the Legislature on the Motion Picture Industry in California 19, (2005); Los Angeles Economic Development Corporation, 2009-2010 Economic Forecast and Industry Outlook 25, (2009).

<sup>151</sup> SUSAN CHRISTOPHERSON, THE CONTEMPORARY HOLLYWOOD FILM INDUSTRY 157, EDITED BY PAUL McDONALD & JANET WASKO (2008).

<sup>152</sup> SUSAN CHRISTOPHERSON, THE CONTEMPORARY HOLLYWOOD FILM INDUSTRY 64, EDITED BY PAUL McDONALD & JANET WASKO (2008).

In 2005, the EDD reported motion picture industry employment grew in the “mid-to-late 1990’s” and began falling in 2000.<sup>153</sup> At the same time, motion picture employment in other states increased.<sup>154</sup> In fact, EDD reported “the drop in employment in California from 1999 to 2003 (almost 35,000 jobs) is virtually matched by a 39,000 increase of jobs in all other states for the same period.”<sup>155</sup> The EDD report was unable to place the blame for the decline squarely on runaway production, which “may have” been the cause:

The downward trend in employment during this period may have been due to the effects of runaway production to other countries and other states, but it may also have been due to the national recession, or possibly to structural changes in the film industry. Pinpointing which of these factors, or combination of factors, that have produced this downward trend still eludes a definitive diagnosis.<sup>156</sup>

The importance of the motion picture industry to California’s economy, particularly Southern California is critical. In June 2009, the importance of the industry was driven home when the LAEDC reported the tourism and hospitality industry surpassed international trade as the number one generator of jobs in Los Angeles County.<sup>157</sup> According to the LAEDC report, tourism and hospitality were responsible for 456,000 jobs compared to 281,000 for international trade, which is significant as the port complex of Los Angeles and Long Beach is “the busiest port complex in the country.”<sup>158</sup> Tourism in greater Los Angeles, according to *The Los Angeles Times*, is centered around “tourist hot spots as Grauman's Chinese Theatre, Disneyland, Universal Studios and the Hollywood Walk of Fame.”<sup>159</sup>

If the motion picture industry, and the entertainment industry in general, erodes in California, the draw of tourist attractions based on them could also wane. Are attractions such

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<sup>153</sup> THE EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD), REPORT TO THE LEGISLATURE ON THE MOTION PICTURE INDUSTRY IN CALIFORNIA 18, (2005).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> Hugo Martin, Tourism industry is L.A. County's No. 1 job generator, report shows, LOS ANGELES TIMES, June 25, 2 2009.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

as Hollywood's walk of fame popular tourist attractions because they lie in the epicenter of Cultural Production (Hollywood, if not World)? If so, state lawmakers should consider whether such attractions would continue to draw tourists if (perhaps when) they become historical attractions of a bygone era rather than celebrations of Hollywood's current preeminence.

The symbiotic relationship between the entertainment industry and the tourism industry in California can not be ignored; a fact that applies to the state more than any other in the U.S. If production in other locations like Vancouver, Toronto (Canada as a whole), Louisiana or New Mexico declines, the impact on their respective tourism and hospitality industries would be negligible. People visit New Orleans for the French Quarter, not because 2002's *Runaway Jury* shot there. Thus, California faces a unique threat to its other major industries on a scale unmatched by other filming locales.

#### **State of the Industry in 2009: Production Activity**

Despite the growth of filming in other states and nations, the employment numbers are not declining precipitously; a fact that may contribute to the lack of urgency felt by state lawmakers to enact meaningful incentives. One of the main reasons employment numbers have remained relatively stable is the growth of television programming. In 1995, there was a total of 7,831 permitted production days<sup>160</sup> in greater Los Angeles; in 2008 that number swelled to 25,277, an increase of 223 percent.<sup>161</sup> Production in other categories such as feature films, however, have declined significantly.

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<sup>160</sup> Permitted Production Days are defined as a single crew's permission to film a single project, at a single location, during any given 24-hour period. See Feature Films Category Report at [http://www.filmla.com/data\\_reports.php](http://www.filmla.com/data_reports.php) (last visited June 24, 2009).

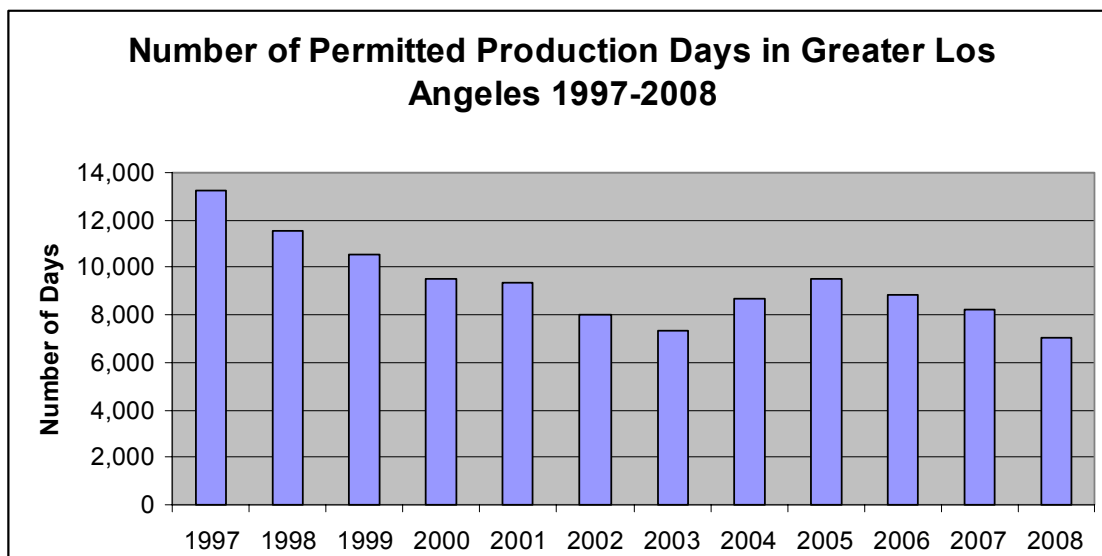
<sup>161</sup> *Id.*

In 2008, Los Angeles County saw its feature film production drop to its lowest level on record since tracking began in 1993.<sup>162</sup> In July 2009, *The Los Angeles Times* reported location feature film production in the Los Angeles area dropped to the “lowest levels on record”:

Student films generated as much activity on the streets of Los Angeles in the first quarter of 2009, when only a few movies, including ‘Fame’ and ‘Alvin and the Chipmunks: The Squeakquel,’ were shot there. California's share of U.S. feature film production dropped to 31% in 2008 from 66% in 2003.<sup>163</sup>

As seen in Chart 14<sup>164</sup>, from 1997 to 2008, the number of permitted production days in the greater Los Angeles area decreased in all but two years, and number of production days declined 47 percent from 1997 to 2008.

**Chart 14:**



In 2009, the numbers did not improve. The number of production days in the first quarter of 2009, at 903, was 56 percent lower than the first quarter of 2008.<sup>165</sup> Film L.A., a nonprofit group that tracks filming in the greater Los Angeles area, attributed the drop in production to runaway production and said California needed a competitive incentive program “as filmmakers

<sup>162</sup> Richard Verrier, *Filming on L.A. Streets Declines, Feature Productions Drop 14% to Lowest level Since Tracking Began in 1993*, LOS ANGELES TIMES, January 14, 2009.

<sup>163</sup> Richard Verrier, *As the Hollywood machine abandons L.A., its supporting workers struggle*, LOS ANGELES TIMES, July 12, 2009.

<sup>164</sup> Feature Films Category Report at [http://www.filmla.com/data\\_reports.php](http://www.filmla.com/data_reports.php) (last visited June 24, 2009).

<sup>165</sup> Feature Films Category Report at [http://www.filmla.com/data\\_reports.php](http://www.filmla.com/data_reports.php) (last visited June 24, 2009).

flocked to other countries and other U.S. states, such as Michigan, New York and New Mexico, that offer tax incentives and rebates that aren't available in California.”<sup>166</sup>

The numbers for primetime television pilots filming in greater Los Angeles have also declined. In the 2004/2005 development cycle for pilots, 101 of the 124 produced that cycle filmed in Los Angeles, which contributed \$309 million to the local economy.<sup>167</sup> In the 2008/2009 development cycle, California captured 59 of the 101 pilots produced, a 42 percent decline from 2004/2005 and production spending decreased to an estimated \$207 million.<sup>168</sup> The average cost to produce a pilot in 2008/2009 was between \$3-\$5 million; the average pilot directly employs roughly 150 people for the duration of the project.<sup>169</sup>

As with the decline in feature film production, Film LA attributed the decline in pilot production to runaway production and Film LA president Paul Audley said cost savings was the top priority for producers in deciding where to shoot:

The fact that so many of this year’s pilots chose to film outside the area shows that no facet of the entertainment industry can be considered captive in Los Angeles. Use of alternative locations for pilot production will probably continue until we in California and Los Angeles collectively take steps to reassert our competitive advantages.<sup>170</sup>

In July 2009, the LAEDC released a report which, unlike the 2005 EDD report, was unequivocal in placing the blame for free falling production numbers on runaway production to other jurisdictions:

run-away production of feature films is a growing threat to the local economy. Run-away production is not an ephemeral thing. It represents lost jobs and tax revenues to the Los Angeles economy.

Production costs have become a major concern for broadcast TV networks, due to the weak advertising market. Thus, the incentives offered by other states are

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<sup>166</sup> FILM LA INC., L.A REGION’S ON-LOCATION FEATURE FILMING IN FREEFALL 4 (2009) *available at*: [http://www.filmla.com/news\\_releases.php](http://www.filmla.com/news_releases.php) (last visited June 24, 2009).

<sup>167</sup> Film LA Inc., *2005-2009 Television Pilot Production Report 2-3* (2009) *available at*: [http://www.filmla.com/data\\_reports.php](http://www.filmla.com/data_reports.php) (last visited June 24, 2009).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 2-4.

<sup>170</sup> *Id.* at 4.

now starting to lure more production of pilots out of the Los Angeles area. While the state of California has finally started to offer incentives, they are felt by many in the industry to be too narrow and not focused on feature film production.<sup>171</sup>

### California's 2009 Response to Runaway Production

In February 2009, after years of lobbying the California Legislature for film incentives, state lawmakers “surprised many” according to *Daily Variety*, when they included film incentives in a budget bill that provided \$12 billion in tax increases and broke a budget impasse that had been stalled for three months.<sup>172</sup>

California's action, however late, might help level the playing field with other states-- might. The incentive took effect on July 1, 2009, and provides for a five-year \$500 million tax credit program; the program is capped at \$100 million annually.<sup>173</sup>

**Table 8: Overview of California Film Incentives**<sup>174</sup>

Incentive	Eligible Productions <sup>175</sup>	Additional Requirements
20% Tax Credit for “qualified motion pictures.	<p>Feature films must spend at least \$1,000,000 but not more than \$75 million. Movies of the Week or Miniseries must have a \$500,000 minimum production budget.</p> <p>New television series licensed for original distribution on basic cable - (\$1 million minimum budget; one - half hour shows and other exclusions apply.</p>	<p>A "qualified motion picture" must meet the following conditions:</p> <ol style="list-style-type: none"> <li>1) 75% test= Production days or total production budget in California</li> <li>2) Principal photography must commence no later than 180 days after application approval</li> <li>3) Postproduction completed within 30 months of receiving tax credit application approval</li> <li>4) Registration of copyright for the motion picture with US Copyright Office.</li> </ol>

<sup>171</sup> LAEDC, 2009-2010 Mid Year Update Economic Forecast and Industry Outlook 70, (July 2009).

<sup>172</sup> Sam Thielman & Dave McNary, *Runaway Relief?*, DAILY VARIETY (February 20, 2009).

<sup>173</sup> Sam Thielman & Dave McNary, *Runaway Relief?*, DAILY VARIETY (February 20, 2009).

<sup>174</sup> Entertainment Partners, Production Incentives,

[http://www.entertainmentpartners.com/products\\_and\\_services/services/tax\\_incentives/us/ca/](http://www.entertainmentpartners.com/products_and_services/services/tax_incentives/us/ca/) (last visited May 16, 2009); California Film Incentive Power Point Presentation |Screen Actors Guild, <http://www.sag.org/california-film-incentive-power-point-presentation> (last visited May 16, 2009).

<sup>175</sup> The following types of production are not eligible for California's incentives: Commercials, awards, reality shows, music videos, news programs, current events or shows, productions that solicit funds, student films, industrial films, public affairs programs, talk shows, game shows, clip based programming (more than 50% of content is comprised of licensed footage), documentaries, sporting events, variety half hour episodic tv shows (sitcoms) programs, daytime dramas, adult films. California Film Incentive Power Point Presentation |Screen Actors Guild, <http://www.sag.org/california-film-incentive-power-point-presentation> (last visited May 16, 2009).

25% Tax Credit for “qualified motion pictures.	<p>A television series, without regard to episode length, that filmed all of its prior season or seasons outside of California.</p> <p>An "independent film" \$1 million – \$10 million budget that is produced by a company that is not publicly traded and that publicly traded companies do not own more than 25% of the producing company.</p>	<p>"Qualified expenditures" are amounts expenditures paid or incurred for the purchase or lease of tangible personal property and qualified wages for services performed in California.</p> <p>Above the Line wages are not qualified expenditures: writers, directors, music directors, music composers, music supervisors, producers and actors, other than background actors.</p>
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The incentive has not impressed everyone. A May 2009 commentary in *The Hollywood Reporter* by entertainment and tax attorney Schuyler M. Moore pointed out some of the problems with the California’s film incentive:

There is still so much production in California that the state can't compete on equal footing in this tax-credit flea market, as even a modest credit applied to the massive remaining production in California would tip it into bankruptcy. The best the state can do is pretend to compete, which is why it recently passed an anemic, deferred-production tax credit that looks good in news stories but in practice is a paper tiger. And in most cases, the credit is unusable because it is not refundable and generally can only be used against the production company's California tax liability, which often is zero. Even when the credit can be used, it is deferred until 2011, and given California's history of "gotcha!" tax changes and its current fiscal problems, it would not be surprising if California deferred further use of the tax credit ‘for a little longer. ...’<sup>176</sup>

Moore’s analysis was prescient, if not understated. Shortly after the incentive passed, producers of “Deal or No Deal”, the popular syndicated game show hosted by Howie Mandel, announced they were shifting production from Culver City, California, to Stamford, Connecticut, a state which offers a 30% production tax credit.<sup>177</sup> Under California’s tax incentive program, only television series that are new or that had previously shot in other states are eligible. Thus, “Deal or No Deal”, which filmed in Culver City since it aired in 2005, was ineligible for the incentive and “most” of the 250 people who work on the show “will lose their jobs.”<sup>178</sup> This begs the question: would the show have stayed in California *had* it qualified for the incentive?

<sup>176</sup> Schuyler M. Moore, *Commentary: Could Federal Tax Credit End Economic War Among States?*, THE HOLLYWOOD REPORTER, May 29, 2009.

<sup>177</sup> Richard Verrier, *Deal or No Deal’ Production is Shifting to Connecticut*, LOS ANGELES TIMES, May 2, 2009.

<sup>178</sup> *Id.*

Moore does not think California should pass more generous incentives, however. Instead, Moore thinks the federal government needs to intervene, a position this author supports.

Discussion of such a federal solution is discussed in Part Five.

California's film and television tax incentive program is not as generous or comprehensive as other states, but it is not insignificant. In fact, it may turn out that California's incentives do not have to be as competitive because the state has a tremendous home-field advantage, namely Hollywood.<sup>179</sup> The major studios have much, if not all, of their corporate operations in the greater Los Angeles area and maintain studios and production facilities not only in California, but concentrated in Los Angeles and Southern California. Indeed, Hollywood's infrastructure advantage is overwhelming. In 2002, 69% of all digital and visual effects firms in the entire U.S. were located in Southern California.<sup>180</sup> In terms production space, soundstages and studio facilities in Los Angeles had a combined square footage of 5,049,000 in 2005.<sup>181</sup> That's more space than New York, Chicago, Orlando, Vancouver and Toronto combined.<sup>182</sup>

Because California has such a massive infrastructure system in place, it attracts the most talented workers in the professions servicing the motion picture industry, talented and veteran production crews with decades of experience. Veteran actor Kirk Douglas said, "My recollection is that no crew was as good as a Hollywood crew, no matter where they were.

There's no argument that it's much easier to shoot a movie here."<sup>183</sup>

With Hollywood's infrastructure, arguably the most skilled laborers in the motion picture industry, the desire by many stars, producers and executives to stay close to home now combined

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<sup>179</sup> Hollywood is frequently used as the moniker for Los Angeles County or Southern California, as most of the major studios are not literally in the City of Hollywood anymore. Only Paramount is based in Hollywood. Walt Disney and Warner Brothers are in Burbank, Sony is in Culver City and Universal is in Universal City.

<sup>180</sup> ALLEN J. SCOTT, *ON HOLLYWOOD* 105 (2005).

<sup>181</sup> ALLEN J. SCOTT, *ON HOLLYWOOD* 84 (2005).

<sup>182</sup> *Id.*

<sup>183</sup> Todd Longwell, *Runaway Production Part of Industry History*, *THE HOLLYWOOD REPORTER*, October 30, 2008.

with an incentive scheme, however meager in place, there is the potential for California to “reverse more than a decade of runaway production.”<sup>184</sup>

## B. Massachusetts

### **The Story of How *The Departed*, Departed:**

No state has a more engrossing back story for its film incentive program than Massachusetts. Indeed, the history of the current film incentives is the stuff of movies. Ironically, the history of the incentive program revolves around one of the most highly acclaimed films, thus far, of the 21<sup>st</sup> Century: 2006’s *The Departed*.

Directed by Martin Scorsese, *The Departed* had an all-star cast including Jack Nicholson, Leonardo DiCaprio, Matt Damon, Martin Sheen, Mark Wahlberg and Alec Baldwin. The film reportedly cost \$90 million, a relatively low number made possible, in part, because of voluntary pay cuts by Scorsese and his cast (Dicaprio and Nicholson usually receive \$20 million salaries).<sup>185</sup>

*The Departed* is a movie about organized crime set in South Boston where “the state police force is waging war on Irish-American organized crime.”<sup>186</sup> Even though the film is set in Boston, the majority of the filming took place in New York City.<sup>187</sup> Matt Damon, a Boston native, was unhappy about filming in New York and chided Massachusetts for not having film incentives and, therefore, unable to compete with New York, which did. Damon criticized then-Massachusetts Governor Mitt Romney (R) and the state legislature for failing to enact incentives to compete with New York and keep the production in Boston, which was “losing significant money”:

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<sup>184</sup> Sam Thielman & Dave McNary, *Runaway Relief?*, DAILY VARIETY, February 20, 2009.

<sup>185</sup> Phone Interview with executive producer Roy Lee (September 28, 2006).

<sup>186</sup> *The Departed* (2006) - Plot summary, <http://www.imdb.com/title/tt0407887/plotsummary> (last visited May 28, 2009)..

<sup>187</sup> *The Departed* (2006) - Filming locations, <http://www.imdb.com/title/tt0407887/locations> (last visited May 28, 2009).

They just haven't figured it out in Massachusetts...It's got to be Gov. Mitt Romney. These guys have to come through and understand that they're losing significant money because things don't come to Boston a lot.

Here's Scorsese, he's in this 'Let's keep filming in America' battle, then they looked at the prices in Boston and New York was cheaper. Classically the most expensive place to shoot, New York, was cheaper than Boston.<sup>188</sup>

Damon was correct; films did not “come to Boston a lot.”<sup>189</sup> From 2000 to 2004, just two films (*What's the Worst that Could Happen* and *Mystic River*), accounted for more weeks of shooting than all other studio features combined for the same period.<sup>190</sup>

The genesis of Massachusetts' runaway production problem can be blamed, in part, on unionized labor in the state; ironically, the workers runaway production affects most. Specifically at fault was the local Teamsters Union, which often clashed with filmmakers in the state.

In 1994, then-Massachusetts Governor William Weld (R), appointed Robin Dawson as the Executive Director of the Massachusetts Film Commission.<sup>191</sup> From 1994 to 2000, Dawson record of achievements was impressive. Dawson helped increase the economic impact from film production in the state by 1500% and film production spending in Massachusetts increased from \$5 million (1994) to over \$73 million (2000).<sup>192</sup>

Unfortunately for Dawson, success was outweighed by politics. According to Peter Morin<sup>193</sup> “the path to political success can be treacherous” in Massachusetts:

But while Dawson appeared to be having success on the Hollywood end of her job, those that worked with her on Beacon Hill had difficulty with her personality,

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<sup>188</sup> Gayle Fee and Laura Raposa, *Film Office Feud Taxing to Hollywood*, THE BOSTON HERALD, April 4, 2005.

<sup>189</sup> Id.

<sup>190</sup> Robert Laubacher, *Lens on the Bay State: Motion Picture Production in Massachusetts*, Alliance for Independent Motion Media, May 2006 at 29.

<sup>191</sup> Talking with Robin Dawson of the Massachusetts Film Office, 1/00 | NewEnglandFilm.com, <http://www.newenglandfilm.com/news/archives/00january/dawson.htm> (last visited May 28, 2009).

<sup>192</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>193</sup> Attorney Peter Morin is a former Massachusetts State Representative and the creator and writer for his “Wave Maker blog.” (PointofLaw.com | PointOfLaw Columns: Time for Payee Notification, <http://www.pointoflaw.com/columns/archives/003005.php> (last visited May 28, 2009).

and she accumulated widespread and significant antipathy. This is the downfall of many a good worker who must inevitably rely on relationships "*in the building*" for survival. And I refrain from laying blame on any party. High places in government are frequently inhabited by large egos and/or small minds, and I have marveled more than once at the aptitude for chicanery that is present in all altitudes of intelligence. The path to political success can be treacherous indeed.<sup>194</sup>

According to Morin, the union was “difficult to work with”:

Reportedly, she [Dawson] had been receiving information from people in the film business all along that the local Teamsters union was "exceedingly difficult to work with" (my words, in what can only be called understatement). Hard as that is to believe, she apparently found it significant enough to attempt to warn her bosses, Governor Weld, and then Governor Cellucci, of the problems.<sup>195</sup>

After she received complaints from film producers of so-called “strong arm” tactics by local unions headed by George Cashman, then-President Teamsters Local 25, Dawson wrote letters to then-Governor Cellucci on the negative effects of union activities and the danger of losing future film production.<sup>196</sup> Teamsters Local 25 handled all negotiations with studios and filmmakers shooting in Massachusetts, Maine, New Hampshire and Vermont.<sup>197</sup> Needless to say, the Cashman and the Teamsters Union had tremendous influence in the region.

Cashman, however, was a strong political ally of Governor Cellucci and Dawson’s complaints went unaddressed.<sup>198</sup> Governor Cellucci was interested in luring more production to Massachusetts and went on “trade missions to Hollywood” to make his pitch.<sup>199</sup> Accompanying Cellucci on his Hollywood trips was Louis DiGiampaolo, Local 25 treasurer/negotiator and one

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<sup>194</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>195</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>196</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>197</sup> Denise Lavoie, *Teamsters chief pleads guilty to conspiracy charges in deal with prosecutors*, ASSOCIATED PRESS, April 25, 2003.

<sup>198</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>199</sup> National Legal and Policy Center, *Film Industry has Massachusetts Local Probed*, 03\_17.htm, [http://archive.nlpc.org/olap/UCU2/03\\_17\\_04.htm](http://archive.nlpc.org/olap/UCU2/03_17_04.htm) (last visited May 29, 2009).

of Cashman's confidants.<sup>200</sup> According to Morin, even though the Governors Weld and Cellucci did not listen to Dawson, "the feds sure did":

By the beginning of 2000, the U. S. Attorney's office and the Labor Department's Office of Labor Racketeering were investigating allegations of shakedowns. In what must have been the least pleasant of experiences, Dawson was called to testify before that Grand Jury sometime during the beginning of 2002.<sup>201</sup>

DiGiampaolo was a target during the investigation because of allegations he "threatened to shut down film and TV commercial productions unless they did business with Local 25."<sup>202</sup>

Complicating matters for Dawson were lunches she had with individuals the U.S. Attorney's office planned to interview for its investigation into the unions. Dawson paid for those lunches with her state-issued credit card.<sup>203</sup> Dawson was pressured to divulge the names of the people she had lunch with, but was advised not to by the U.S. Attorney's office.<sup>204</sup> In 2001, Cellucci resigned to become the U.S. Ambassador to Canada at the appointment of President George W. Bush.<sup>205</sup> Jane Swift, then Lt. Governor (R), was elevated to acting Governor. According to Morin, Governor Swift attempted to fire Dawson in March 2002 for misuse of her state credit card, but was prevented from doing so by the U.S. Attorney:

When she [Dawson] refused to identify the names of the people she ate with, Governor Swift tried to fire her for misusing the credit card, and "someone" leaked the story to the press. While the U. S. Attorney's office intervened and

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<sup>200</sup> National Legal and Policy Center, *Film Industry has Massachusetts Local Probed*, 03\_17.htm, [http://archive.nlpc.org/olap/UCU2/03\\_17\\_04.htm](http://archive.nlpc.org/olap/UCU2/03_17_04.htm) (last visited May 29, 2009).

<sup>201</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>202</sup> National Legal and Policy Center, *Film Industry has Massachusetts Local Probed*, 03\_17.htm, [http://archive.nlpc.org/olap/UCU2/03\\_17\\_04.htm](http://archive.nlpc.org/olap/UCU2/03_17_04.htm) (last visited May 29, 2009).

<sup>203</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>204</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, *Wave Maker: Bare Knuckles In the Limelight*, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>205</sup> The Embassy of the U.S.A., Ottawa - Embassy Ottawa, [http://ottawa.usembassy.gov/content/textonly.asp?section=embconsul&document=cellucci\\_biography](http://ottawa.usembassy.gov/content/textonly.asp?section=embconsul&document=cellucci_biography) (last visited May 29, 2009).

saved her job (for the moment), Dawson was now identified in the press as a Grand Jury witness.<sup>206</sup>

The investigation focused on allegations Teamsters Local 25 “extorted Hollywood producers who filmed a series of box-office hits throughout New England.”<sup>207</sup> Specifically, the FBI was investigating allegations that “local bosses” forced movie producers to hire a Boston-based company called Local Connection.<sup>208</sup> Local Connection provided “wardrobe trailers and other vehicles” and was “allegedly controlled by James P. Flynn, the local's transportation coordinator.”<sup>209</sup> The FBI received information that “bosses extorted favors from movie producers and forced them to hire a small group of hand-selected drivers many of whom are criminals and/or have alleged connections to the Patriarca organized crime family in Rhode Island.”<sup>210</sup>

In June 2000, records regarding Teamster Local 25's contracts with filmmakers behind movies filmed in Massachusetts such as *The Perfect Storm*, *The Cider House Rules*, *Message in a Bottle*, and *Good Will Hunting*.<sup>211</sup> That James Flynn had cameo appearances in the latter two seemed more than a coincidence.<sup>212</sup>

In January 2002, Cashman resigned his board member position with the Massachusetts Port Authority Board (a position he was appointed to by Governor Weld and again by Governor Cellucci), after being indicted on 175 counts of bribery and fraud.<sup>213</sup> Specifically, the allegations included:

shaking down movie and television producers in exchange for labor peace. Members of Local 25's movie crew allegedly padded overtime expenses, forced producers to lease member-owned equipment at inflated rates and threatened and

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<sup>206</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, Wave Maker: Bare Knuckles In the Limelight, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>207</sup> National Legal and Policy Center, *Film Industry has Massachusetts Local Probed*, 03\_17.htm, [http://archive.nlpc.org/olap/UCU2/03\\_17\\_04.htm](http://archive.nlpc.org/olap/UCU2/03_17_04.htm) (last visited May 29, 2009).

<sup>208</sup> *Id.*

<sup>209</sup> National Legal and Policy Center, *Film Industry has Massachusetts Local Probed*, 03\_17.htm, [http://archive.nlpc.org/olap/UCU2/03\\_17\\_04.htm](http://archive.nlpc.org/olap/UCU2/03_17_04.htm) (last visited May 29, 2009).

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

intimidated other rival union members and crew. In one instance, Cashman allegedly approved the beating of a female snack truck driver who refused to turn her concession contract over to a Local 25 member on the set of the movie 'What's the Worst That Could Happen?'<sup>214</sup>

In April 2003, Cashman plead guilty on two conspiracy charges after striking a deal with federal prosecutors.<sup>215</sup> As a result of the conviction, Cashman lost his position with the Teamsters Union, where he said "I believe that I've made a difference."<sup>216</sup>

Even though Governor Swift was prevented from firing Dawson, the story was "leaked" to the press and Dawson was identified as a grand jury witness which, predictably, compromised her safety.<sup>217</sup> Thus, on March 22, 2002, Dawson received death threats because of her role in the investigation; that night, Dawson attended an "Oscar party" to benefit victims' families of the 9-11 Attacks at the Four Seasons hotel in Boston and the hotel "beefed up security because of the threat."<sup>218</sup> After the death threat, Dawson was offered a "safe house" to stay in for her protection.<sup>219</sup>

Just four months after Dawson's life was threatened, the "third shoe dropped," according to Morin:

As the Commonwealth fell into a precipitous budget abyss, budget writers looked for targets, and found one in the Mass Film Office. Four months after Dawson's life had been threatened as a result of her cooperation with a federal Grand Jury investigating union corruption in the movie business in Massachusetts, legislative budget writers eliminated the Film Office. And there was no one fighting to keep it.<sup>220</sup>

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<sup>214</sup> *Id.*

<sup>215</sup> Denise Lavoie, *Teamsters chief pleads guilty to conspiracy charges in deal with prosecutors*, ASSOCIATED PRESS, April 25, 2003.

<sup>216</sup> *Id.*

<sup>217</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, Wave Maker: Bare Knuckles In the Limelight, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>218</sup> National Legal and Policy Center, *Death Threats Alleged in Connection to Racketeering Probe of Boston Local, Union Corruption Update 5.7*, [http://archive.nlpc.org/olap/UCU3/05\\_07\\_24.htm](http://archive.nlpc.org/olap/UCU3/05_07_24.htm) (last visited May 29, 2009).

<sup>219</sup> National Legal and Policy Center, *Death Threats Alleged in Connection to Racketeering Probe of Boston Local, Union Corruption Update 5.7*, [http://archive.nlpc.org/olap/UCU3/05\\_07\\_24.htm](http://archive.nlpc.org/olap/UCU3/05_07_24.htm) (last visited May 29, 2009).

<sup>220</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, Wave Maker: Bare Knuckles In the Limelight, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

The Massachusetts Film Office was officially shut down in July 2002. Undaunted, one month later, Dawson created the Massachusetts Film Bureau, “a private, nonprofit organization supported by local businesses.”<sup>221</sup> In 2004, Dawson’s film bureau was credited with generating \$112 million in production spending in the state and was ranked number three on *MovieMaker Magazine*’s annual “10 Best Cities to be a MovieMaker.”<sup>222</sup>

Dawson’s time in the limelight did not last long, however. In 2003, Marc Drago, who worked for the Massachusetts Sports Commission, “succeeded in getting the Legislature to expand the Commission’s mission to include all entertainment -- including movies.”<sup>223</sup> In November 2004, Drago was named Vice President/Executive Director of Film and Entertainment and was praised by Governor Mitt Romney.<sup>224</sup> One of the mandates of Drago’s new position was to lure film production to the state, something Dawson was already doing for the City of Boston with her private venture. In sum, Massachusetts had two film commissions, Drago headed the official state-funded office and Dawson, who had deep Hollywood ties, had hers.

Which of the two offices that had the state’s “blessing” was unclear; the state funded Drago’s office with \$450,000, but also appropriated \$5,000 for Dawson’s non-profit commission.<sup>225</sup> Once again, Massachusetts film policy was overshadowed by politics, according to Boston Globe reporter Joanna Weiss, who asked “How else to explain how a state could have two offices aimed at attracting major motion pictures, each claiming to be the legitimate one?”<sup>226</sup> According to Weiss:

Both [Dawson and Drago] are helmed by veterans of the Weld and Cellucci administrations. Both have champions on Beacon Hill. Both have been engaged in a months-long exchange of name-dropping and dirt-dropping, complete with leaks

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<sup>221</sup> James L. Menzie, *10 Best Cities to be a Moviemaker*, MOVIE MAKER MAGAZINE (February 2, 2002).

<sup>222</sup> James L. Menzie, *10 Best Cities to be a Moviemaker*, MOVIE MAKER MAGAZINE (February 2, 2002).

<sup>223</sup> Posted by: Wave Maker/12:06 PM/ postCount('111265252814163395'); Comment (1, Wave Maker: Bare Knuckles In the Limelight, [http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight\\_06.html](http://screenshotblog.blogspot.com/2005/04/bare-knuckles-in-limelight_06.html) (last visited May 28, 2009).

<sup>224</sup> *Id.*

<sup>225</sup> Joanna Weiss, *Lights, camera, politics*, THE BOSTON GLOBE, May 3, 2005.

<sup>226</sup> *Id.*

and legal threats. The fight has made it to the film industry press; Daily Variety's headline was "Mass Pix Confusion."<sup>227</sup>

The “confusion” may have cost the state dearly. At stake when the Dawson-Drago feud made headlines was Scorsese’s *The Departed*. The film is quintessentially Boston, the city itself is a character in the film. No one argued Boston was where the film *should* be shot, the problem was whether it *could* be shot in Boston. Since Massachusetts did not have state tax incentives at that time, most of the production went to New York, where it qualified for that state’s film incentives.

The tragedy is that Massachusetts had a window to pass an incentive package and prevent *The Departed*—from departing. In 2005, there were two tax incentive bills pending before the Massachusetts Legislature, but “insiders” said neither incentive bill would pass while the Dawson-Drago confusion remained.<sup>228</sup>

Scorsese sent staff members to Boston to inquire about shooting *The Departed* in the city it takes place.<sup>229</sup> Dawson was the first person to speak with Scorsese’s staff about area hotels and parking, but Drago accompanied Scorsese around the city to scout locations.<sup>230</sup> Predictably, things turned ugly and Dawson’s supporters entered the fray to tout her Hollywood connections. Dawson’s twin sister, for example, was an executive at NBC.<sup>231</sup> Charlie Harrington, a Los Angeles based location manager said Dawson was “the best film commissioner in the country.”<sup>232</sup>

Perhaps Dawson’s biggest backer was Matt Damon. Damon was critical of Massachusetts’ willingness to compete for film production and said “Entertainment-wise, we're

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<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

like Third World on the state level. We just don't get it. We've got to get on the stick or we're just not even going to be in the business.”<sup>233</sup>

Damon was furious about allowing a Tom Hanks-produced series on John Adams to shoot in Virginia:

I mean, it's a John Adams movie and we're losing it, Maybe part of it is arrogance, because we think there's only one Boston and if your movie takes place in Boston then you have to shoot it here. But the reality is you can find practical locations anywhere that can double as anything, and people will never know.<sup>234</sup>

With respect to Drago, Damon said:

I don't even know that other guy. 'My personal opinion is you stick with somebody who knows the business and knows the people, somebody who's worked with all the A-list directors who've come in the last eight or nine years. That's who everyone in town knows to call.’<sup>235</sup>

And that person, Damon opined, was Dawson. Damon’s comments did not phase Drago, who released a statement that praised Damon:

As the state's official liaison to the film industry, we are always encouraged when one of our hometown stars expresses interest in filming in the Commonwealth. We are glad that Matt had a great experience when he filmed 'Good Will Hunting' here 10 years ago. Adam Sandler told me [Damon] was a wonderful person to work with and we look forward to working with Matt soon on 'The Departed.’<sup>236</sup>

After Cashman’s conviction, “most major studio heads vowed to never again do business in Boston,” according to *The Boston Herald*.<sup>237</sup> Damon rejected that notion, claiming the union had changed, and said the biggest problem<sup>238</sup> for Massachusetts was that it lacked film incentives

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<sup>233</sup> Janice Page, *Matt Damon: Mass. Is failing in film industry*, THE BOSTON GLOBE, March 31, 2005.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> Dave Wedge, *Boston Teamsters have a long, sordid history*, THE BOSTON HERALD, December 9, 2008.

<sup>238</sup> Damon turned out to be right, according to *The Boston Herald*: “Gov. Deval Patrick lured back the industry with generous tax breaks, resulting in several recent big-budget productions, including Martin Scorsese's ‘‘Ashecliffe,’’ the Bruce Willis cop drama ‘‘The Surrogates’’ and ‘‘Edge of Darkness,’’ starring Mel Gibson.” Dave Wedge, *Boston Teamsters have a long, sordid history*, THE BOSTON HERALD, December 9, 2008.

and said “It's a matter of [Governor] Romney and the legislators getting together and pulling the trigger on it.”<sup>239</sup>

In March 2005, Dawson sent a letter to Governor Romney, in which she accused Drago of “threatening to use political influence to bully filmmaker Martin Scorsese’s production executives into dealing exclusively with him.”<sup>240</sup> Dawson said Drago threatened to block Martin Scorsese’s film from permits needed from the city of Boston to shoot in the city.<sup>241</sup> A spokesperson for Drago at the Massachusetts Sports and Entertainment Commission said Dawson’s allegations were baseless.<sup>242</sup> Mac Brown, one of *The Departed*’s producers, said he was unaware of the allegations in Dawson’s letter.<sup>243</sup>

Dawson claimed, “Drago's negligent actions have just seriously jeopardized a \$100 million production for the Commonwealth, and that *The Departed* and *John Adams* were “just two examples of projects that have been compromised by his [Drago] unprofessional behavior.”<sup>244</sup>

The bickering ran out of steam, as *The Departed*, departed for New York. For unknown reasons, Drago was dismissed from his position the Massachusetts Sports and Entertainment Commission (MSEC) in fall 2006.<sup>245</sup> Shortly after Drago was fired, MSEC “came to an understanding with Dawson,” who was then-head the Boston Film Festival. In 2006, MSEC eliminated the position held by Drago (Vice President and Executive Director of Film and Entertainment) and Massachusetts created the Massachusetts Film Office (MFO), which operates

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<sup>239</sup> Janice Page, *Matt Damon: Mass. Is failing in film industry*, THE BOSTON GLOBE, March 31, 2005.

<sup>240</sup> Frank Phillips, *State Official Accused of Threatening Film Program*, THE BOSTON GLOBE, March 30, 2005.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> Daniel Kimmel, *Paleologos to run Mass. Film Office*, VARIETY, January 29, 2007.

under the MSEC umbrella.<sup>246</sup> Dawson agreed to advise the new film office and, in March 2007, Dawson's Massachusetts Film Bureau was rolled into the new film office.<sup>247</sup>

In January 2007, Nicholas Paleologos, a former Massachusetts state legislator who had served as producer or executive producer on several films was named Executive Director of the MFO.<sup>248</sup> Richard Krezwick, the head of MSEC, praised Dawson for all of the assistance she had provided.<sup>249</sup> In October 2007, Dawson joined Twin Lights Entertainment and is currently a producer with the company, in addition to her duties as Executive Director of the Boston Film Festival.<sup>250</sup> In 2009, Dawson was a producer on *The Ride*, a film in preproduction scheduled to shoot exclusively in Boston.<sup>251</sup>

While Dawson earned her happy ending, the real victim in failing to host production of *The Departed* was the state. Sadly, Massachusetts acted too late to keep *The Departed* from filming primarily in New York and just 7% of the film's budget was spent in Massachusetts.<sup>252</sup> The film won four Oscars at the 2007 Academy Awards, including best picture and best director.<sup>253</sup>

### **Massachusetts post *The Departed* Film Incentive**

After Massachusetts passed production incentives in 2006, several productions were quickly lured to the state and spent 50-percent or more of their budgets in state.<sup>254</sup> In 2007,

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<sup>246</sup> *Id.*

<sup>247</sup> Robin Dawson - LinkedIn, <http://www.linkedin.com/pub/robin-dawson/10/185/300> (last visited May 30, 2009); Daniel Kimmel, *Paleologos to run Mass. Film Office*, VARIETY, January 29, 2007.

<sup>248</sup> Daniel Kimmel, *Paleologos to run Mass. Film Office*, VARIETY, January 29, 2007.

<sup>249</sup> *Id.*

<sup>250</sup> Robin Dawson - LinkedIn, <http://www.linkedin.com/pub/robin-dawson/10/185/300> (last visited May 30, 2009).

<sup>251</sup> Robin Dawson (I), <http://www.imdb.com/name/nm0206252/> (last visited May 30, 2009); *The Ride* (2009) - Filming locations, <http://www.imdb.com/title/tt1241245/locations> (last visited May 30, 2009).

<sup>252</sup> Leslie Brokaw, *The year of filming profitably; Movie boom of 2007 enriched Commonwealth with dollars, jobs*, THE BOSON GLOBE, December 2, 2007.

<sup>253</sup> *The Departed* (2006), <http://www.imdb.com/title/tt0407887/> (last visited May 30, 2009).

<sup>254</sup> Leslie Brokaw, *The year of filming profitably; Movie boom of 2007 enriched Commonwealth with dollars, jobs*, THE BOSON GLOBE, December 2, 2007.

Massachusetts amended the program to eliminate a \$7 million per project cap on the film credits.<sup>255</sup>

**Table 9: Overview of Massachusetts film incentive**<sup>256</sup>

Incentive	Eligible Production	Additional Information
Income tax credit equal to 25% of the total in-state spend.	Eligible if at least 50% of the movie is shot in-state or more than half the production budget is spent in-state.  Filmmakers may choose to receive the credit as a rebate, equal to 90% of the face value (guaranteed and rebated by the state), or the credit may be transferred or sold at the current market rate.  Production insurance, workers compensation and completion bond are not qualified expenses.	Minimum spend is only \$50,000.  Cast and crew from out of the state qualify.  There is no statewide, talent or production cap.
25% of payroll in the state	The payroll credit is equal to 25% of the total payroll that is sourced to Massachusetts, when production costs exceed \$50,000 for the taxable year.  For purposes of the payroll credit, total payroll does not include any portion of the salary of any employee whose salary is equal to or greater than \$1,000,000.	
The production spend credit is equal to 25% of all Massachusetts production expenses (not including the payroll expenses included in the labor credit).	Eligible if total production costs incurred in Massachusetts exceed \$50,000 for the taxable year, and either the Massachusetts production expenses are more than 50% of the total budgeted production costs, or at least 50% of the total principal photography days take place in Massachusetts.  For purposes of the production credit, the entire amount of each salary that is equal to or greater than \$1,000,000 may be used to calculate the production credit (if the entire salary was not included in the payroll credit).	

From 1999-2005, before Massachusetts enacted film incentives, just ten films shot in the state and spent a combined total \$67 million in state.<sup>257</sup> From 2006-2008, 23 films shot in

<sup>255</sup> The Incentives Office, *The Guide to United States Production Incentives 21-22*, Winter 2009

<sup>256</sup> The Incentives Office, *The Guide to United States Production Incentives 21-22*, Winter 2009; Entertainment Partners, Production Incentives, [http://www.entertainmentpartners.com/products\\_and\\_services/services/tax\\_incentives/us/ca/](http://www.entertainmentpartners.com/products_and_services/services/tax_incentives/us/ca/) (last visited May 16, 2009); California Film Incentive Power Point Presentation |Screen Actors Guild, <http://www.sag.org/california-film-incentive-power-point-presentation> (last visited May 16, 2009).

<sup>257</sup> MFO Magazine, Dollars & Sense, Spring 2009 Issue, Available at <http://www.mafilm.org/> (last visited May 30, 2009).

Massachusetts and their combined in state spending was \$545 million.<sup>258</sup> In the two years after the incentive was introduced, Massachusetts saw 713%, or eight times more, production spending in the state than it had in the seven-year period before the incentives.

**Table 10:**<sup>259</sup> **Production Spending and Activity in Massachusetts 2005-2008**

Year	No. of Projects	Direct Spending in Massachusetts
2005	1	\$6 million
2006	2	\$61 million
2007	8	\$125 million
2008	13	\$359 million

In March 2008, the Massachusetts' Department of Revenue (DOR) released a report on the "film industry tax incentives," which showed the total number of productions (i.e. all productions, not just "major productions" touted by the MFO) shot in the state that had either claimed or would be eligible for the film tax credits was approximately 88, with end dates between 2006 and 2008.<sup>260</sup> Forty-seven of the 88 productions that filed "film credit applications" received a total credit value of \$17.5 million.<sup>261</sup> The remaining 41 productions must have had much higher cost estimates than the other 47, because DOR estimated the remaining 41 productions would "qualify for \$116.4 million in tax credits, bringing total tax credits for the 2006-2008 period to \$133.9 million."<sup>262</sup> Regarding "tax revenue foregone" DOR stated:

DOR estimates that total tax credits for film productions from calendar years 2006 to 2008 will be \$135.7 million, and tax benefits from sales tax exemptions will be between \$1.9 million and \$2.9 million, for total tax revenue forgone of \$137.7 million to \$138.7 million.<sup>263</sup>

<sup>258</sup> *Id.* The MFO claims 26 films shot in the state, but two of them were television pilots and one was a feature film that shot primarily in Australia.

<sup>259</sup> Massachusetts Film Office, <http://www.mafilm.org> (last visited June 30, 2009).

<sup>260</sup> Department of Revenue, A Report on The Massachusetts Film Industry Tax Incentives 5-6, March 2008.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

The DOR report did, however, admit some of the cost would be offset by tax revenue from economic activity related to film production, but did not offer an estimate. The report was somewhat reluctant to attribute such economic activity to the incentives, as some production would occur “even without the tax incentives.”<sup>264</sup> However, the report said “most of the additional tax revenue generated by large budget motion pictures should be seen as the result of new economic activity.”<sup>265</sup>

The DOR report concluded with the following caveat:

On the other hand, any estimate of the net economic and tax revenue impact of tax incentives needs to take into account the reduction in state government spending that occurs as a result of decreased tax revenue available for state programs, as well as other factors, such as how much in wages is paid to nonresident employees who spend that income in other states, rather than in Massachusetts.<sup>266</sup>

In March 2009, two Massachusetts State Representatives, John Keenan and Brian Wallace, responded to the DOR report and praised the film incentive program; the two lawmakers said the “cost of the film tax credit is only 14 cents for each new dollar generated in the state's economy by the film industry.”<sup>267</sup> Moreover, the editorial claimed that \$500 million of “private investment” was “likely to be generated” from the construction of several new “proposed sound stages.”<sup>268</sup> According to Keenan and Wallace, “the benefits to the local economy far outweigh the costs... It means creating private sector jobs with private sector pension and health care benefits at a cost of pennies on the dollar.”<sup>269</sup> Keenan and Wallace attempted to counter any argument the state could not afford the film incentives:

The question, therefore - especially now - is not whether we can afford the film tax credit. The question is, can we afford to lose the jobs and revenue the film tax credit has brought to Massachusetts.<sup>270</sup>

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<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

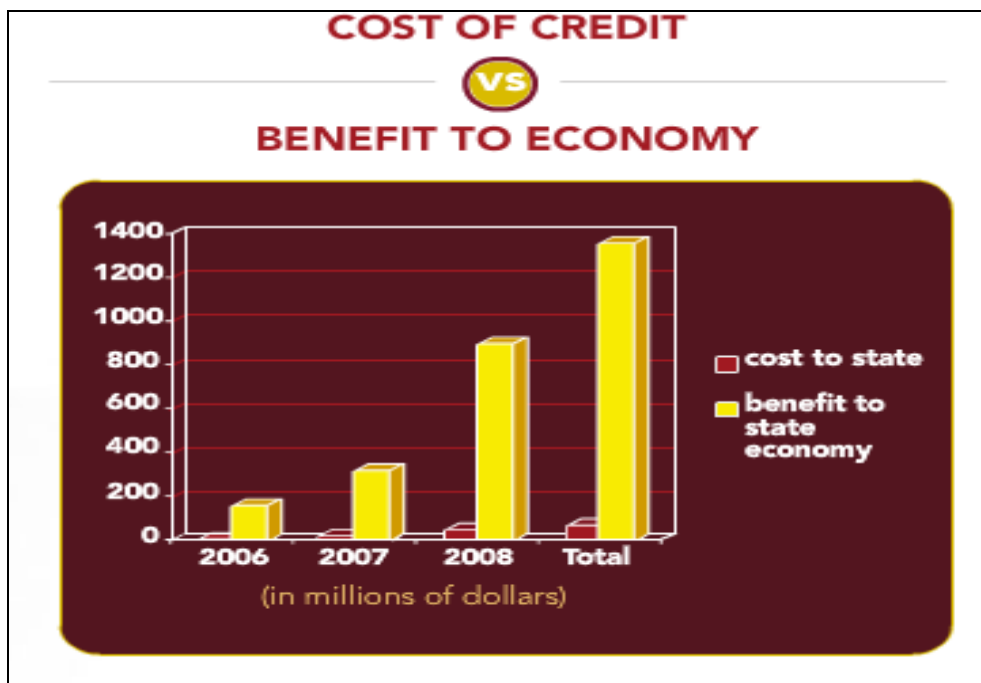
<sup>267</sup> John Keenan and Brian Wallace, *Editorial: The show must go on*, THE BOSTON HERALD, March 21, 2009.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

According to the MFO, the \$545 million spent on film productions in Massachusetts from 2006-2008 had an economic impact of \$1.36 billion.<sup>271</sup> Further, the MFO claims for every 5-cents the state spends on the incentives, the benefit to the state economy is \$1.<sup>272</sup> The MFO's 5-cent number is less than half of the 14-cent number Keenan and Wallace arrived at. The MFO released the following chart,<sup>273</sup> which shows the cost of the film credits and the economic impact they had on the state from 2006-2008:



There is a problem of bias. The MFO is more likely to be biased in favor of the incentives, because the office depends on them to keep its doors open. MFO Executive Director Nicholas Paleologos, said there have been about dozen studies on the “pros and cons” of film incentives by “Arthur Anderson, Ernst & Young, Cornell University etc.” in many states.<sup>274</sup> Paleologos only mentioned the studies and failed, however, to say if they were, on balance,

<sup>271</sup> MFO Magazine, Dollars & Sense, Spring 2009 Issue, Available at <http://www.mafilm.org/> (last visited May 30, 2009).

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> Added by The Series on April 15, 2009 at 3:43pm, *The Series Visits the Mass Film Office - Hollywood East TV*, [http://www.hollywoodeasttv.com/video/the-series-visits-the-mass?page=3#comment-2131296\\_Comment\\_100991](http://www.hollywoodeasttv.com/video/the-series-visits-the-mass?page=3#comment-2131296_Comment_100991) (last visited May 31, 2009).

favorable to tax incentives or unfavorable. Instead, Paleologos said “If they were such a crappy idea, somebody would have figured it out by now.”<sup>275</sup> Indeed someone had. Susan Christopherson and Ned Rightor have been researching state film incentives, which can be, in Paleologos words, “crappy ideas”:

Fiscal impact analyses of the impact of film and TV subsidy programs overwhelmingly conclude that the subsidies have a negative impact on state tax revenues, particularly if they take the form of saleable tax credits.<sup>276</sup>

The \$500 million in private spending generated by the construction of sound stages in Massachusetts that Keenan and Wallace mentioned also raises some credibility concerns. Plymouth Rock Studios LLC (PRS), was created by David Kirkpatrick, the former “President of Paramount Pictures” as well as the “first person ever in the motion picture industry to hold two studio production chief jobs simultaneously, when he ran both Walt Disney Studios and Touchstone Studios.”<sup>277</sup> Two other former Paramount executives, Rae Ann Del Pozzo (a senior vice-president of Paramount’s studio operations) and Earl Lestz (the former president of Paramount Studio Group), joined Kirkpatrick as part of the PRS management team.<sup>278</sup>

PRS is moving forward with the construction of a large studio complex built on 240 acres in Plymouth, Massachusetts, which is about 30 minutes from Boston. The company claims PRS will be the “East Coast’s first independent full service production facility and the first movie studio in the world to be all union built.”<sup>279</sup> PRS will also be eco-friendly as “the first LEED® certified studio in the world, and the first built with a smart technology infrastructure.”<sup>280</sup> The studio plans call for 14 sound stages occupying 288,000 square feet of space, a 900 seat theater, a

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<sup>275</sup> Added by The Series on April 15, 2009 at 3:43pm, *The Series Visits the Mass Film Office - Hollywood East TV*, [http://www.hollywoodeasttv.com/video/the-series-visits-the-mass?page=3#comment-2131296\\_Comment\\_100991](http://www.hollywoodeasttv.com/video/the-series-visits-the-mass?page=3#comment-2131296_Comment_100991) (last visited May 31, 2009).

<sup>276</sup> Susan Christopherson and Ned Rightor, *The Creative Economy as ‘Big Business’: Evaluating Sate Strategies to Lure Film Makers 2*, (2009).

<sup>277</sup> Plymouth Rock Studios LLC, Team, <http://plymouthrockstudios.com/team/index.html> (last visited June 30, 2009).

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

cultural center, professional office's, post-production facilities, 25 bungalow houses, a 100 apartments and a 300-room hotel, among other facilities.<sup>281</sup>

A 2008 fiscal impact analysis of PRS found that, based on the space capacity at PRS, “as much as \$400 million in film and television production activity could be supported each year.”<sup>282</sup> However, since total production spending in all of Massachusetts was \$545 million from 2006-2008, “film production in Massachusetts would have to increase exponentially” to achieve \$400 million in production activity annually. Compounding the unrealistic projection of \$400 million in production spending at PRS annually is that it seems to ignore potential competition from other locales with film incentives and the prospect that PRS will take several years to reach profitability:

While Massachusetts has taken important steps to lure movie and television productions, many other states, Canada, and other foreign countries compete for the film industry by offering tax incentives and other economic advantages. It may take several years for PRS to attract enough productions to achieve substantial occupancy of its stage facilities.

[A]chieving a high level of activity on the site will require a significant expansion in the overall level of film and television production in Massachusetts.<sup>283</sup>

Film industry insiders in Massachusetts point out that Christopherson and Rightor's study has bias problems of its own. An April 2009 column in *Commercial Interests*, points out that Christopherson and Rightor's argument that “it is futile for states like Massachusetts to compete for films against New York and Los Angeles” contradicts their earlier work:

the thrust of another study put out by the two researchers back in 2006, when they were hired by New York film industry stakeholders to examine the decline – that's right, decline – of the Empire State's share of the film and media biz.

The description of the goals of that 2006 study, sponsored by none other than the New York Film, Television and Commercial Initiative, just about says it all: “There is substantial anecdotal evidence that production is decreasing in New

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<sup>281</sup> Community Opportunities Group and Jeffrey Donohoe Associates, Plymouth Rock Studios Economic and Fiscal Impact Analysis 22, October 2008.

<sup>282</sup> *Id.* at 24.

<sup>283</sup> Community Opportunities Group and Jeffrey Donohoe Associates, Plymouth Rock Studios Economic and Fiscal Impact Analysis 4, 26, October 2008.

York, with implications for employment of industry professionals and for the position of the city as a media production center. To ensure and build New York's role in what are now global entertainment and information industries, we need to know why the location of production is changing and to devise a policy agenda that places New York at the center of these industries as a primary location for visual media production.<sup>284</sup>

### **Making a Cultural Argument for Incentives in Massachusetts: Does it Matter Where *The Departed* Was Filmed?**

While some might think it was a tragedy for a film as Boston-Centric as *The Departed* to not shoot in the city, but is such a view widely held? Does it matter where the film was made?

According to Boston-based Boston Movie Tours, the answer is no.<sup>285</sup> According to Boston Movie Tours, the definition of a Boston production is:

In general terms, any movie or TV show that depicts Boston is considered a Boston movie, even if it was not shot in Boston. For example, *The Out-of-Towners* (1999) with Steve Martin contains a number of scenes that were supposed to take place in Boston but were filmed elsewhere. We consider that a Boston movie.<sup>286</sup>

A movie can be a Boston movie even if it was not shot there? How then, would *The Departed* hold up, given that it spent at least 7% of its budget in Massachusetts and that it “bleeds Boston” according to Boston Movie Tours founder Jeff Coveney?

I can say it ranks in the top five but time will tell. There are some awesome Boston shots and the movie bleeds Boston. We also see Mr. Boston, Matt Damon along with the Wahlberg brothers. However, I have to subtract some points for the movie being partially shot in New York. Maybe it's because I am a Red Sox fan and hate seeing us lose anything to New York.<sup>287</sup>

I am not so sure the gangsters depicted in the film would agree with Coveney, not to mention members of Teamsters Local 25.

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<sup>284</sup> Scott Van Voorhis, *Lack Of Movie Studio Tax Credits May Make Mass. A Laughingstock. Again*, Commercial Interests April 20, 2009.

<sup>285</sup> [www.bostonmovietours.net](http://www.bostonmovietours.net)

<sup>286</sup> "Defining a Boston Movie " Boston Movie Tours, <http://www.bostonmovietours.net/pages/filmology.htm> (last visited June 1, 2009).

<sup>287</sup> *The Departed*, <http://www.bostonmovietours.net/jeff/Export1/MovieMile/details/6759.html> (last visited May 30, 2009).

### C. Louisiana

Louisiana, unlike Massachusetts, does not have a film incentive history of death threats, organized crime and political battles fought by state lawmakers and celebrities. Louisiana's story, however, is textured, colorful, inspiring and not without a touch of corruption. Since Louisiana enacted its first film incentives in 2002, production in the state increased at breathtaking levels and speed.<sup>288</sup>

The original film tax credit Louisiana passed in 2002 was a 15% production credit for qualified expenditures in the state.<sup>289</sup> In 2005, the production credit was increased to 25% of qualified production expenditures and a 15% infrastructure credit was added to the program and inadvertently increased to 40% (discussed below) later the same year.<sup>290</sup>

Originally, the infrastructure tax credit did not have any spending caps. In 2007, the state legislature amended the film incentive legislation for infrastructure applications filed after August 1, 2007, which would be subject to a \$25 million per-project credit cap. A sunset date for the infrastructure credit was extended from January 2008 to January 2009.<sup>291</sup>

In 2008, Louisiana law makers debated whether to extend and increase the film incentives or allow the production credit to decrease to 20% for applications filed and approved after June 2010 and 15% if filed and approved after June 2012.<sup>292</sup>

June 2009, worried about the explosion of other state's enacting larger, more generous film incentives than Louisiana, the legislature amended the film incentive legislation once again and increased the production credit to 30% of qualified expenditures.

#### **Table 11: Overview Of Louisiana Film Incentive<sup>293</sup>**

<sup>288</sup> ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 1 (February 2009).

<sup>289</sup> ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 85 (February 2009).

<sup>290</sup> ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 85 (February 2009).

<sup>291</sup> ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 86 (February 2009).

<sup>292</sup> ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 86 (February 2009).

<sup>293</sup> The Incentives Office, *The Guide to United States Production Incentives* 18, Winter 2009; Entertainment Partners, Production Incentives,

[http://www.entertainmentpartners.com/products\\_and\\_services/services/tax\\_incentives/us/ca/](http://www.entertainmentpartners.com/products_and_services/services/tax_incentives/us/ca/) (last visited May 16,

Incentive	Eligible Production	Additional Information
<p>Investor Tax Credit of 30% of total production expenditures (including payroll for resident and non-resident labor, except portion of any salary over \$1 million)</p> <p>Payroll to Louisiana residents receives an additional 5% credit. Credits are transferable and can be carried forward for 10 years.</p>	<p>Minimum spend in state must be at least \$300,000.</p> <p>Once the minimum in-state spend threshold of \$300,000 is met) the producer may request that expenditures to date be certified, at which point they may be sold to brokers or private buyers. It is not necessary to complete the film prior to selling certified credits if earned in accordance with Louisiana state law. However, the statute prohibits the transfer of credits before they are certified.</p> <p>An independent CPA, licensed in Louisiana, must audit and certify a production's expenditures before the State will certify credits; each time a production requests certification of expenditures an audit report must be sent to the Office of Entertainment Industry Development.</p> <p>The credit may be used against the Louisiana tax liability of an individual or corporation. The investor may transfer credits to the Office of Entertainment Industry Development for 85 cents on the dollar.</p> <p>Some of the tax credit brokers and local banks will advance funds against the credits. If the credit exceeds the tax liability, it may be carried forward for ten years. Within 30 days of a sale or transfer, both parties must notify the Department of Revenue (DOR) and the Office of Entertainment Industry Development, in writing.</p>	<p>There is o statewide cap on the production credit.</p> <p>All fringes qualify, as do payroll-processing fees paid to a local vendor.</p> <p>Expenditures may be certified twice during the duration of the production, at no charge. Thereafter, there is a fee of \$250 per additional certification.</p>

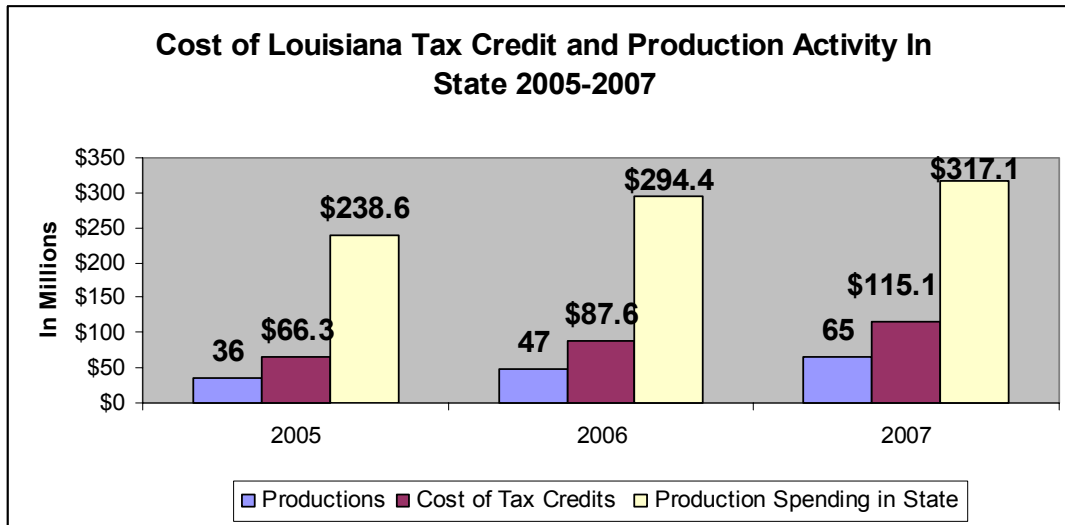
Since the incentives were passed in 2002, a total of 135 films were produced in Louisiana that qualified for the motion picture tax credit.<sup>294</sup> The success of the program, in terms of the amount of money Louisiana spent on tax credits and number of productions and the amount of money they spend in the state is illustrated in Chart 15.<sup>295</sup>

**Chart 15:**

2009); California Film Incentive Power Point Presentation |Screen Actors Guild, <http://www.sag.org/california-film-incentive-power-point-presentation> (last visited May 16, 2009).

<sup>294</sup> ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 31 (February 2009).

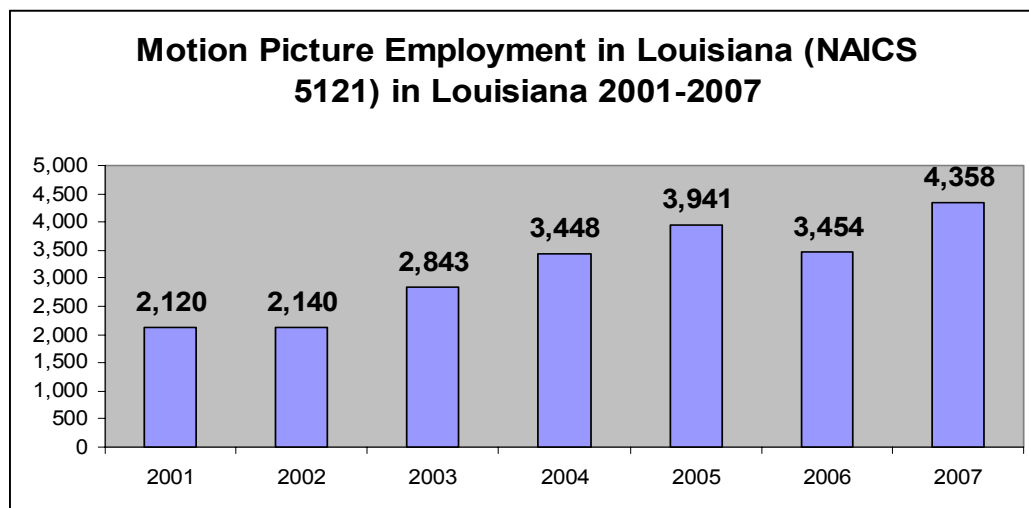
<sup>295</sup> *Id.* at 31-32.



In 2007, when the estimated in-state spending for 8 productions awaiting certification for tax credit is added to the production spending number above, total production spending in Louisiana came to \$429 million and the “total economic benefit to the state of these expenditures was \$763 million.”<sup>296</sup>

Chart 16<sup>297</sup> shows the growth in motion picture employment in Louisiana from 2001 to 2007.

**Chart 16:**



<sup>296</sup> *Id.* at 32. The economic benefit total includes indirect and induced expenditures related to film production.

<sup>297</sup> Bureau of Labor Statistics Data, <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet> (last visited Nov. 10, 2009). The ERA report used a narrower definition of motion picture employment and used NAICS codes 51211, 51212, 51219 and 7115. Using these codes, ERA reported a total of 926 workers in 2001 and 3,056 in 2007. ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 4-5, 31 (February 2009).

Note that in 2003, the first full year after the incentives were enacted in 2002, motion picture employment doubled in Louisiana. When the number of “indirect” and “induced” jobs are added to the total, the number rose to 6,230 in 2007.

Table 12<sup>298</sup> provides a breakdown of the total employment numbers in Louisiana; direct jobs represent BLS numbers (NAICS 512), indirect jobs includes full and part time jobs across all sectors of the economy supported by production spending.

**Table 12:**

<b>Year:</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Direct	1879	2350	2450
Indirect	1110	1390	1450
Induced	540	680	710
Non-Certified	N/A	440	1630
<b>Total:</b>	3520	4850	6230

Louisiana’s film incentives have been successful, if nothing else, in bringing film productions to the state have been overshadowed by some significant problems involving legislative incompetence, corruption by at least one former state employee, and ongoing concerns over the cost of the incentives.

### **Corruption Problem**

Louisiana’s film tax credits are, like most things about the state, unique. Louisiana’s film tax credits can be converted into cash. The holder is able to sell them, often at a discount, to a Louisiana investor who is able to pay local taxes with the credits. Shenanigans were inevitable. It came as no surprise to observers when the FBI announced it was investigating reports of improperly inflated budgets on several productions shooting in the state. Eyebrows were raised when a Kevin Costner film, *Mr. Brooks*, was cleared by the state film office for tax credits just

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<sup>298</sup> ERA, Louisiana Motion Picture, Sound Recording and Digital Media Industries, 33 (February 2009). Induced job numbers are not explained in the report. Non-certified numbers are from productions that did not qualify for Louisiana incentives.

over \$34 million in alleged expenditures, “despite having a stated budget of less than \$20 million.”<sup>299</sup>

The investigation focused on the Louisiana Institute of Film Technology (LIFT) Productions and allegations that it received “improper or excessive credits from the program and bribed Mark Smith, the former head of the Louisiana Film Commission.”<sup>300</sup>

In 2007, LIFT Productions was the largest production company in Louisiana and was responsible for \$250 million worth of production spending in Louisiana over five years.<sup>301</sup>

Before the scandal was uncovered, LIFT Productions was in the process of constructing a 300,000 square-foot production facility that would house soundstages, postproduction facilities, distribution, audio recording and a vocational film school.<sup>302</sup>

During construction, news broke that LIFT’s CEO, Malcolm Petal, was being investigated by the FBI. One reporter quipped: “I didn't want the gossip to be true, turning my sunny New South business piece into another Louisiana cliché.” The problem, the reporter learned, was with Louisiana’s transferable tax credits:

Louisiana's film tax credits can be converted into cash by being resold, usually at a discount, to an investor with local taxes to pay. The Times-Picayune reported in June that the Feds suspect LIFT of inflating production costs on at least two films—including Kevin Costner's *Mr. Brooks*, which was cleared for tax credits based on \$34.1 million in expenditures, despite having a stated budget of less than \$20 million.

Louisiana’s tax credits scheme was problematic from the start. When enacted in 2002, Louisiana’s film incentive program did not require the production expenses be independently

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<sup>299</sup> Anya Kamenetz, *The Short, Shady History of Hollywood South*, Fastcompany.com, December 19, 2007. Available at: <http://www.fastcompany.com/node/60350/print> (last visited June 1, 2009).

<sup>300</sup> Matthew J. Bailey, *Hollywood South: Why Film Credits are Good For Louisiana*,

48 State Tax Notes 715 (June 2, 2008).

<sup>301</sup> Anya Kamenetz, *The Short, Shady History of Hollywood South*, Fastcompany.com, December 19, 2007. Available at: <http://www.fastcompany.com/node/60350/print> (last visited June 1, 2009).

<sup>302</sup> Anya Kamenetz, *The Short, Shady History of Hollywood South*, Fastcompany.com, December 19, 2007. Available at: <http://www.fastcompany.com/node/60350/print> (last visited June 1, 2009).

audited and Smith, as state film commissioner, “was principally responsible for signing off on production spending and converting it into credits.”<sup>303</sup>

Smith plead guilty in September 2007 to taking bribes “in return for approving inflated production budgets for LIFT.”<sup>304</sup> After Petal and Smith plead guilty in 2007, United States Attorney Jim Letten said he hoped the investigation helped to “level the playing field” for the Louisiana film industry and claimed that it would be “very, very difficult now to exploit this type of mechanism again without fear of detection.”<sup>305</sup>

### **Cost v. Benefit Debate: Does Cost Matter and The Cultural Argument**

According to Greg Albrecht, chief economist at the Legislative Fiscal Office in Baton Rouge, the amount of economic activity the film incentives generate in Louisiana does not even come close to covering the cost of the tax credits:

The film and video incentive program has generated additional jobs, incomes, and tax revenue for both state and local governments. These benefits occur directly through the additional spending associated with film and video production activities in the state and, to some extent, indirectly through the increase in disposable income that is realized by taxpayers that purchase tax credits. Government, especially local government, incurs the costs of providing public services associated with the production activities. In addition, State government incurs the cost of lost tax revenue when the tax credits are realized. After accounting for the dynamic effects on the economy of the additional film and video production activity, the State may expect to recoup 16% to 18% of the tax revenue it obligates to the program through the transferable tax credit mechanism.<sup>306</sup>

However, the director of the Louisiana Economic Development Department’s film project, Chris Stelly, disagrees and claimed Louisiana is “getting a 75-percent return on the credits paid out.”<sup>307</sup>

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<sup>303</sup> *Id.*

<sup>304</sup> Matthew J. Bailey, *Hollywood South: Why Film Credits are Good For Louisiana*, 48 State Tax Notes 715 (June 2, 2008)

<sup>305</sup> Michael Kunzelman, *Film Producer Pleads Guilty in La. Bribery Case*, USA TODAY, December 12, 2008.

<sup>306</sup> Greg Albrecht, *Film and Video Tax Incentives, Estimated Economic and Fiscal Impacts 5*, State Of Louisiana, Legislative Fiscal Office (March 2005).

<sup>307</sup> Matthew J. Bailey, *Hollywood South: Why Film Credits are Good For Louisiana*, 48 State Tax Notes 715 (June 2, 2008)

In December 2008, Albrecht said the loss ratio was roughly four to one, the state spent \$100 million on the incentives and got roughly \$25 million in return.<sup>308</sup> One reporter commented the four to one loss ratio seemed large and asked why Louisiana offered the incentives, Albrecht responded:

We like the film industry. It's a clean industry. We're trying to build an industry. People here would look at it as an investment, you have to take some losses while you build up your employment skill sets, depth and breadth of your employment base.

In Louisiana, it hasn't been tight financial times for a number of years. We have been doing quite well in the post Katrina and Rita hurricane environment. We have had quite a bit of a boom here. Spending boom, reconstruction boom, federal money, insurance money has been in here and we have actually been running surpluses. This hasn't been something that we have looked as a big drain in a tightening budget environment.<sup>309</sup>

Thus, while Albrecht recognizes the cost of the film incentives, he is able to justify them. Louisiana may be losing money, but considers the value of building a permanent, hopefully sustainable, industry in the state. According to a National Public Radio report, Louisiana invested \$27 million in 2008's *The Curious Case of Benjamin Button*.<sup>310</sup>

Benjamin Button is an excellent example of a film whose value is perhaps better measured not in economic terms, but in terms of a significant work of art that represents a specific regional culture, which is a positive. Benjamin Button is “of that time, of that place”—it is a film about New Orleans, of New Orleans. Indeed, the cast and crew had an awareness they were making a work of art that was a cultural expression of New Orleans and Louisiana. Director David Fincher, for example, said the film could not have been made without the contribution of Louisiana residents:

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<sup>308</sup> Day to Day, *Louisiana Seduces Filmmakers with Tax Breaks*, National Public Radio, December 3, 2008.

<sup>309</sup> Day to Day, *Louisiana Seduces Filmmakers with Tax Breaks*, National Public Radio, December 3, 2008.

<sup>310</sup> *Id.*

You know we could literally not have made this movie without the faces that Louisiana afforded us. Almost everybody was memorable in their own specific way.<sup>311</sup>

Fans of the F. Scott Fitzgerald's book, on which the movie is based, might not be receptive to the fact the film was shot mainly in New Orleans, since the book was set in Baltimore, Maryland. For set designer Victor J. Zolfo, however, New Orleans uniqueness trumped the desire to stay true to Fitzgerald's work:

Baltimore is like a Norman Rockwell everyman town, and you go to New Orleans and it's just its own thing. The city becomes part of the story. And I don't think I ever felt that when it was in Baltimore.<sup>312</sup>

Screenwriter Eric Roth echoed Zolfo's sentiment:

It takes on a whole different feeling when you say 'New Orleans.' All of a sudden, it sort of drips, you know. And in a nice way, it feels old, and there's sort of a texture to it that you don't have with some other places.<sup>313</sup>

Business interests, however, are not trumped by an altruistic desire to create art. To the filmmakers credit, Baltimore was considered for the shoot, according to production designer Donald Graham, who scouted filming locations there:

It [Baltimore] became more and more expensive as we were looking at it, so we were really looking for a way to mitigate the cost of the movie, and so we started looking at other cities.<sup>314</sup>

Jim Davidson, one of Ben Button's associate producers, pointed out that movies are part of a show business, emphasis on the business:

You know, movies, they are a business. They have to be made for a certain amount of money to get out the door.

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<sup>311</sup> David Fincher, Director's Commentary, *THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

<sup>312</sup> Victor J. Zolfo, *The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

<sup>313</sup> Eric Roth, *The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

<sup>314</sup> Donald Graham, *The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

I kept thinking about it and thinking about it, and that's when I came up with the idea that the script could be, if they were willing to, it could be redone for New Orleans.<sup>315</sup>

Location manager William Doyle was candid about the pivotal role Louisiana's film incentives played in getting the film made:

I think that the only way that this movie was made possible was what Louisiana was doing to foster a new industry, which were massive tax credits, and tax credits are basically cash. You can sell them on the open market. It's literally right off the top of your budget.

I had shot a couple of things in New Orleans. Both New Orleans and Baltimore have a lot of similarities, as 200-year-old-plus port cities. With those kind of great histories and backgrounds, there's a lot of commonality to them.<sup>316</sup>

Once New Orleans was given the go-ahead, Hurricane Katrina happened. The impact of the hurricane and the difficulties of shooting in New Orleans in the storm's aftermath weighed heavily on studio executives' minds in deciding if the shoot was still feasible. Location manager William Doyle detailed some of the challenges:

And then Katrina hit, which put a bit of a damper in everyone's enthusiasm. The studio sent me there to take a look around, and I spent a couple of weeks going back to my old roots as a journalist and interviewing people, locals and different officials. And I came back and put together, basically, a 40-page report and reported back to the studio on it.

One of the biggest issues we had along the lines of a location manager's problem is that this is a city that had 800 people in the public works department before the hurricane. And on November 15, 2005, they had 14. Because they had zero tax base, and they couldn't pay them. So they literally laid off 700 people. So public works for a location manager, you so rely on them. They're the people that deal with your street signs and all that, but I'm also dealing with a period picture. There's no parking meters and electronic parking kiosks and those new Cobra Heads. These are all things that we would normally pay a city's public works department to remove, and we'd put up our fake things. Well, there is nobody to pay. So it was a huge problem and it lasted straight through all of production. We would have to get our own contractors, some of them staffed by former public works workers.<sup>317</sup>

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<sup>315</sup> Jim Davidson, *The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

<sup>316</sup> William Doyle, *The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

<sup>317</sup> William Doyle, *The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

Despite the challenges the production faced, director David Fincher said the historical quality of the mostly preserved French Quarter was enough of a factor to tell the studio that, if nothing else, he wanted to at least “try” to make the film in the city and added that the passion of his star, Brad Pitt, was instrumental:

And it was Brad’s passion and fervor to go down there and to do this movie there that kind of reignited it.<sup>318</sup>

Also instrumental in keeping the production in New Orleans were the pleas of Louisiana state officials, who promised to bend over backwards to assist the production team, according to producer Kathleen Kennedy:

The state officials got on the phone with us and said, ‘We know what you’re thinking, but please, please for the sake of the city, could you believe in us and still commit to shooting here? We’ll do whatever it is that you need to make this a still viable city for shooting.’<sup>319</sup>

The decision to keep the production in New Orleans had the unforeseen consequence of incorporating not just the physical presence of Hurricane Katrina directly into the films closing scenes, but also incorporating the post-Katrina New Orleans psyche into the fabric of the film. Set designer Victor J. Zolfo described the “life changing” experience of shooting in Katrina’s immediate aftermath:

We were scouting places and driving by the houses with the ‘X’ symbol on the doors, and how many dead and two dogs dead and people...It was really impactful. And I think it, you know...in seeing that, it set a tone for us for the sort of melancholy feeling that the whole movie has.

It was almost a ghost town when we got there. We would scout places and not see a soul. It became trying to find people that owned these businesses that we were trying to get reopened.

It was life-changing to go there and be there as it kind of rose from the ashes and started to become New Orleans again. And in the course of the filming, we saw it change from, really, still gone, a year later, after Katrina, to pretty much thriving

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<sup>318</sup> David Fincher, *The Making of Benjamin Button Bonus Disk Material*, *THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

<sup>319</sup> Kathleen Kennedy, *The Making of Benjamin Button Bonus Disk Material*, *THE CURIOUS CASE OF BENJAMIN BUTTON* (Warner Brothers & Paramount Pictures 2008).

again and alive by the time we were finished. We were there for ten months, and in those ten months, it totally evolved into coming back to life.<sup>320</sup>

Shooting in post Katrina New Orleans also had an effect on Brad Pitt:

I'm always amazed at people's back stories. I had no idea about the loss and even pain that people are carrying with them, in some sense, or directly. And I think this is what the film speaks to.<sup>321</sup>

Louisiana spent \$27 million to finance the tax credits *The Curious Case of Benjamin Button* qualified for by shooting in the state, a tremendous expenditure of taxpayer money on a single film for which in state production spending returned just 25% of that amount, at most, to the state in new revenue, according to state's chief economists--arguably, the leading expert on the economic impact of film production activity in the U.S. (Greg Albrecht). One of the questions that arose during this author's research was whether certain intangibles, arguably related to production activity, get factored into an economic impact assessment of film incentive programs. For example, Benjamin Button star Brad Pitt has become a fixture in New Orleans since working on the film and his activism is bringing in millions of dollars to rebuild the Lower Ninth Ward of New Orleans. In September 2007, Pitt announced the formation of the Make it Right Foundation, which plans to help "make it right" by building, Pitt said:

150 sustainable, affordable houses - houses that stand out for their design both aesthetically and structurally, so that these people can live in beautiful safe structures that respect their spirit and provide a good quality of life.<sup>322</sup>

Pitt and partner Steve Bing pledged a total of \$10 million in matching funds to jumpstart construction and 50 homes will be completed by December 2009.<sup>323</sup> Attributing the benefit

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<sup>320</sup> Victor J. Zolfo, The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON (Warner Brothers & Paramount Pictures 2008).

<sup>321</sup> Brad Pitt, The Making of Benjamin Button Bonus Disk Material, THE CURIOUS CASE OF BENJAMIN BUTTON (Warner Brothers & Paramount Pictures 2008).

<sup>322</sup> Press Release, Brad Pitt, Steve Bing Plan New 150-Home Community in New Orleans' Lower Ninth Ward, Media : Make It Right, *available at* [http://www.makeitrightnola.org/index.php/media/press/brad\\_pitt\\_steve\\_bing\\_plan\\_new\\_150-home\\_community\\_in\\_new\\_orleans\\_lower\\_ninth/](http://www.makeitrightnola.org/index.php/media/press/brad_pitt_steve_bing_plan_new_150-home_community_in_new_orleans_lower_ninth/) (last visited Nov. 12, 2009).

<sup>323</sup> About Us, Make It Right, *available at* [http://www.makeitrightnola.org/index.php/about/detail/our\\_history/](http://www.makeitrightnola.org/index.php/about/detail/our_history/) (last visited Nov. 12, 2009).

Louisiana reaps from Pitt’s activism to the state film incentives, however, is an implausible leap. Albrecht speculated Pitt would have created the Make it Right Foundation regardless of his exposure to the state from filming movies there, which is probably true.<sup>324</sup>

### **Cost vs. Benefit Debate: Do the Incentives Make Financial Sense, sans Culture?**

Matthew J. Bailey, assistant director of economic development in Shreveport, Louisiana and former aide to U.S. Senator Mary Landrieu (D-LA), discussed the issue affordability of Louisiana’s incentives in June 2008:

There are no concrete measurements of Louisiana's numerical returns on its tax credits, but the proof is in the competitive pudding. Following Louisiana's lead in creating permanent economic growth, 10 states beefed up their film incentive packages in 2007 alone. As long as the cameras are rolling and studios are going up, the state is bringing in local and state tax dollars, helping local businesses, and providing new jobs for residents.

State tax policy experts have routinely dismissed as bad tax policy economic development tax incentives generally and film credits specifically. In Louisiana, however, their arguments really do not hold water.<sup>325</sup>

Bailey argues that Louisiana would not have a film industry without the tax incentives, a “consensus” held by many:

There is consensus that the only reason Louisiana’s film industry has grown and succeeded is because of the existence of the tax credits. Without them, productions and studios would stay in Hollywood or go to other states offering tax benefits. So in this case, the tax incentives are directly responsible for the creation of new movie jobs and the influx of production money where there would be none.

Those tax incentives have created a thriving industry where one did not exist and would not have existed otherwise. Because of that growth, more money is being spent locally, more movie vendor businesses are cropping up, and more Louisianans are finding good-paying jobs.

Bailey is correct that the only reason Louisiana has a film industry is because of its tax incentives. Bailey views this as a positive because of all the economic development and new jobs—which are good things. Bailey is aware that without its film incentives, Louisiana would

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<sup>324</sup> Phone Interview with Greg Albrecht, November 12, 2009.

<sup>325</sup> Matthew J. Bailey, *Hollywood South: Why Film Credits are Good For Louisiana*, 48 State Tax Notes 715 (June 2, 2008)

lose productions to other states with film incentives or stay in Hollywood. Bailey's argument that the "proof" of numerical return for the state lies in the "competitive pudding" of dozens of states rushing to enact their own incentives lacks merit. Bailey does not seem to grasp the fundamental problem with the tax incentives, which is that if Louisiana ends them, the industry will disappear as quickly as it came. Moreover, Bailey is aware almost all states are offering film incentives, in part because of Louisiana's success, but he does not recognize the danger.

Since almost all states have film incentives, each new program is more generous than the one before it. To remain viable, Louisiana will have to not only keep the tax incentives in place for many years, if not permanently, but also keep them competitive, something that is more and more expensive to do.

Much of Bailey's arguments are in response to the writings of David Brunori, a contributor to *State Tax Notes*. Brunori, an animated writer, is cynical about the value of film incentives:

Politicians think it would be cool to make movies in their state. They want to hang out with Ben Affleck, Charlize Theron, Brad Pitt, and other glamorous people. They have big dreams of turning Wichita, Kan.; Omaha, Neb.; or Des Moines, Iowa, into Hollywood, Calif. They're willing to spend your tax dollars to satisfy their desire to rub elbows with the rich and famous. Rather than building a tax system that provides a level playing field for all businesses, the politicians decide to pick winners (and thus losers).<sup>326</sup>

Brunori said film credits "shrink the tax base, which requires everyone else to pitch in a little more."<sup>327</sup> Without supporting that assertion, Brunori lambasted the "reasoning" behind film incentives:

Connecticut House Speaker James A. Amann (D) is urging the state to expand the film tax credits to all performing arts. His reasoning is that a dry cleaner in his town saw more business because Uma Thurman was filming a movie. Almost all film credit arguments are based on that kind of hard-hitting evidence.<sup>328</sup>

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<sup>326</sup> David Brunori, *My Last Hurrah on Film Credits*, STATE TAX NOTES, Apr. 7, 2008, p. 57.

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

While many arguments in favor of film incentives mention anecdotal evidence like Brunori's Uma Thurman example, few, if any, of these arguments are "based" on them or use them as "hard hitting evidence." Moreover, Brunori overlooks the possibility that an argument for production incentives can include a concession that film incentives are short-term revenue losers whose value is to build a long-term sustainable industry. That said, Brunori does raise the main problem with film incentives, which is that over 40 states and many foreign nations now offer them, and have been racing to the bottom to outdo one another.

Brunori defers to Bob Tannenwald, a vice-president at the Federal Reserve Bank of Boston and director of its New England Public Policy Center, who Brunori said "is one hell of a smart guy."<sup>329</sup> Further bolstering Tannenwald's credibility, Brunori said:

Tannenwald isn't a politician and doesn't have an agenda. He is a researcher, dedicated to developing sound public policy. He didn't argue against tax breaks for films. He simply told the legislators that they should proceed cautiously in expanding those programs.<sup>330</sup>

Based on "the data" regarding film incentives Tannenwald concluded "there is no evidence that they will ever pay for themselves...The state will spend more giving out credits than it will generate by local spending."<sup>331</sup>

In this regard, all lawmakers enacting or revising film incentives should heed Tannenwald's advice to "proceed cautiously." Unfortunately, many are not following such advice and the debate over film incentives is ongoing. In June 2008, Billy Hamilton reported on the "angst" in Texas about losing film production to Louisiana and New Mexico, exacerbated by films like "2007's *No Country for Old Men*, a film set almost entirely in Texas but mostly filmed in New Mexico."<sup>332</sup>

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<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> Billy Hamilton, Is Texas Losing the 'Arms Race' to Become the New Hollywood?, 48 State Tax Notes 907 (June 16, 2008).

Hamilton seems naïve about what factors motivate filmmakers to shoot in a particular locale, apparently unaware cost is the primary concern for most productions. Moviemakers, Hamilton said, “have to shoot movies somewhere, and Texas has a modestly impressive portfolio of film work to recommend it to moviemakers.”<sup>333</sup> Other than the occasional movie about the Alamo, Hamilton said the “impressive portfolio” included:

Sandra Bullock filmed *Hope Floats* near Austin. *Dazed and Confused* was filmed around Austin. *Giant* with Rock Hudson, Elizabeth Taylor, and James Dean was filmed near Marfa in 1956. In 1961 the great John Ford shot the not-so-great *Two Rode Together* with Richard Widmark and Jimmy Stewart near the Alamo set Wayne built for *The Alamo*. *Hud*, *The Last Picture Show*, *Bonnie and Clyde*, *Friday Night Lights*, *Urban Cowboy*, *The Texas Chainsaw Massacre*, *The Killer Shrews* -- the list is long.<sup>334</sup>

Hamilton took issue with press coverage in Austin, Texas about increased filming in New Mexico and Louisiana, which were “besting Texas.”<sup>335</sup> Hamilton offers his own “hard hitting evidence”:

Just to give you some idea of what a travesty that is, the Internet Movie Database lists 342 movies and television shows with "Texas" in their titles. It lists a mere 29 featuring the word "Louisiana." New Mexico has an even more paltry 14 mentions. So, what's the problem?<sup>336</sup>

Hamilton said Canada’s 1997 film incentives is where the “trouble really began”:

Films that could have been made in the United States were for financial reasons no longer being made here. Suddenly runaway film production was a major concern -- well, at least a major concern for some people.<sup>337</sup>

Hamilton’s insensitivity to anyone in the film industry who lost their career because of runaway productions is odious on many levels. Unlike Brunori, Hamilton is aware of the positive economic numbers film incentives generate, but correctly warns “there is little hard

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<sup>333</sup> *Id.*

<sup>334</sup> Billy Hamilton, *Is Texas Losing the ‘Arms Race’ to Become the New Hollywood?*, 48 State Tax Notes 907 (June 16, 2008).

<sup>335</sup> Billy Hamilton, *Is Texas Losing the ‘Arms Race’ to Become the New Hollywood?*, 48 State Tax Notes 907 (June 16, 2008).

<sup>336</sup> Billy Hamilton, *Is Texas Losing the ‘Arms Race’ to Become the New Hollywood?*, 48 State Tax Notes 907 (June 16, 2008).

<sup>337</sup> Billy Hamilton, *Is Texas Losing the ‘Arms Race’ to Become the New Hollywood?*, 48 State Tax Notes 907 (June 16, 2008).

economic evidence that incentives at the stratospheric levels they have now achieved can be justified economically.”<sup>338</sup>

Without such economic evidence, Hamilton said supporters of film incentives are “beginning to steer clear of the economic development argument as a primary justification” and instead, “they are making a cultural argument.”

Brunori and Hamilton base the value of film incentives on a narrow litmus test: does the state get back enough revenue from the economic activity related to film production to cover or exceed the cost of the tax incentive? If yes, the film incentive is “good”; if no, the film incentive is “bad”.

Tax opponents of film incentives are dealing with an issue, runaway production, and an industry, the motion picture industry, that have shown to be naïve about. Film incentives are, in the U.S., new. The opponents of film incentives treat them as any other kind of incentive, which may or may not be true. There may be some arrogance on the part of film incentive detractors, who think the motion picture industry is like any other. University of California at Irvine economics professor Arthur DeVany has been studying the motion picture industry for over 20 years and, in that time, made the following observations:

[M]ovie revenue dynamics are so complex that they are nearly chaotic.

In our research we found such wild statistical behavior that we came to feel that nobody could optimize anything. Shedding this belief meant jettisoning one of the key elements of conventional economics. We do not believe that people don’t try to make the best decisions they can. We believe they are so deeply shrouded in clouds of uncertainty that optimizing is just not possible. Decisions are made by gathering information and then choosing the best action in light of what is known. Information flows are delayed and erratic. So, many errors are made and many false beliefs are held.<sup>339</sup>

De Vany claimed the motion picture industry is one in which “nobody knows anything”:

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<sup>338</sup> Billy Hamilton, *Is Texas Losing the ‘Arms Race’ to Become the New Hollywood?*, 48 State Tax Notes 907 (June 16, 2008).

<sup>339</sup> ARTHUR DE VANEY, HOLLYWOOD ECONOMICS: HOW EXTREME UNCERTAINTY SHAPES THE FILM INDUSTRY 2-3 (2004).

There really is nothing that is predictable, not costs, not performance value and certainly not revenue...we can't even trust the statistics, as wild as they are, will remain stable in the future.<sup>340</sup>

Therefore, dismissing the impact of film incentives is premature, at best. Even if the critics and economists opposed to film production incentives are correct about them being revenue losers for the state, does that mean the incentives are not worth having?

In March 2008, Brunori received a letter from a New Mexico resident, who informed him four movies filmed in that state were up for Oscars (*No Country for Old Men*, *3:10 to Yuma*, *Valley of Elah* and *Transformers*). Brunori admitted to not “know much” about filmmaking, which he demonstrated by taking issue with the letter writer’s point that the movies would not have shot in New Mexico without tax incentives:

I don't know much about moviemaking. But I do know that all four of those movies were shot in vast, desert like terrain. One thing that New Mexico has is vast, desert like terrain. Do you think it's possible that the movie guys picked New Mexico because they needed vast, desertlike terrain?<sup>341</sup>

Even if all films depended on a vast desert like terrain, why would they shoot in New Mexico when California has its own deserts and neighboring Nevada and Arizona also had the needed terrain?<sup>342</sup> New Mexico had tax credits and the other states, at that time, did not. Moreover, if the tax incentives were not the motivating factor for the shoot, why not film in the locations where the films are set? Texas, for example, is the setting for *No Country for Old Men* and Yuma, Arizona, is the setting for *3:10 to Yuma*. *No Country for Old Men* spent \$12 to \$17 million of its \$25 million budget in New Mexico, where it qualified for a 25% rebate on production expenses.<sup>343</sup> It’s not clear if Brunori was trying to be sarcastic and humorous, or if he

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<sup>340</sup> *Id.* at 267.

<sup>341</sup> David Brunori, *Maybe Politicians Will Swear Off Swearing Not to Raise Taxes*, *State Tax Notes Magazine* 47 *State Tax Notes* 715 (Mar. 3, 2008).

<sup>342</sup> Not all of the movies Brunori mentioned needed to be shot in a vast “desertlike terrain.” *Transformers*, for example, filmed in New Mexico because part of the plot takes place in a U.S. military base in the Middle East. The studio wanted the film to shoot in Canada to take advantage of the tax incentives there, but Micheal Bay refused.

<sup>343</sup> David Miles, *Coen Brothers Coming to N.M.*, *THE SANTA FE NEW MEXICAN*, April 14, 2006.

is truly ignorant of filmmaking practices. What seems clear is that Brunori lacks any sense of how the motion picture industry works and, therefore, his comments and arguments against film incentives are undermined.

## V. Federal Solution—Conclusion

Throughout this article, the cost-benefit argument and analysis of film and television tax incentives has been explored at length. An attempt was made to give each side of the argument over the efficacy, worth or value (in the broadest sense) equal time and weight.

During the course of researching this article, however, this author was persuaded that the dozens of film incentives offered in the U.S. are ridiculously generous and fiscally irresponsible in many cases. The classic race to the bottom situation is playing out in spectacular fashion. There is now evidence that the race to the bottom is slowing as states pause to consider the ramifications of enacting larger and larger incentives.

For example, Connecticut's incentive program, which offers a generous 30% tax credit for in-state production spending, does "not pay for itself" according to the Federal Reserve Bank of Boston:

The credit does not "pay for itself." Increases in economic activity spurred by the film credit generate some additional tax revenue for the state from a variety of tax sources. This additional revenue is likely to offset some, but not all, of the initial cost of the credit. Increased economic activity may also reduce government spending if it results in less need for government services. A study undertaken by Connecticut's Department of Economic and Community Development (DECD) estimated that in 2007 each initial dollar of film tax credit granted by the state was offset by about seven cents in new tax revenue and by about thirteen cents in NEPPC – 2 reduced government spending. Thus, on net, each dollar of film tax credit granted still cost the state roughly \$0.80.<sup>344</sup>

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<sup>344</sup> Federal Reserve Bank of Boston, Memorandum: Cost-benefit analysis of Connecticut's film tax credit 1-2, January 19, 2009 (on file with author).

In Michigan, the Mackinac Center for Public Policy released findings that discounted a positive analysis of the state's film incentives for leaving out the cost of the program and claimed the state's incentives may actually be "destroying" rather than creating new jobs:

The Michigan Film Office has since stirred controversy through its lack of transparency and through its publication of a distorted impact analysis of the film incentive. While the analysis forthrightly estimated that in 2008 the film incentive created just 1,102 full-time equivalent jobs - an insignificant number in a state the size of Michigan - the report then excluded costs of up to \$48 million in calculating the program's benefits. Including these costs would likely have reduced the already small number of jobs ascribed to the incentive. Indeed, it may have even led to a jobs figure that was negative. In other words, the program may actually destroy jobs.<sup>345</sup>

In March 2009, the Wisconsin Department of Commerce issued a report to "raise the warning flag" about problems with the state's film incentives:

Commerce feels a duty to raise the warning flag and draw attention to several fundamental flaws in the program: The program's flaws create an incentive to hire out-of-state contractors instead of Wisconsin labor. The program is really expensive because it is a refundable tax credit program, not just a tax credit program. The program's cost-benefit analysis compares poorly to other programs aimed at manufacturing, technology, and agriculture.<sup>346</sup>

There is a growing consensus that film and television production incentives, as they exist now in most U.S. states, are too costly for the enacting states and, in turn, trigger competing states to revise or enact legislation to compete. This vicious cycle is not serving the national interest.

Several years ago, the debate and discussion about runaway production focused on the phenomenon being an increasing problem for the U.S. economy and especially for California as film and television productions migrated to Canada and other international locations trying to duplicate Canada's success. Runaway production needs to be reframed as a national problem;

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<sup>345</sup> Michael D. LaFaive and James M. Hohma, *Michigan Economic Development Corporation [Mackinac Center]*, August 31, 2009, available at <http://www.mackinac.org/article.aspx?ID=10896> (last visited Nov. 13, 2009).

<sup>346</sup> Wisconsin Department of Commerce, *Cost Benefit Analysis of Wisconsin Film Tax Credit Program 1*, (March 2009), available at <http://www.senate.michigan.gov/gop/senators/cassis/Wisconsin%20Film%20Tax%20Analysis.pdf> (last visited Nov. 13, 2009).

the United States is competing globally and needs to begin acting accordingly. Rather than competing with Canada and elsewhere as a nation, the competing U.S. states with film incentives are competing as though they were individual nations. While the net effect for the U.S. may be an increase of the number of film and television productions that elect to shoot domestically rather than internationally (or at least stop further loss), such a goal can be achieved much more effectively and without potential budget disasters in numerous individual states by a single national film and television production incentive enacted by the federal government.

The argument for enacting a single national film incentive is beginning to catch on as many industry observers are reaching the same conclusion. In May 2009, Shulyer M. Moore proposed what a basic national incentive scheme might resemble:

So what's the solution? Easy. It is time for all the states to band together, stop the self-defeating madness and request the federal government to convert Section 181 into a useful 10% tax credit -- instead of a deduction -- for U.S. production costs. And it must be assignable in order to provide actual financing for production, which is what really is needed.

As part of implementing this tax credit, the federal government should use its power under the Commerce Clause to pre-empt all state laws (and don't let Puerto Rico sneak away) that give tax credits for production. That way, the states would be saved from their self-inflicted immolation, and they could go back to competing for production based on services, infrastructure and locations -- just like in the good ol' days. We could go back to seeing ads to shoot in Wyoming because of its sweeping vistas rather than ads for shooting in Connecticut because of its sweeping tax credits.<sup>347</sup>

The specifics pertaining to the amount of the tax credit could be adjusted, perhaps needing to be larger to effectively compete with Canada and elsewhere. The genius of such a plan is its simplicity. The political reality, however, of having such a plan realized at the national level is, like the movies, an unlikely fiction. Many of the states with aggressive film incentive programs would not want to lose their advantage. Certainly, with a national production incentive plan in place, it is likely that most film and television production in the U.S. would

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<sup>347</sup> Schuyler M. Moore, Commentary: Could Federal Tax Credit End Economic War Among States?, THE HOLLYWOOD REPORTER, May 29, 2009.

return to the traditional bases of California and New York. States like Louisiana, New Mexico, Michigan and others are certain to oppose losing whatever gains they think, perhaps naively, they have made.

There is also a recognition by many writers, directors, actors and other film and television production industry that runaway productions motivated primarily, if not exclusively, for economic reasons is not the most effective way to enhance the creative and artistic aspects upon which the industry is driven by. Fostering this notion is critical with the film and television community and, according to Massimo Martinotti, founder and president of Mia Films, should be seen as a “quest for excellence”:

In the last few years when we mentioned the possibility of shooting abroad, we all immediately characterized this option as 'runaway production.' Last year (2003), more than 20 percent of American production companies shoot days took place outside the U.S., and it is true that the most frequent reason to go and shoot somewhere else has been costs. Political and economic circumstances have given strong advantages to countries around the globe that can offer very low production costs and, at the same time, decent—and often excellent—structures, crew and equipment.

However, I believe that we should consider the international approach of a production from the creative angle, and not only from the 'saving money' perspective. In the last several years, I shot in more than 30 countries on all the continents, and I am sure that in most of cases, the creative impact of the international choice was stronger than the budgetary one. A location is like a good wine: it has a specific color, a unique taste, a peculiar smell. If these elements can make the idea grow, this is not 'runaway,' it is the search for the best, the fight for excellence.

Our business is based on these concepts. Some time ago, we were working on a project. The agency was looking for a European atmosphere, a classical and elegant look, and a nostalgic mood. The example proposed was Paris. Nevertheless, we suggested a different place: Lisbon, Portugal. I don't think that any other European city can offer the same feeling: the terraces of Alfama, the climbing streets of Barrio Alto, the stones, the tiles, the flowers, the walls. Everything evokes old times, elegance and romanticism. It is not the glamorous, sexy look of Paris, the imperial elegance of Vienna, the flamboyant and charming sensuality of Rome, the mysterious solidity of Prague or the contagious happiness of Seville. It is the dreamy grace of Lisbon, defined by the 'Fado' music, the smell of the carnations, the blue color of its tiles, the flavor of an old wine from Porto.

The need for the perfect location goes much further than the quest for a specific type of geographic environment or an appropriate climate. It is a much more delicate, subliminal and creative approach. We shouldn't look, for instance, for an 'ancient European city' because thousands of places fit that description: Pompeii, Bath, Tour, Koblenz, Sigüenza, Budapest, Istanbul, Olympia, etc. We should, on the contrary, concentrate our quest on finding that unique atmosphere, texture, tone of color, type of light or shape that can make the commercial different, memorable, relevant. Instead of exploring new territories, very often we are moved to go back repeatedly to the same places: if we go to Italy, we shoot in Tuscany, and in France, the spot is La Côte d'Azur. Why not Piedmont, Liguria or Trentino? Why not the Loire region, Provence or Alsace? Why not Spain, Belgium or Luxembourg instead? Why not Costa Rica, which I believe is the best-kept secret in Latin America as a production destination? Putting the location exclusively on the creative side of the equation will indeed give a more consistent meaning to the international approach of a production. The quest for excellence is in this sense the antithesis of the runaway production concept.<sup>348</sup>

Here's to the "Quest for Excellence."

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<sup>348</sup> Massimo Martinotti, Runaway Production Or Quest For Excellence?, ShootOnline, July 5, 2004, *available at* <http://74.125.95.132/search?q=cache:uYuqml6ghkJ:www.shootonline.com/go/news-view.15907.Runaway-Production-Or-Quest-For-Excellence-.html+runaway+production+.pdf&cd=8&hl=en&ct=clnk&gl=us> (last visited Nov. 13, 2009).

