

**Broadcast Policies of the European Union:  
Economically or Culturally Bound?**

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## **Broadcast Policies of the European Union: Economically or Culturally Bound?**

In 1989 the European Economic Community issued the "Television without Frontiers" (TWF) Directive. Its goal was to "ensure wherever practicable and by appropriate means that broadcasters reserve for European works the majority proportion of their transmission time, excluding the time appointed to news, sports, events, games, advertising and teletext services."<sup>1</sup> On the one hand, the directive's goals are clear. Europeans wanted to increase the amount of Community-produced broadcasting on national television stations while lowering internal European barriers to the transmission of these broadcasts, in keeping with the visions of the single European market. This would increase the markets and profitability for both programming and advertising as well result in greater cultural exchange between Community members.

On the other hand, the European Commission was promoting the ideal of a "trans-European Culture" in response to the global mass culture of the television market.<sup>2</sup> While Collins points out that the TWF Directive may have been a cynical attempt by European producer interests to protect their markets, he also indicates that there were some valid concerns about the overwhelming effect of mass television culture. The fact remains, however, that the stated intentions of TWF have had affected and been affected by events outside of Europe. Further, it is possible that, consciously or unconsciously, there were both economic and cultural extra-European reasons for the directive as well. The directive introduced quotas for programming produced in Europe which, some believe, were intended to combat "American cultural imperialism." The French were especially adamant about their resistance to US broadcasting influences. Former French President Jacques Chirac stated that he did not want a "European culture sterilized or obliterated by American culture for economic reasons that have nothing to do with real culture."<sup>3</sup> Chirac's statement underlined the dual thrust of the "Television Without Frontiers" Directive.

The goals of the directive seem somewhat paradoxical. It sought to encourage both the economic and cultural expansion of European broadcasting, and to be economically and culturally protectionist. To understand why TWF was developed, a contextual examination of both the internal and external events may provide some insight into the emergence and paradox of the TWF Directive, as well as into the future European broadcast-related policy.

The subsequent discussions and policies stemming from the Directive tended to reflect elements of both economic and cultural expansionism and protectionism. This paper seeks to ascertain if one of the objectives had primacy over the other and, if so, why? To answer this question, the paper will consist of four parts. The first part begins with a discussion of the problem and the relevant literature. The second

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<sup>1</sup> "Television without Frontiers" Directive, 89/552/EEC, 3 October 1989 p. 2.

<sup>2</sup> Richard Collins. "National Culture: A Contradiction in Terms?" *Canadian Journal of Communication* 16, no. 2 (1991): <http://www.cjc-online.ca/BackIssues/16.2/hoskins.html#EN1>

part provides a history of television in Europe and the pan-European environment in which the legislation developed. The third part examines the relevant telecommunications and broadcast legislation, focusing on the Directive, subsequent reports and decisions. The final section draws some conclusions about the intended and actual outcomes that have emerged as a result of the legislation.

### **Broadcast Policies and Social Structures**

With the explosion of Internet, satellite, and broadcast communications, Marshall McLuhan's global village grows increasingly smaller. Communication occurs over increasingly varied media and at all levels of interaction, and the ongoing impact of information and communications on society and social structures is as profound as any in the modern era. The effects of the globalization of information have not gone unnoticed in Europe. Exports of American programming to Europe have increased greatly.<sup>4</sup> The US dominates the feature film industry, with 82 percent of films shown in Europe coming from American sources.<sup>5</sup> In light of American media dominance, the response of the European "information society" has been to recognize that telecommunications has "very broad social and organizational changes which have to be confronted as a result of the information and communications revolution."<sup>6</sup> In 1984, one of the early debates on European-wide broadcasting was addressed in a Green Paper, which discussed the issues raised by a legislative proposal. It stated that,

broadcasting is a powerful medium for the communication of all kinds information, ideas and opinion. It thereby influences the attitudes of almost all Community citizens [in] political, social, educational and cultural affairs which are associated with some of our societies' most fundamental values. Broadcasting's role in these areas makes it an especially important factor in the development of the European Community as an association of democratic states seeking to develop an increasingly integrated economic, social and political entity.<sup>7</sup>

The 1984 Green Paper was published at a time when the European broadcast market was being deregulated. It broached European concerns that the content of non-European (predominantly US) programming would gradually overwhelm and homogenize the distinctiveness of the European cultures. Yet, as the Green Paper indicates, the concerns over cultural homogenization had their roots in the economic competitiveness of the US media. European productions could match neither the scale nor the technical quality of imported productions. American competitiveness, in fact, was overwhelming even in the face of the state-run and state-operated broadcasters. The American media had well-established

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<sup>3</sup> "We Are Not an Average Nation: An Exclusive Talk with Jacques Chirac," *Time* 11 December 1995, p. 59.

<sup>4</sup> As an example, in 1995 the most widely watched television program in Europe was *Baywatch*. With 18 million weekly viewers in the five largest countries, it exceeded even the national television favorites of Britain, France, Germany, Italy and Spain. "Viewing Figures" *The Economist* 18 March 1995, p. 56.

<sup>5</sup> *Ibid.*

<sup>6</sup> [http://europa.eu.int/pol/infso/info\\_en.htm](http://europa.eu.int/pol/infso/info_en.htm) "Information Society, telecommunications"

<sup>7</sup> "Television without Frontiers: Green Paper on the Establishment of the Common Market in Broadcasting, Especially by Satellite and Cable," COM 84, 300/final 2/3.

markets both within Europe and larger domestic markets and they had economies of scale, infrastructure, and expertise, which European media could not easily match. It was often cheaper and easier to buy American programs. Moreover, the American productions, with their high drama, slick productions and calculated marketing, were very entertaining. European viewers often preferred to watch American programs instead their own national productions. Thus, European officials also asserted that “the regulation of broadcasting necessitated the establishment of the cultural safety net. The safety net was to be comprised of quotas aimed at preserving the different national television industries and encouraging the development of a pan-European broadcasting industry which would remind Europeans of their common heritage and goals.”<sup>8</sup>

### *TWF Dichotomy: Technological Standardization v. Product Diversification*

As emphasized in the discussion surrounding European broadcast legislation, within the context of telecommunications trade, there are two distinct processes at work: the *cultural* and the *economic*. The cultural processes manifest (to whatever degree) “artistic expression,” which creates and/or contributes to the creation of culture. These processes, at the same time, can reflect the culture that produces it through the iconography that enshrines cultural artifacts within the public realm or public consciousness. The economic processes, meanwhile, lend themselves to the “marketization” or “commodification” of cultural products. In this manner, cultural icons are converted into goods for sale on the market.

The development of mass communication technology has both increased the number of goods available in the market (with no assessment offered about the quality of the goods), and the size of the market. The cultural processes often reflect artistic expression and engender traditionally democratic attitudes associated with freedom of expression. Thus, the creative process generally tends to lend itself to less regulation than is the case with the economic processes. In fact, the Council of Europe reaffirmed its commitment to freedom of expression issues, stating, “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”<sup>9</sup> Economically, the sale of telecommunications goods lends itself more readily (perhaps) to regulation or intervention by governmental regulatory actors, in order to encourage the development of the national broadcasting market.

The TWF’s dichotomy emerges again from the implicit paradox contained within it. On the one hand the Directive indicates that there should be no regulatory interference in the development and broadcast of programming within Europe (reflecting the freedom of expression), although the

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<sup>8</sup> “Pursuit of Broadcasting Activities,” The European Parliament, 32 OJ/No. 2-378, (1989) pp. 110, 118.

development of programming should reflect and/or preserve the cultural diversity the EU member states. On the other hand, the Directive also seeks to standardize the technology and the technological infrastructure through which programming is broadcast – to aid the creation of a single European telecommunications market. Yet, restructuring of telecommunications policy within a cultural preservation context through legislation is an inherently contested process between the policy structure and its concomitant cultural and societal links.

The term “national culture” fits the reality of television less and less, ... [f]or the creation of a single European market ... is conditional on the creation of a “European nation.” A political and economic unit, which will need its own shared culture to unify the new community and separate it from others. [sic] ... In the old Europe of nation states there was (and is) no symmetry between political institutions and nations, or between “culture” and political institutions. Both advocates of a European nation, such as Jacques Delors, and those who resist it, notably Margaret Thatcher, ground their arguments in similar nationalist precepts and demand that culture and political institutions be isomorphic.<sup>10</sup>

The conflict between “national culture” and television, and cultural preservation versus economic growth is exacerbated by the nature of the technology. Telecommunications has exponentially increased the rate at which the products of one culture are transmitted across cultures. As technology becomes more sophisticated, ease of transmission produces two, often countervailing tendencies. 1) It becomes easier for all producers to reach larger (cross-national) audiences more cheaply; and 2) it becomes cheaper and easier for the smaller producers to carve out their own audiences, thus dividing the market. As Thomas McPhail indicates:

On the one hand, current technological innovations are creating global infrastructure much more sophisticated in scope and technical quality than previously imagined... on the other hand, however, technological innovation has also functioned to fragment the mass audience. The advent of diverse, individualized telecommunications and media systems... threatens to render the concept of mass national or international systems obsolete.<sup>11</sup>

Some European leaders recognized this problem as well. Joao de Deus Pinheiro, the European Commissioner for communications and information, culture and audiovisual policy in 1994, reached conclusions similar to McPhail's. He was convinced “that if too much emphasis is placed on the cultural aspect of the audiovisual sector, then we will be unable to seduce the financial institutions. Moreover,... subsidies have so far encouraged producers to present works which are not very accessible to

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<sup>9</sup> Collins, “National Culture: A Contradiction in Terms?” Article 10 of the European Convention of Human Rights. This was in response to a 1982 UNESCO initiative, which stated that reception of broadcast signals required prior consent of the respective governments.

<sup>10</sup> Ibid.

<sup>11</sup> Thomas L. McPhail. “Inquiry in International Communication,” in *International and Intercultural Communication*, Molefi Kete Asante and William B. Gudykunst, eds. Newbury Park, CA: Sage Publications, 1989, pp. 49-50.

the public, instead of mass consumption audiovisual products.”<sup>12</sup> For Pinheiro and others, there were economic and industrial factors to consider.

### Globalization and Television

The emergence of TWF is due, at least in part, to globalization. The globalization of telecommunications trade only reinforces the internal countervailing tendencies outlined above. Economically, international competitiveness allows the most efficient producers to push the smaller, inefficient producers out of the market. Such a result, of course, directly contradicts both goals of the TWF Directive. Politically, therefore, the problem must be addressed within the context of interdependent political relationships. That is to say, globalization, a widely used term with multiple meanings, usually encompass a range of dynamics that signifies the reduction of sovereignty; the adverse effects on community, citizenship, and social justice; and effective policy planning. All of these raise issues about continued social and cultural affiliations. Globalization is premised on neo-liberal economic policies, but paradoxically, begins to remove the idea of comparative advantage implicit within neo-liberal economics. Comparative advantage has generally meant that different groups *within national markets* specialize in the production of the items and/or services they can provide most efficiently, which forces international interaction among groups in order to obtain those goods (or services) they do not produce. The open markets that provide opportunities for foreign trade and investment, encourage the recipient country to do the same elsewhere. Greater reliance on or trade for the externally produced goods and services increases the interdependence of nations and groups.<sup>13</sup>

Globalization, however, removes the specialization *within national markets* and creates intersectoral competition across national markets. The focus is no longer cross-national comparative advantages, but absolute intersectoral competitive advantage. The more competitive a producer is, the easier it is for that producer to penetrate markets in all countries; only increasing the complexity of relationships among state and non-state actors. Governance has not kept up with the forces of globalization because, while it integrates along the economic and private dimension, it fragments along the political or public dimension, increasing tendencies of social disintegration and fragmentation.<sup>14</sup> Telecommunications globalization is an especially good example of these tendencies since it transmits ideas as well as goods and services.

When one examines the issue at the level of the firm, as is appropriate within discussions of globalization, several key aspects emerge. “At the firm level, three basic competitive strategies, cost-

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<sup>12</sup> Christine Simon, in an interview with Joao de Deus Pinheiro, “European Union Official Clarifies Audiovisual Policy” FBIS Reports, July 8, 1994.

<sup>13</sup> See Robert O. Keohane and Joseph S. Nye. *Power and Interdependence*, 2<sup>nd</sup> ed. (Glenview, Illinois: Scott, Foresman and Company, 1989).

<sup>14</sup> Janine Brodie, “The New Political Economy of Regions,” in W. Clement, ed. *Understanding Canada* McGill-Queens U. Press: Montreal, 1997.

leadership, differentiation, and focus, are identified. The need to decide clearly between cost-leadership and adding to value through differentiation is stressed. A crucial notion is that it is industries, not nations, that compete globally, and the economic performance of a nation ultimately depends on how successful its industries are at achieving global dominance.”<sup>15</sup> Since, in this paradigm, national economic performance is based on the performance of its industries, it is also in the interest of a state to promote the global competitiveness of those industries. At the same time, such globalizing tendencies negatively affect the ability of a state to govern. Moreover, when economic issues of competitiveness intersect with political issues such as freedom of expression and the commodification of ideas contained therein, regulatory concerns become even more complex. These concerns are especially crucial to telecommunications, with its transmission of ideas that bypass the organs of the state. There has been a world-wide preoccupation, in both communications and public policy circles, with the dominance of trade in television programs by producers domiciled in one nation, the United States.<sup>16</sup>

The visible disadvantages to globalization (similar to those of interdependence) are that relationships tend to be dependent ones, which means that a group relinquishes some ability to control its internal processes. In other words, sovereignty decreases. For example it may become more difficult to make policy decisions based on exclusively domestic national interests as others outside the national boundaries may have increasing influence on the policymaking process.<sup>17</sup> This extends to regulating international actors within a national context. “The increase in importance of international transactions and the growth of multinational institutions have weakened government’s control over some of its most important policy instruments, while the increase in economic interdependence has increased the risks of retaliation and adverse feedback.”<sup>18</sup>

Within the competitive television broadcasting market, the usual domestic factors influence both production and consumption: the cost of production, marketing structures, cost of marketing, quality of product, etc. Economic globalization frees production infrastructure and allows for sectoral specialization without wasting domestic production factors on costly endeavors. When France, Germany and Britain overhauled their broadcasting legislation, they did so for several reasons, not the least of which was the technological diversity and innovation that negatively affected the domestic factors of production and inhibited global competition. At the same time, the standardization of telecommunications regulations led to the increased expectations of standardization within broadcast policies. In fact, most of the major

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<sup>15</sup> Colin Hoskins & Stuart McFadyen. “The U.S. Competitive Advantage in the Global Television Market: Is it Sustainable in the New Broadcasting Environment?” *Canadian Journal of Communication* 16, no. 2 (1991): <http://www.cjc-online.ca/BackIssues/16.2/hoskins.html#EN1>

<sup>16</sup> Ibid.

<sup>17</sup> See, for example, Robert O. Keohane. “International Organization and the Crisis of Interdependence,” *International Organization*. 29 (1975): 357-365.

<sup>18</sup> Raymond Vernon. “Global Interdependence in a Historical Perspective,” in *Interdependence and Cooperation in Tomorrow’s World* (Paris: OECD, 1987), p. 27.

countries, in spite of their increasingly neo-liberal economic policies, resisted several proposals for deregulation – especially in cases of media ownership – because the competition laws would be insufficient on their own.<sup>19</sup> Some relevant reasons cited were that “special media ownership rules, which exist in all major media markets, are needed... to provide the safeguards necessary to maintain diversity and plurality,” and market share thresholds set out in the various legislation would produce dominance in “a handful of very powerful companies.”<sup>20</sup> Not only did telecommunications globalization threaten indigenous cultures, it also threatened telecommunications industries, especially in Europe.

### Managing Globalization?

The neo-liberal political economy models intrinsic to globalization suggest that the telecommunications industry, like all other industries, should be free of institutional arrangements by regulatory governmental (or supra-governmental) agencies. Rather, competition frees the producer to provide the product at its most efficient costs to the consumer, regardless of consumer ties to specific societal links. That is to say, the market knows no culture or society; the market knows consumers. Much of telecommunications trade, however, is inherently embedded within societal links. It is the product of a society or culture within which it is produced. Governmental or supra-governmental actors, which are linked to society and cultures, seek to “protect” them. The cultural products and services – films, television, books, music, etc. – are ideologically bound items, which, in addition to offering entertainment and information, embody social values and messages and consequently influence the organization of the entire social systems.<sup>21</sup> As such, the transmission of cultural products and attendant regulatory efforts increase specific challenges for the European Union. Both the individual members and the EU desire their firms to be globally competitive, but to achieve such a level of competitiveness often requires governmental input. This fact alone may account for the rise of TWF.

Comparative policy studies offer insights into problems of globalization and governmental attempts to manage it. One such insight emerges from examination of policy networks. The policy networks often include elite leaders who advocate ideas and approaches,<sup>22</sup> which places them in the role of coordinating and disseminating information among groups of “tribal professionals.”<sup>23</sup> Their concern with a special subject “leads them to build up a nationwide or international network of contacts that are

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<sup>19</sup> David A. Levy. “Regulating Digital Broadcasting in Europe: the Limits of Policy Convergence” *West European Politics* 20, no. 4 (October 1997): 31.

<sup>20</sup> Dept. of National Heritage, *Media Ownership: The Government’s Proposals* (London: HMSO 1995), Cm 2872, pp. 11, 17, and Levy, “Regulating Digital Broadcasting in Europe,” pp. 31-32.

<sup>21</sup> Howard Frederick. *Global Communication and International Relations*. (Belmont, California: Wadsworth Publishing Company, 1992), p. 146.

<sup>22</sup> David Dolowitz and David Marsh. “Who Learns what from Whom: A Review of the Policy Transfer Literature,” *Political Studies* 64 (1996): 343-57.

<sup>23</sup> This term was used by Richard Rose, “Comparative Policy Analysis: The Program Approach,” Mattei Dogan, ed., *Comparing Pluralist Democracies: Strains on Legitimacy* (Boulder Colorado: Westview Press, 1988), p. 233.



the source of ideas for responses, programs, and implementation strategies.”<sup>24</sup> The comparative policy studies literature also points out that penetration by external actors and interests force governmental or supra-governmental actors to address the results of global influences.<sup>25</sup> One means of managing such penetration by powerful (and essentially independent) actors is through the coordinated governmental or institutional efforts. “The apparently increasing transnationalization of many policy problems, from environmental pollution to communications policy, has convinced governments of the need to avoid unnecessary [regulatory] discrepancies. The existence of intergovernmental and supranational institutions facilitates the shaping of a common response to common problems, to mitigate the unintended external consequences of domestic policy.”<sup>26</sup>

In response to globalization's effects on the state, there are other types of influence on governmental or intergovernmental actions, such as direct coercive transfers. In this case, governmental actors respond within the context of supranational institutions to force domestic regulatory changes.<sup>27</sup> Indirect coercive transfer occurs when externalities or functional interdependence push actors to cooperate on common problems.<sup>28</sup> This type of transfer is directly analogous to the penetrating effects of globalization. This penetrative process “is one in which externally based actors participate in the 'selection of goals, the allocation of costs, and the mobilization of resources and capabilities' in the domestic policy process.”<sup>29</sup> Again, telecommunications trade is a particularly relevant type of penetration, which governments must address internationally or intergovernmentally because of its complexity and breadth; failing to do so results in economic penalties.<sup>30</sup>

The TWF directive represented efforts to deal with both the direct and indirect coercive transfers. What follows is an analysis of the European response to these factors of globalization, both economic and cultural from a policy perspective

## **Why Television is Important to Europe**

### *Technological Developments: An Ocean Apart*

The consistent development of television broadcasting should have been important to European countries and, eventually, the Community and Union, since technological leadership has become just as valuable as political or economic leadership. The path toward television built on much of the technology used in radio, which evolved both in Europe and in the United States. Historically however, some of the

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<sup>24</sup> Richard Rose. *Lesson-Drawing in Public Policy: A Guide to Learning across Time and Space* (New Jersey: Chatham House, 1993), p. 56.

<sup>25</sup> Colin Bennett. “Review Article: What is Policy Convergence and What Causes It?” *The British Journal of Political Science* 21 (1991): 215-233.

<sup>26</sup> *Ibid.* p. 225.

<sup>27</sup> Dolowitz and Marsh, “Who Learns what from Whom,” p. 346-47.

<sup>28</sup> *Ibid.* p. 348-49.

<sup>29</sup> Bennett. “Review Article: What is Policy Convergence and What Causes It?” p. 227.

first and most important advances in television happened in Europe. Theories explaining the transmission of light were furthered through the work of a German, Paul Nipkow, whose 1884 creation of the *Elektrisches Teleskop*, and Boris Rozing, whose cathode ray system, both made the development of television possible.<sup>31</sup>

Though World War I diminished fervor about television, the war itself brought “great advances in communications both by wire and radio.”<sup>32</sup> By the 1920s, both sides of the Atlantic were working feverishly to develop a television broadcasting system, with the United States taking the lead in demonstrating the wireless transmission of pictures (Charles Francis Jenkins, 1923) and Britain taking the lead in public broadcasting of pictures (John Logie Baird, 1925). In the 1930s, the Europeans began to make television available for public use. The Germans started one of the first television companies, broadcasting the 1936 Olympic Games in Berlin, although only within the city. The British had regular programming in 1936, including game shows, musical numbers and sporting events. “A steady stream of visitors from the United States (and elsewhere) were amazed at the uniformly high quality of the pictures, the regularly scheduled programmes, and the coverage of remotes (outside broadcasts). . . . Television progress was lagging in the United States.”<sup>33</sup>

World War II changed that position. Though television production in the United States was discontinued during the war, research continued. Progress in Europe stagnated. Meanwhile, although the post-war period brought tremendous growth in television in the US, it took Europe much longer to resume its research on and use of television. In 1946, television burst upon the American scene and by 1950 the television industry had exploded. Many film and stage stars switched to television. Audiences increased. Stations that once broadcast only a few hours a day telecast around the clock in the 1960s. The growth of the numbers of televisions in American households was just as phenomenal. In fact, “there were almost twice as many sets sold in 1950 alone as had been purchased during the entire previous decade.”<sup>34</sup> And, on April 15, 1956, the world’s first all color television station began operating in Chicago. The growth of television in the United States did not deter European developments, but they were constantly reacting to advances in the United States. Only in 1964 did the N.V. Philips Company of the Netherlands provide one of the first major technological innovations in Europe – an improved color camera tube that made previous tubes obsolete.<sup>35</sup>

While there was much cooperation and sharing of information in its development, there were also differences. The most noticeable difference was the broader social and economic context in which new

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<sup>30</sup> Ibid. p. 228.

<sup>31</sup> Anthony Smith, ed. *Television: An International History* (Oxford: Oxford University Press, 1995), p. 17.

<sup>32</sup> Ibid. p. 19.

<sup>33</sup> Ibid., p. 30, 31.

<sup>34</sup> Cobbett Steinberg. *TV Facts* (New York: Facts on File Publications, 1985), p. 85.

<sup>35</sup> Smith, *Television: An International History*, p. 34.

technologies developed. Innovations in the United States often took place in the private sector for commercial reasons, while those in Europe grew in state-run, often educational, institutions.

### *Programming Differences: A Mass Culture Apart*

In addition to technological advances, the production of programming in Europe was also slow to recover from the war. In the mid-1960s, RAI, the Italian state-owned television station, was asked why it used so many American programs. In reply, it said Italian programming was “both less accessible and more expensive” and very little programming was actually produced in Italy.<sup>36</sup> The United States was the main source of television programming or telefilms, as they were called. All of the major American networks had European offices to sell their products. In what was to become a familiar refrain, it was harder for European broadcasting organizations to sell telefilms to each other than for the United States to sell to any of them since the United States was more competitive.<sup>37</sup>

Like the evolution of television technology, programming development also emphasized the differing broadcasting environments on the opposite sides of the Atlantic. The commercial focus in the United States provided the impetus for increases in programming, while state-run television in obviated the need for profit making. Anthony Smith believes the biggest historical reason for this difference was geography and terrain. Larger countries avoided national systems and smaller countries felt a need to control what came across their borders.<sup>38</sup> Thus, television in Europe became a public-service medium and in the United States it became a commercial one.

Additionally, the commercial focus of American television forced them to become very sophisticated about selling television programs, both to the public and the advertisers.

The U.S. are [sic] the world leaders in using a marketing approach whereby program development is undertaken with audience maximization in mind. To increase the chance that programs exhibited will be popular with viewers (and hence induce advertising revenue) the U.S. networks, from some 9,000 ideas received annually, provide sufficient encouragement to induce about 300 sample scripts. Pilots are made for around 90-100 of these and tested by audiences at special showings. Largely based on this audience reaction, 12 to 20 pilots will be broadcast and about 10 will later be developed into series. If successful the series will be continued for several years. An important consideration here is the economic imperatives of the potentially lucrative U.S. second-run syndication market that requires a minimum of 65 episodes.<sup>39</sup>

There is a second difference in the nature of programming between the United States and Europe; namely, the cultural homogeneity or lack thereof. A major source of both comparative and competitive advantage

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<sup>36</sup> Burton Paulu. *Radio and Television Broadcasting on the European Continent*. (Minneapolis, Minnesota: University of Minnesota, 1967), p. 213.

<sup>37</sup> *Ibid.*, p. 216.

<sup>38</sup> Smith, *Television: An International History*, p. 64.

<sup>39</sup> Hoskins and McFadyen, “The U.S. Competitive Advantage in the Global Television Market.”

is that the US market is culturally consistent, especially in linguistics. The fact that English comprises the largest linguistic market – and is the second language in a significant number of other markets – helps explain why the format and type of broadcasts originated by the American entertainment industry have created a new universal art form which claims something close to a worldwide audience.<sup>40</sup> It became widely known as mass culture.

Finally, as indicated earlier, an effect of the explosion of telecommunications outlets has been a lack of available programming. Since the United States remains the competitive leader in the production of television programming for reasons stated above, it is the favored (indeed, when considering cost, the only) source of entertainment programming. And, Europe is not alone in its reliance on the American media.

As a response to US programming dominance, one strategy has been the development of co-productions. Co-productions reflect the economic pressures for production collaboration between different nationality partners due to the high cost of the drama form of television program.<sup>41</sup> One trade journal identified already in October 1989, 442 co-productions in progress or recently completed.<sup>42</sup> Collins, however, points out that the globalization of mass culture resulting from massive amounts of US programming are not necessarily addressed by co-productions. That is, while economic imperatives may attempt to address programming imperialism through international co-production, such co-productions still must satisfy cultural criteria and must please different audiences with few common assumptions and cultural reflexes; requirements that therefore result in partnerships within a single international language community.<sup>43</sup>

The argument can be made therefore, that the evolution of US programming dominance resulted from primarily economic criteria. The question remains of whether TWF is in response to economic or cultural imperatives is less clear. With the US focus on the commercial development of television, the European Communities could argue that it needed to be economically protectionist and promote internal production. On the other hand, the EC could argue that the economic rapaciousness of the American telecommunications trade not only overwhelmed its internal markets, but also, through the transmission of mass culture and its attendant ideas, icons, and social mores, was indelibly affecting European culture. It was an unintended consequence or by-product of the global marketization of cultural artifacts through telecommunication.

Is the response, then, one of primarily cultural protectionism? Europe embraced Americans after the war and, consciously or unconsciously, embraced their culture as well. With the American military

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<sup>40</sup> Ibid.

<sup>41</sup> Collins, "National Culture: A Contradiction in Terms?" Drama is the highest cost television program form, generating the most acute economic pressures to internationalize.

<sup>42</sup> *Television Business International*, October 1989, pp. 127-134.

<sup>43</sup> Collins, "National Culture: A Contradiction in Terms?"

presence and economic investment through the Marshall Plan, the influx of services like broadcast programming were not as scrutinized for their effects on culture. Little by little, this situation informed the European Community as it began to examine broadcasting in a greater pan-European context and, subsequently, formulate broadcast-oriented policy.

### *The European Communities (Union) and Television: A Joint Response?*

The general impetus for treating broadcasting in the overall European framework of a single market harkens to the very beginnings of the European Community in 1957. "Television broadcasting is a service and the Treaty of Rome provides for the free movement of services."<sup>44</sup> It also addresses one of the basic freedoms in Article 10 of the European Convention on Human Rights, the right to "receive and impart information and ideas without interference by public authority and regardless of frontiers."<sup>45</sup> Though broadcasting was not initially discussed in the context of services because of its limited technical capabilities, as technology has changed over time policymakers have placed it into this category and have labeled it "audio-visual" services, encompassing, for example, cable, satellite and video and film services, as well as television broadcasting.

It was not until the early 1980s that the pan-European institutions began to seriously discuss broadcast policy.<sup>46</sup> An early effort was the Hahn report, which placed telecommunications in the context of European integration. It stated, "[I]nformation is a decisive, perhaps the most decisive factor in European integration," arguing that "[t]he instruments which serve to shape public opinion today are the media. Of these, television, as an audiovisual means of communication is the most important".<sup>47</sup> The Hahn Report was linking economic integration and cultural integration within the context of audiovisual policy and telecommunications trade. The joint regulation of European broadcasting at the supra-national level was necessary to achieve both goals.

European unification will only be achieved if Europeans want it. Europeans will only want it if there is such a thing as a European identity. A European identity will only develop if Europeans are adequately informed. At present, information via the mass media is controlled at the national level.<sup>48</sup>

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<sup>44</sup> "Audio-Visual Services and Production," *The Single Market Review: Impact on Services*, Subseries II, Volume 8 (Luxembourg: Office for Official Publications of the European Communities, 1998), p. 34.

<sup>45</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.

<sup>46</sup> See, for example, "Realities and Tendencies in European Television: Perspectives and Options," Commission Report COM(83)229 final, 25 May 1983; "Green Paper on the establishment of a Common Market for Broadcasting, especially by Satellite and Cable" European Commission document, COM(84)300, 14 June 1984; or "Resolution on the economic aspects of the common market for broadcasting in the European Community," European Parliament document, OJ No. C 288, 11 October 1985, p. 119.

<sup>47</sup> "Report on radio and television broadcasting in the European Community on behalf of the committee on youth, culture, education, information and sport" (The Hahn report) European Parliament document. Doc. 1-1013/81, PE 73.271/fin, 23 February 1982. p. 8

<sup>48</sup> *Ibid.* p. 8.

The Hahn report responded, in part, to the deregulation of telecommunications within Europe in the early 1980s. As deregulation complicated the audiovisual landscape in Europe, it became clear that both the cultural and economic concerns needed to be addressed, but the primacy of one over the other was less clear. One Commission document from 1985 states that a proposal concerning the pursuit of broadcast activities has the following objectives: to promote the freedom of broadcast services across internal Community frontiers, to ensure the free circulation within the Community of all broadcasts; to promote markets of sufficient size for television productions, to increase television production, to promote distribution of television programs and to stimulate the development of broadcasting. These, of course, are economic goals, in keeping with the goal of a single European market. However, it later quotes an earlier report which says that the reason for improved relations in broadcasting is to “bring the peoples of Europe closer together.” Thus, “the economic objectives of the policy form a wider set of goals of which cultural objectives are an important component.”<sup>49</sup> It is entirely possible that, for at least some EU Member States, the opposite relationship drove their support for the subsequent TWF Directive.

#### **Analysis of the TWF Directive, subsequent reports and decisions**

On 3 October 1989, the full “Television without Frontiers” Directive was adopted by the European Parliament. It embodied both the economic and cultural goals discussed throughout the 1980s. The stated overriding goal was “a first step on the road to establishing a legal framework for a single Community-wide broadcasting area.”<sup>50</sup> Indeed, “[i]t had both economic objectives – to establish a harmonized set of minimum rules in order to remove the barriers to a single market for television broadcasting services – and cultural objectives – to encourage the creation of European audio-visual productions through European and independent works quotas.”<sup>51</sup>

There were some contradictions in the report. In one section, it focused on the economic objectives. The directive took the view that, “the priorities established inter alia during the discussions on amendments to the Media program, namely financing mechanisms, pre-production, distribution and training, were the best means of establishing coherent, stable European networks. Economically, the Directive was clear about its desire to harmonize national legal structures and “promote markets of sufficient size”<sup>52</sup> so that European television producers might be able to profit.

On the other hand, it also addressed cultural and program content issues raised in the Bangemann Report. The Bangemann Report entitled “Europe and the Global Information society – Recommendations

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<sup>49</sup> “Proposal for a Council Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities,” European Commission document, COM(86)146 Final, 29 April 1986, pp. 1-2, 6.

<sup>50</sup> “Audio-Visual Services and Production,” p. 34.

<sup>51</sup> *Ibid.*, p. 3.

<sup>52</sup> “Television without Frontiers Directive,” p. 3.

to the European Council” had introduced and acknowledged the strategic importance of the audiovisual program<sup>53</sup> industry in terms of content. Culturally, there was some evolution in thinking from earlier documents to a more concrete exposition of the objective. In the preamble, for example, “it is essential for the Member States to ensure the prevention of any acts which . . . may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole.”<sup>54</sup> The wording is ambiguous enough to mean either dominance among the member states themselves or dominance of the united member states by an outside party.

How well did the European Union address its dual-stated purpose? And, though the Directive focuses formally on internal broadcast relations, has it had an affect on extra-EU relations, specifically on EU relations with the United States and is any evidence to support that rationale that there was a desire to limit US access to European markets, especially for cultural reasons? The conclusion, drawn from an examination of the two objectives as discussed in a series of reports chronicled the actions of various Member States in attempting to meet the Directive’s objectives, is mixed.

**TABLE 1**

**Main Documents In the Evolution of the TWF Directive**

Television Without Frontiers Directive	October 3, 1989
1 <sup>st</sup> Report on Application of Articles 4 & 5	March 3, 1994
First Commission Report	May 31, 1995
Second Commission Report	July 15, 1996
New Television Without Frontiers Directive,	June 30, 1997
Third Commission Report	March 4, 1998

**“Economic Indicators:” Technological Standardization, Quotas, and Ownership Standardization**

Standardization for broadcasting in Europe was manifest in two areas: 1) privatization, and 2) greater need for programming because of increased television outlets and programming time. First, in the mid-1980s, deregulation and privatization altered the telecommunications landscape. Where most television stations in the European Union were either government controlled or a public monopoly, privatization multiplied the number of Europe television stations, almost doubling them to around 200 and increased program hours from about 250,000 per year in the late 1980s, to approximately 400,000 hours by the mid 1990s.<sup>55</sup> The privatization boom was fueled with the huge expansion of technology, including cable and satellites. The European audiovisual market also developed and implemented new

<sup>53</sup> Council Decision 95/563/EC

<sup>54</sup> *Ibid.*, p. 2.

<sup>55</sup> Kirsten Kessler, “Protecting Free Trade in Audiovisual Entertainment: A Proposal for Counteracting the European Union’s Trade Barriers to the U.S. Entertainment Industry’s Exports,” *Law and Policy and International Business* 26, no. 2 (1995): 563-611.

technologies and services. They included video-on-demand, and direct satellite broadcasting (with an additional 10 to 12 direct broadcasting satellites), resulting in a market that could almost triple its present value in the next 20 years.<sup>56</sup>

Second, it is possible that in the future even more time on television schedules will be devoted to US programming with larger potential profit. "The shortage of programming, however, also provides opportunities for US competitors to gain access to new markets or become better established in existing ones."<sup>57</sup> Since American producers already have a competitive advantage, American programs can be marketed in Europe at cut rate prices. Yet, increased global (and especially European) demand has significantly affected prices – especially in popular shows. For example, "In 1987, Lorimar sold 150 episodes of *Knot's Landing* to France for about \$50,000 per episode whereas a year earlier 13 episodes had been sold for only \$12,000-\$15,000 each."<sup>58</sup> Prices for other, less well-known shows, however, are often lower because American producers have such a large domestic market, and can recoup most of their investment costs for sales to US networks.<sup>59</sup>

Further, four decades of mass culture marketing have been effective. Because European national audiences are small, local broadcasters have been unable to create many programs that appeal to audiences outside their home countries; a size limitation that also produces fewer advertising revenues and consequently higher prices for such productions.<sup>60</sup> For example, French films usually cost local networks ten times as much as purchasing the rights to US films.<sup>61</sup> Newer stations, in need of programming, but lacking the capital to produce their own, are therefore highly attracted to US products.<sup>62</sup>

"In economic terms, TWF [was] expected to lower the barriers to cross-border expansion and to increase competition as a result of doing so. [But], this was likely to be particularly relevant for services carried mainly on cable and satellite which do not face terrestrial frequency limitations."<sup>63</sup> In other words, by expanding the market for programming, the EU put broadcasting companies in the unenviable

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<sup>56</sup> Brian Ross, "I Love Lucy, but the European Community Doesn't: Apparent Protectionism in the European Community's Broadcast Market" *Journal of International Law* 26 (1990): 529, 536. Quoted in Kessler.

<sup>57</sup> Hoskins and McFayden. "The U.S. Competitive Advantage in the Global Television Market: Is it Sustainable in the New Broadcasting Environment?"

<sup>58</sup> *Ibid.*

<sup>59</sup> Kessler, "Protecting Free Trade in Audiovisual Entertainment."

<sup>60</sup> "GATT and the Media," *Financial Times*, Dec. 15, 1993, p. 17; Clint N. Smith, Note, "International Trade in Television Programming and GATT: An Analysis of Why the European Community's Local Program Requirement Violates the General Agreement on Tariffs and Trade" *10 International Tax and Business Law* 97 (1993): 102, quoted in Kessler, "Protecting Free Trade in Audiovisual Entertainment: A Proposal for Counteracting the European Union's Trade Barriers to the U.S. Entertainment Industry's Exports," in *Law and Policy and International Business*, 26, no. 2 (1995): 563-611.

<sup>61</sup> "Taking Cultural Exception" *Economist* Sept. 25, 1993, p. 61.

<sup>62</sup> Smith, "International Trade in Television Programming and GATT;" Kessler, "Protecting Free Trade in Audiovisual Entertainment."

<sup>63</sup> "Audio-Visual Services and Production," p. 35.



position of having greater potential for program distribution, but also finding a need for more programming that was not always affordable or available. Thus, the Directive has indeed encouraged the establishment of a legal framework surrounding economic broadcasting issues, but “the application of TWF’s basic principle of freedom of movement [of television programming between member States] has been restricted in practice.”<sup>64</sup>

#### *Quotas*

There is one section in the directive which specifically addresses the use of quotas: Article 4, which provides that “Member States shall ensure . . . that broadcasters reserve for European works . . . a majority proportion of their transmission time.”<sup>65</sup> This article is the most followed of all the goals of the Directive because their results are more easily monitored. Every two years since 1991, there has been a formal “Communication” from the Commission to the European Parliament on the application of Article 4. In the third Communication (the most recent available) the following is a list of the number of reporting television stations by country with the number of those in compliance with Article 4.

**TABLE 2**  
**Compliance of European Television Stations with Article 4<sup>66</sup>**

<i>Country</i>	<i>No. of stations</i>	<i>No. in Compliance 1995</i>	<i>No. in Compliance 1996</i>
Belgium	13	6 (46%)	8 (62%)
Denmark	5 in 1995 6 in 1996	3 (60%)	4 (67%)
Germany 3 stations not reporting	19	9 (47%)	9 (47%)
Greece 2 stations not reporting	11	9 (82%)	9 (82%)
Spain	13	10 (77%)	9 (69%)
France	18	18 (100%)	18 (100%)
Ireland	2	2 (100%)	2 (100%)
Italy 4 stations not reporting	13	6 (46%)	6 (46%)
Luxembourg	8	3 (38%)	5 (63%)
The Netherlands	9	4 (44%)	5 (56%)
Austria	2	1 (50%)	1 (50%)
Portugal	5	2 (40%)	3 (60%)
Sweden 1 station not reporting	11	4 (36%)	6 (55%)
Finland	3	3 (100%)	3 (100%)
UK	64 in 1995 80 in 1996	26 (41%)	38 (48%)

<sup>64</sup> *Ibid.*, p. 3.

<sup>65</sup> “Television without Frontiers Directive,” Article 4.

Except for France, to be discussed below, the only two other countries in full compliance are Ireland and Finland, two of the countries with the smallest number of television stations. There are various reasons given for noncompliance, but the two most often cited are 1) lack of selection and 2) cost of purchasing the rights to broadcast European works as compared to others. Though the "others" are not specified in the document, it is clear that a primary objective of the directive was to reserve the European television market for European audiovisual producers and to protect European productions, at least in part, from US competition.

In fact, the US currently provides 70,000 hours (28%) of all television programming in the EU, and will remain a presence in that expanding market.<sup>67</sup> TWF has sought, (successfully) to limit future gains, as EU officials have pointed out that without TWF quotas, the US portion of the market could double or triple.<sup>68</sup> And, while there may be some change from year to year, the principal desire is to maintain profitable programming, not to meet the quotas of the Directive. In fact the quotas are difficult to enforce since, as Ted Turner pointed out, a broadcaster could show the same European program over and over again in the middle of the night, and thus meet the requirements.<sup>69</sup>

In the second iteration of the Television without Frontiers Directive, called the "New" TWF Directive, one of the significant changes was the addition of the phrase "excluding the time appointed to news, sports events, games, advertising and teletext services"<sup>70</sup> from the programming that must be considered when meeting the 50 percent threshold. This helps stations meet the quota by removing a number of broadcast hours (some of the most profitable) from the overall equation. It is also interesting to note that this exception resulted from the sport-entertainment industry lobby, which saw the quota system as economically damaging.

Another response in the TWF Directive (Article 6) to address the high cost of European production was to coordinate production with another company. There has been success and failure regarding the spirit of TWF. The British have most often turned to the United States because of language compatibility. Other European nations have looked inward for co-production partners.<sup>71</sup> But, on the whole, "most European producers seek co-production deals with US companies for a number of reasons, whether to use co-productions as a means of getting access to US markets for their own productions or to acquire distribution rights for domestic territories or to keep down costs of acquiring US product. . . . A

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<sup>66</sup> Source: "Third Communication from the Commission To the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC" COM(98)199 final, 4 March 1998.

<sup>67</sup> Kessler, "Protecting Free Trade in Audiovisual Entertainment."

<sup>68</sup> Ibid.

<sup>69</sup> "Viewing Figures" p. 56.

<sup>70</sup> "The New Television without Frontiers" Directive 97/36/EC of 30 June 1997 amending Council Directive 89/552/EEC, Article 4.

<sup>71</sup> "Audio-Visual Services and Production," p. 107.

success in the US market makes a company stronger in its domestic market.”<sup>72</sup> As a result, there have been relatively few intra-European co-productions.

Upon closer examination, the quota system has had mixed reviews. It effectively penalizes smaller European broadcasters by forcing them to purchase expensive European productions. The smaller firms, because of their fewer resources, cannot compete without help from the state. For this reason, European Commission President Jacques Santer said that quotas were not enough. There needed to be some “financial means to stimulate audiovisual production . . . [both] guaranteeing funds [and] allowing the granting of tax incentives to the European audiovisual industry.”<sup>73</sup> Some member states were taking such steps before the Union did.

### *Ownership*

In addition, there is the question of ownership. Despite the attempt at European-produced programming, of the nine “primary” pan-European broadcasters (see Table 3), five are entirely US-owned and only one, “Euronews” has no US connection. Does ownership affect content? There is a growing body of literature saying that it does.<sup>74</sup>

**Table 3**  
The Primary Pan-European Broadcasters<sup>75</sup>

<i>Broadcaster</i>	<i>Year Launched</i>	<i>Owner</i>	<i>Nationality</i>	<i>European Home Penetration in Key markets</i> <sup>76</sup>	
				<i>%</i>	<i>Millions</i>
MTV Europe	1987	Viacom	US	31%	47
Eurosport	1989	ESPN Canal Plus TF1	US France France	31%	47
CNN International	1987	Turner Broadcasting	US	29%	41
Superchannel	1987	NBC	US (1994)	23%	32
TNT/Cartoon Network	1993	Turner Broadcasting	US	13%	10
Euronews	1993	Public Broadcasters Société Occidentale	Europe France	10%	32
Discovery Channel	1989	Discovery	US	6%	3
European Business News	1995	Dow Jones Flextech	US UK/US	N/A	N/A
BBC World BBC Prime	1995	BBC Pearson Cox	UK UK US	N/A	N/A

<sup>72</sup> Ibid., p. 106.

<sup>73</sup> Transcript of television interview on Brussels RTBF-1 Television Network. Roberto Denis interviewing Jacques Santer, 8 April 1995, FBIS Daily Report, Document no. WEU-95-070.

<sup>74</sup> See, for example, Ben H. Bagdikian, *The Media Monopoly*, 5<sup>th</sup> ed., (Boston: Beacon Press, 1997) and Robert W. McChesney *Corporate Media and the Threat to Democracy* (New York: Seven Stories Press, The Open Media Pamphlet Series, 1997).

<sup>75</sup> Source: “Audio-Visual Services and Production,” p. 83.

<sup>76</sup> Source: “New Media in the Old World,” *Response TV*, (prepared by Media Business International,) 4, no. 3 (November 1995): 38.

In this light, it is very possible that the focus of the TWF Directive encouraging European-produced programming is warranted. One concern is that this pan-European ownership will “lead to the sort of ‘common denominator’ programming so feared by cultural separatists and isolationists,” but “it is probable that common ownership will create pressures to standardise units so as to increase the possibilities of exchanges and so benefit from consequent cost savings.”<sup>77</sup> Though ownership may on the surface be an economic issue, the distinction between economics and culture is becoming increasingly blurred.

### **Cultural Indicators: Identity, (European) Product Diversification and Quotas, Language**

#### *National or European Identity*

Culture in itself is a difficult concept to nail down and when there is an attempt to combine it with television, the resulting policies will most likely be equally amorphous. There has been much written on culture with little agreement on what constitutes it. Directives like TWF raise the debate to a supranational level, in which the European Commission promotes the idea of a transnational culture while trying to defend distinct national cultures. In part, the TWF is an attempt to counter “the concern succinctly articulated by Jack Lang (Minister of Culture of France) that ‘coca-cola satellites are attacking our artistic and cultural integrity’ (Financial Times April 30, 1984, p. 3).”<sup>78</sup> The fact that TWF was developed as a cultural remedy suggests, at the very least, a politicization of culture. Yet the constant economic references suggest other forces at work. These forces tend

not to focus on the long-established international high culture where authors and audiences share no common citizenship. The international circulation of Mozart, Poussin, Borges, Tolstoy troubles few. What is troubling is the internationalization of mass culture and hence the consequential imputed threat to national identity and the stability of the political institutions and systems which are assumed to rest on it. Attempts to keep “polity and culture” congruent are largely confined to mass culture.<sup>79</sup>

In addition, there is a tension between national “cultures” and European “culture.” While the EU defends the protectionist measures in TWF as a necessary to preserve European culture, it is not clear what is meant by European culture; whether it refers to the cultural heritage of individual member states, or to thematically common aspects of their diverse cultures.<sup>80</sup> “The notion of a synthesized European culture imposed upon the people by some official arbiter of cultural worthiness seem repugnant to the

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<sup>77</sup> Ralph Negrine and Stylianos Papathanassopoulos. *The Internationalisation of Television* (London: Pinter Publishers, 1990), p. 79.

<sup>78</sup> Collins, “National Culture: A Contradiction in Terms?”

<sup>79</sup> *Ibid.*

<sup>80</sup> Kessler, “Protecting Free Trade in Audiovisual Entertainment.”

very concept of individual expressionism and cultural diversity which the European Union claims to be furthering.”<sup>81</sup>

The TWF and member state legislation generally avoids this issue because culture policy in this area must be necessarily vague. “Most [European] legislation simply requires that television should contribute to the spread of culture. The absence of any overall cultural policy, either inspired of, planned or even carried out by the State, which would harness the cultural function of television is stamped by the complex play of socio-cultural forces and the personal outlook of the directors.”<sup>82</sup> So, when culture becomes an issue in television policy, it may be difficult to express on a national level, let alone on a pan-European one.

The impetus to come to a consensus on cultural objectives came from France,<sup>83</sup> which held the European Union presidency in the first half of 1994. France was very specific about the “priorities” during its tenure, one of which was that it “intends to continue to plead in favor of the ‘cultural exception.’ With quite a straightforward room for maneuver regarding television without borders.”<sup>84</sup> French Foreign Minister Alain Juppe continued the momentum when, a year later as the French took over the European Council presidency, he said that the discussion surrounding “the renewal of the directive on ‘television without frontiers’ . . . should again be an occasion for France to justify its reputation as a fierce defender of European culture.”<sup>85</sup> The French position highlighted the unaddressed questions within TWF, turning them from what constituted a European culture, to *whose* European culture. Later in 1995, then-French Prime Ministerial candidate Lionel Jospin used stronger language in his campaign, saying he would fight for French identity on the pan-European level. “If we are not careful, the globalization of broadcasting, brought about by the rapid growth and standardization of the communications technologies with the help of the powerful American television industry, may lead to resignation or decline.” . . . The TWF directive can help Europeans “implement a much more offensive policy than has been pursued to date.”<sup>86</sup>

All this rhetoric certainly had an influence on the first Commission Report. Despite the feeling of general success in the economic aspects of the directive, the language insisting on the importance of culture became stronger. The EU regulatory framework “might contribute more effectively to promoting the programme industry” since the Maastricht Treaty “requires the Union to take cultural aspects into

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<sup>81</sup> Ibid.

<sup>82</sup> James Quinn. *The Film and Television as an Aspect of European Culture* (Leyden: A.W. Sijthoff, 1968), p. 95.

<sup>83</sup> Interview with Erhard Busek, co-chair of the Commission on Radio and Television Policy and former vice chancellor of Austria. Interview on March 30, 1999.

<sup>84</sup> “The Four Priorities of the French EU Presidency,” FBIS Daily Report, Document no. WEU-95-010, 13 January 1994.

<sup>85</sup> Arnaud, Thierry. “France’s European Union Presidency: Europe Doomed to Immobilize” *La Tribune Desfosses*. 2 January 1995, p. 5.

<sup>86</sup> Lionel Jospin, “Winning the Cultural Battle.” *Liberation* 4 April 1995, pg. 4.

account.” In addition, “measures relating to the content of audiovisual services must take into account of their cultural and sociological impact regardless of their mode of transmission.”<sup>87</sup>

### *“Product” Diversification and Content Quotas*

Before the adoption and implementation of TWF, there was substantial legal uncertainty regarding the different national laws, regulations and administrative measures in the field of television broadcasting within the Community. For instance, the Commission brought a complaint against France, Belgium and the Netherlands, alleging that their laws on non-domestic program content were too restrictive. At the time, France required that 50 percent of the programs should be of French origin; Belgium required that 20 percent of the programs should be produced locally, and the Netherlands restricted non-domestic cable channels from aiming advertising at the Dutch market.”<sup>88</sup>

The TWF Directive was meant to harmonize national requirements. Thus, the directive introduced quotas, including cultural ones through the addition of the content quotas. While it is difficult to separate the economic from the cultural in some cases, the argument certainly can be made that the content goals represented protection of cultural programming. In fact, however, European Commission President Jacques Santer of Luxembourg, said that quotas are not at issue. The important thing is to promote the European audiovisual industry and correct the global imbalance that exists in favor of the United States. “It is not right that only 1 percent of European audiovisual productions are disseminated in the United States, whereas 80 percent of American films are shown here [in Europe].”<sup>89</sup>

The cultural aspects of program diversification are not clear and verge on the paradoxical. Several points raised during preliminary expert discussions include “the promotion of the European cultural diversity and of multilingualism.” Yet, the same discussions also raised the point that it is necessary to encourage “the institution of mechanisms to promote networking and the creation of European products.”<sup>90</sup> Will the encouragement of European cultural diversity be reflected in the number and types of programs from each country or language group? What takes precedence, the French language or the European culture, “considering that the main objectives of the European Union in the field of culture are to help improve the knowledge and dissemination of the culture and history of the European peoples, safeguard and preserve the cultural heritage of importance to European peoples, encourage cultural exchanges and artistic creations?”<sup>91</sup>

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<sup>87</sup> “Report on the Application of Directive 89/552/EEC,” COM(95)86 Final, 31 March 1995, p. 6, 7-8.

<sup>88</sup> “Audio-Visual Services and Production,” p. 35, ff. 20.

<sup>89</sup> Transcript of television interview on Brussels RTBF-1 Television Network. Roberto Denis interviewing Jacques Santer, 8 April 1995, FBIS Daily Report, Document no. WEU-95-070.

<sup>90</sup> 95/C 247/01 Draft Resolution on Culture and the Multimedia

<sup>91</sup> Ibid.

To further emphasize the effects of product diversification, broadcasting is one of the most widely available media<sup>92</sup> in Europe and thus it “capable of attracting new audiences, thereby making culture available to a wider public.”<sup>93</sup> The discussions above about what types of programming are used to fill the time are again applicable, lending to the notion of the interconnected nature of economics and culture.

### *Language*

The original directive made language preservation clear. The emergence of the information society is likely to increase citizen access to information and constitute an exceptional opportunity for the development of a programming industry, the content of which will take account of the cultural and linguistic richness and diversity in Europe. “In order to allow for an active policy in favour of a specific language, Member States remain free to lay down more detailed or stricter rules in particular on the basis of language criteria.”<sup>94</sup> This is one instance in which, in conjunction with a move to deregulation and privatization, the Directive granted implicit permission to member states to enact their own, more restrictive, protectionist legislation. Though the desire to erase the barriers to program distribution is strong, the requirements of translations, subtitling or dubbing may prove an obstacle, if the individual states decide that “other-language” programming is inhibiting their own language programming.

### **Conclusions: Telecommunications Integration in the EU – Economically or Culturally Constrained**

As seen from the preceding analysis, a clear understanding of the Directive’s goals and objectives -- and their implications -- may not be possible. There is a strong case that both culture and economics come into play, but some observations are in order. They come in the form of paradoxes in the Directive.

First, the internal/external paradox. It is interesting to note how little the effect of US broadcasting comes up in official EU publications and how much it comes up in the media and other unofficial sources. A Commission-sponsored survey of European and US broadcasters discovered that “Eighty percent of survey respondents . . . believed that national tastes, cultural differences and language differences were a significant or very significant barrier”<sup>95</sup> to the exchange of television programming throughout Europe. The same survey indicated that the most significant economic barriers were the advertising market (56 percent) and nationally-mandated quotas (58 percent). Yet, *none* of the questions in the survey dealt with the impact of non-European or US programming on the industry.<sup>96</sup> This focus on

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<sup>92</sup> According to the 1998 UNESCO Statistical Yearbook, the European Region has more televisions (442) per 1,000 inhabitants than any other region in the world. And, like the United States, Europe has been consistently at the level of 98 percent-plus households with televisions since the 1980s.

<sup>93</sup> “Draft Resolution on Culture and the Multimedia.”

<sup>94</sup> “Television without Frontiers Directive,” p. 4.

<sup>95</sup> “Audio-Visual Services and Production,” p. 97.

<sup>96</sup> *Ibid.*, see appendices.

internal objectives and the lack of attention paid to external consequences – which could be positive and negative in both the economic and cultural arenas – is cause for concern.

Second, there is an inherent tension within and without the EU between the desire to expand economically and the desire to protect culturally. On the one hand, real global competitiveness requires the conversion to the same sort of mass culture and mass appeal that made American programs so marketable and thus so competitive. On the other hand, the desire to promote specific cultural content automatically limits the size of the available markets. Ultimately, cultural protection or promotion may prove to be too limiting in an era of global competition. As seen in the above discussion both are happening simultaneously, so the conclusion cannot be that this is not possible. The results are a balancing of the negative and positive effects of each.

Third, and finally, the paradox of programming. It costs less to use American programming, yet forcing Europeans to spend more to produce their own programming flies in the face of the theory of markets, which is allowing the marketplace, and thus consumers, choose what they want to watch. Moreover, given the trend (and wide support for it) for deregulation and privatization, the only way to build up the European television industry is through subsidies and governmental support -- often funded by tariffs on imported programming. These tariffs come in the form of a levy on cinema box office receipts, blank tapes, and video sales. France, for example, imposes an eleven percent surcharge on such items, nearly 60 percent of which are generated by US producers, and raised \$350 million dollars in subsidies for French productions.<sup>97</sup>

Further, the placement and timing of programming may be an issue. There are two parts to this. A) Companies tend to use better-made American films in prime time to get audience. Erhard Busek, co-chair of the Commission on Radio and Television Policy in Vienna, said, “There is a concentration on European-produced programs, but they show them in non-prime time hours. To get the audiences, they show the American movies during the times when they know they will get the most viewers. It helps advertising revenues.”<sup>98</sup> B) Companies also use less expensive programming to fill the non-peak hours. “As commercial television markets have developed, the requirement to keep costs low has led to an increased demand for product to fill non-peak schedules. This demand is primarily satisfied with US product, partly due to the availability of large libraries which can provide programming at marginal cost and partly because it offers a better price-audience ratio than non-domestic EU productions.”<sup>99</sup>

To this point, there seems to have been some success in balancing these paradoxes in favor of internal demands. It does not seem that the external ramifications have been addressed adequately. For the French, the rationale seems quite clear. “The TWF directive had French origins and its purpose was to

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<sup>97</sup> Kessler, “Protecting Free Trade in Audiovisual Entertainment.”

<sup>98</sup> Busek Interview.

<sup>99</sup> “Audio-Visual Services and Production,” p. 107.



combat globalization, meaning the United States.” The French believed “the United States shouldn’t dominate the world.”<sup>100</sup> However, it doesn’t seem that the French have been able to transfer the cultural mandate to the agendas of fellow EU Member States.

Finally, it is possible that the underlying motivations of the TWF are inextricably intertwined. It is useful to examine the EU’s self-stated principles as outlined in the table below. The reader will quickly note several things.

**Table 4**  
**The Principles Of EU Policy For The Information Society<sup>101</sup>**

<p>At least eight important principles are shaping EU policy:</p> <ol style="list-style-type: none"><li>1. Market forces must drive progress to the information society. This means opening up to competition information services and infrastructure.</li><li>2. Universal service must be ensured together with network interconnection and the interoperability of services and applications throughout the Union. Similar measures are needed in other regions of the world which also guarantee equal access.</li><li>3. The job of financing the information society lies chiefly with the private sector.</li><li>4. <i>Cultural and linguistic diversity should be protected and promoted.</i></li><li>5. Personal privacy must be protected and information must be communicated and processed securely and confidentially.</li><li>6. Cooperation should be developed with less economically advanced countries, particularly with neighbouring countries in Central and Eastern Europe.</li><li>7. Economic operators must be made aware of the new opportunities which the information society presents for them.</li><li>8. A similar awareness is needed among the general public. People need access to the appropriate training throughout all levels of education.</li></ol>
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First, cultural protection is explicitly mentioned only once (point 4, italics added). Economic reasons, however, are mentioned in points 1, 2, 6, and 7. And, when they are mentioned, they are couched in neo-liberal economic terms that emphasize the market, competition, the private sector, and the potential for growth. The other conclusion that can be draw about the principles of an EU information policy is that, like the development of the technology and programming of television, a strong commitment to public service and education remains. This last set of goals seems to be contradictory to the economic goals, if recent history is any measure.

In fact, the Europeans may be using cultural protection issues to justify some of their stances on economic protectionism. Ironically, however, given the leviathan American media industry, there may be some justification for the cultural protection issues. The danger lies in the fact that the Europeans have cried cultural imperialism so often and for so many things, that the cultural defense may be losing its force and its effectiveness. Indeed, the media industry both in Europe and the United States are returning, like many other industries, to the cry that government regulation is interfering with the development of

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<sup>100</sup> Busek Interview.

the telecommunications market. Indeed, upon receiving many negative responses from a discussion paper on the Television without Frontiers Directive by industry groups and viewers, the European Commission has decided to examine the validity of its quota-based directive governing European television content.<sup>102</sup> Many respondents indicated that TWF was not only not a valid measure, but that legislation should focus on committing broadcasters to certain levels of investment in European programming, and that content quotas would impede competition.<sup>103</sup> It seems that the only protection the European telecommunications industry is interested in is economic protection.

The ultimate interconnectedness between economics and culture can be seen in the fact that the commodification of information and culture that drove “neo-technological determinism” in the 1980s<sup>104</sup> inspired national governments to identify information technology as the route to future prosperity. The precepts were baldly stated by the British government as *Making a Business of Information*<sup>105</sup> the same year the French President pronounced, “The cultural industries are the industries of the future. Investing in culture is investing in the economy.”<sup>106</sup>

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<sup>101</sup> [http://europa.eu.int/pol/infso/info\\_en.htm](http://europa.eu.int/pol/infso/info_en.htm) “Information Society, Telecommunications”

<sup>102</sup> “EC May Scrap TV Without Frontiers Directive,” in *Screen Digest*, March 1999, p. 50

<sup>103</sup> *Ibid.*

<sup>104</sup> Quoted in Marjorie Ferguson “Media, Markets, and Identities: Reflections on the Global-Local Dialectic,” *Canadian Journal of Communication* 20, no. 4 (1995): <http://www.cjc-online.ca/BackIssues/16.2/hoskins.html#EN1>.

<sup>105</sup> Kessler, “Protecting Free Trade in Audiovisual Entertainment.”

<sup>106</sup> Ferguson. “Media, Markets, and Identities: Reflections on the Global-Local Dialectic,”