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Opening the International Television Market to Greater Program Diversity

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*by Donna Coleman Gregg**

Telecommunications—in particular, the medium of television—is a powerful force, well-recognized for its ability to link remote peoples and places, inform millions, and make the once strange or exotic familiar. For nearly two decades, communications satellites have enabled television viewers on one side of the world to witness events as they occur on the other side of the world. In the industrialized countries, increasingly available and affordable products of technological development such as cable television and home video recorders permit the individual consumer not only to witness world events, but also to preserve and replay them as personal convenience dictates.

At least from a technological standpoint, there are few, if any, places in the world totally beyond the reach of television. In the last ten years, the number of television sets in the world increased from 399,208,674 to 648,480,765.[1] Even in a seemingly remote country such as Nepal, there are 20,500 television sets in use.[2]

Despite the worldwide proliferation of television, a great disparity exists among different countries in the program choices available for television audiences. Obviously, in less well-developed nations that are struggling to meet their people's basic needs, entertainment cannot make an immediate claim on limited national resources. Although such national priorities and economic conditions largely account for the disparate state of television program choices throughout the world, in many nations conditions exist for a more dynamic television programming market, but media laws and regulations restrict the diversity of programming available. [See Appendix.]

This Article examines various national regulatory systems that

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[1] TELEVISION DIGEST, INC., 47 TELEVISION FACTBOOK [STATIONS VOLUME] 1156-b (1978); TELEVISION DIGEST, INC., 56 TELEVISION & CABLE FACTBOOK [STATIONS VOLUME] B-202 (1988). The totals given here include both color and black and white television sets.

[2] TELEVISION DIGEST, INC., 56 TELEVISION & CABLE FACTBOOK [STATIONS VOLUME] B-187 (1988). The totals given here include both color and black and white television sets.

govern television programming, their impact on the vitality and diversity of the entertainment program market, and their ability to withstand forces for change.

I. National Systems of Television Regulation

A. Foundations of Government Regulation

Both the technical aspects of television and its power of communication and persuasion made the developing medium an immediate candidate for government regulation. Because television broadcasting relies on use of the airwaves, it involves a tremendous potential for interference.[3] Early broadcasters trying to operate without any form of regulation quickly learned that, from a technical standpoint, the medium was ineffective unless stations operated in a noninterfering manner. It fell to each country's government to impose the order necessary for a national broadcasting system. International organizations such as the International Telecommunication Union[4] were responsible for ensuring that broadcasting within countries did not interfere with the communications of neighboring countries and that broadcasting between countries was possible.

Regulation of broadcasting did not stop with policing the airwaves, however. Recognizing television's power to inform and persuade, many governments attempted to insure that the medium was used to benefit the public. Officials in some countries went further, enacting laws and regulations to hold the medium in check or harnessing its power for the advancement of their own political objectives.[5] Hence, in virtually every nation, television is subject to regulation, which to varying degrees affects program content as well as frequency of usage.

As the European Economic Commission has recognized, unnecessary limits on consumer choice can exist when a country's regulations, even those aimed principally at domestic stations, operate to impede the free flow of programming into the country from abroad.[6] The impact of content-oriented regulations is felt most keenly in countries where the domestic production industry has a limited output. In fact, such restrictions on the media detract from the vitality of local production. In some countries, program choice is limited by direct barriers such as bans or quotas on importation of program-

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[3] *See* Czech, *Studio and Operating Facilities*, in RADIO BROADCASTING 52-103 (R. Hilliard 2d ed. 1974).

[4] *See generally* G. CODDING & A. RUTKOWSKI, THE INTERNATIONAL TELECOMMUNICATION UNION IN A CHANGING WORLD (1982).

[5] *See, e.g.*, H. SCHILLER, COMMUNICATION AND CULTURAL DOMINATION 68-97 (1976). It has also been reported that television has been introduced into some third world countries as a means of keeping the local populace peaceful and off the streets. E. KATZ & G. WEDELL, BROADCASTING IN THE THIRD WORLD 11 (1977).

[6] *See* Cockfield, *The Future of Television in Europe*, 37 E.B.U. REV., Nov. 1986, at 8, 9.

ming, content standards, and even censorship. In others, industry structure dictated by prohibitions on private ownership of television stations, limitations on the number of distribution outlets, or severe restrictions on foreign ownership of or investment in distribution outlets or production facilities limit opportunity, restrict sources of investment capital, and ultimately retard the development of a market for diverse programming.[7] In still others, restrictions on advertising or regulations that impede the development and implementation of new technologies create a climate which is not conducive to variety or choice.[8]

B. Current Regulatory Schemes and Their Impact on the Market

The influence of each country's blend of geography, demographics, resources, history, and socio-political conditions can be seen in the broadcast regulation that has developed there.[9] Although individual differences exist, most countries fall within one of four basic categories or tiers of regulatory philosophy and kind of programming market the resulting regulations have fostered.

1. Tier I Countries

At one end of the spectrum are countries with very rudimentary television systems, in some cases, with only one program channel operating for a few hours a day and available only in the country's capital or major population centers.[10] In these countries, television typically is government owned and controlled and is used mainly to provide essential information services and a small amount of entertainment. Although such countries depend almost completely on imported programming for what little entertainment broadcasting is

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[7] For example, Australian law traditionally has limited the number of broadcasting outlets under the ownership or control of any one person or entity. *See* Armstrong, *Ownership and Control of Commercial Broadcasting Station Licences*, 54 AUSTRALIAN L.J. 344, 344-55 (June 1980). In West Germany, television station ownership is conferred on public companies by government-awarded monopoly charters, and the composition of the company's board of directors is subject to government mandates. *See* Witteman, *West German Television Law: An Argument for Media as Instrument of Self-Government*, 7 HASTINGS INT'L & COMP. L. REV. 145, 147 (1983).

[8] Most European countries impose restrictions on advertising. *See infra* text accompanying note 49; *see generally The Privitization of Europe*, 110 BROADCASTING, Mar. 31, 1986, at 60, 62.

[9] Although the focus of this Article is on national regulatory systems governing television, it must be acknowledged that a country's intellectual property laws can also have an impact on the flow of programming into the country. A more detailed treatment of this issue can be found in Abrahams, *Over the Border in Hot Pursuit: Cable, Satellite and the Authors in Europe*, 32 J. COPYRIGHT SOC'Y U.S.A. 173 (1985).

[10] The television systems in Angola, Djibouti, Ethiopia, Gabon, Ghana, Mozambique, Oman, Tanzania, and Vietnam still exemplify this situation. *See* TELEVISION DIGEST, INC., 56 TELEVISION & CABLE FACTBOOK [STATIONS VOLUME] B-173, B-178 to -180, B-187 to -188, B-192, B-194 (1988). *See generally* E. KATZ & G. WEDELL, *supra* note 5.

done,[11] the market for programming in those countries awaits transformation not just of the industry but of the whole national economy.

2. Tier IV Countries

At the other end of the spectrum are countries where vigorous program production industries exist. In these Tier IV countries—most notably the United States and Japan— government's role in the media is kept to a minimum, and program availability is determined by market forces. Although television broadcasting in the United States and Japan had radically different starting points, intervening events have caused U.S. and Japanese television to become similar in many respects.

In the United States, television developed initially and currently operates under the auspices of a private, advertiser-supported enterprise within a much looser regulatory framework than exists in most other countries. In the United States, the Federal Communications Commission (FCC) is responsible for regulating television broadcasting "in the public interest, convenience, and necessity."[12] In addition to administering a basic system of licensing, whereby mainly private concerns[13] are given the right to operate television stations on available frequencies, the FCC issues and enforces regulations dealing with media ownership and, to a lesser degree, program content. Over the years the FCC has adopted various regulations designed mainly to insure that broadcasts on American television are not blatantly misleading or harmful to the audience and that coverage of public and political issues is fair.[14]

This history of regulatory restraint, together with the country's good fortune in having abundant resources, has produced a dynamic television industry and a public of some eighty-eight million television households with a voracious appetite for televised entertain-

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[11] *See* Varis, *Global Traffic in Television Programming*, in WORLD COMMUNICATION, A HANDBOOK 144, 149 (G. Gerbner & M. Siefert eds. 1984).

[12] Communications Act of 1934, 47 U.S.C. § 303 (1982).

[13] In the United States, television broadcasting began as a private sector activity and remained so until the introduction of noncommercial public broadcasting in the Public Broadcasting Act of 1967, 47 U.S.C. §§ 390-399 (1982 & Supp. IV 1986). Of the 1,342 full-service television stations operating in the United States at the end of 1987, 1,017 were commercial and only 325 were noncommercial. *See A Short Course in Broadcasting, 1988*, in 1988 BROADCASTING CABLECASTING Y.B. A-2.

[14] For example, section 73.1212 of the FCC Rules contains requirements for identification of program sponsors. 47 C.F.R. § 73.1212 (1987). Sections 73.1910-.1940 define standards for political broadcasting. 47 C.F.R. §§ 73.1910-.1940 (1987). Finally, section 73.1211 limits the broadcast of lottery information. 47 C.F.R. § 73.1211 (1987). In recent years, the FCC has moved away even from general, content-oriented regulation such as the Fairness Doctrine (a requirement for fair and balanced coverage of controversial issues of public importance) as interfering unduly with a broadcaster's First Amendment rights. *See In re* Syracuse Peace Council v. Television Station WTVH, 2 F.C.C. Rec. 5043 (1987), *aff'd*, 3 F.C.C. Rec. 2035 (1988).

ment and information.[15] U.S. viewers are inundated with a diversity of programs, including twenty-four hour news services, children's programming, live coverage of the U.S. Congress and its committees, and religious and foreign language programming.[16] This multitude of programs is distributed through conventional broadcast television stations, cable television, "wireless cable systems" using microwave frequencies to distribute subscription programming, and, more recently, satellite receiving stations.[17]

The U.S. program production industry is the largest exporter of programming to other countries, currently grossing approximately one billion dollars per year in sales to foreign television markets.[18] Although the U.S. program market is not closed to foreign television programming by quotas or other regulatory barriers, only one to two percent of the programs that appear on American television stations are produced abroad, with most foreign-produced programs appearing on public television.[19] The strength of the U.S. production industry together with the distribution practices that American program producers developed have resulted in what a UNESCO study termed a "one way street" in worldwide programming traffic, namely, out of the United States.[20]

When Japanese broadcasting began in the years immediately preceding World War II, the country was growing increasingly militaristic. All forms of the media were placed under strict governmental control.[21] Nevertheless, as a result of the Allied occupation and democratization of Japan following World War II, the Japanese media, like many other Japanese institutions, adopted the United States' legal and regulatory framework as a model. Although in the United

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[15] About 98% of the total homes in the United States have television. *A Short Course in Broadcasting, 1988*, *supra* note 13, at A-2.

[16] *See* Battaglio, *Lintas Study Finds Cable Is Improving*, ADWEEK, Feb. 13, 1989, at 2, 2. As of April 1, 1988, about 63% of U.S. cable television subscribers had between 30 and 53 channels of programming available, and close to 18% had 54 channels or more. TELEVISION DIGEST, INC., 56 TELEVISION & CABLE FACTBOOK [CABLE & SERVICES VOLUME] C-359 (1988).

[17] When transmission is by microwave frequencies "[t]he signal, which may be from a distant station, is relayed and amplified by strategically placed microwave facilites . . . . These microwave signals . . . are combined with a carrier frequency to match a standard VHF channel assignment to the subscriber's tuner." J. ROMAN, CABLEMANIA: THE TELEVISION SOURCEBOOK 34 (1983). Satellite stations use direct broadcast satellites (DBS) to beam programs directly to the homes of subscribers. *Id.* at 53. DBS enables households with relatively small satellite dish antennas to receive signals directly from a satellite. *Id.* at 253.

[18] *See* Yanowitch, *U.S. Programmers Dominate Overseas Market*, 2 MEDIA BUS. Q. REV., First Quarter 1988, at 52, 52.

[19] *See* S. WILDMAN & S. SIWEK, INTERNATIONAL TRADE IN FILMS AND TELEVISION PROGRAMS 40 (1988); *The Daydream Machine, A Survey of Television*, 301 ECONOMIST, Dec. 20, 1986, at 72, 72(14).

[20] *See* Varis, *supra* note 11, at 152 n.1.

[21] *See* W. EMERY, NATIONAL AND INTERNATIONAL SYSTEMS OF BROADCASTING 481 (1969).

States private commercial stations took the lead, in Japan there exists a strong dual system of publicly owned stations supported by license fees[22] and private, commercial stations supported by advertising. The development of television in Japan emphasized greater freedom for the communicator than in other countries, and Japanese broadcasting continues to have a more relaxed regulatory scheme. Regulatory restraint, coupled with Japanese entrepreneurial spirit and technical prowess, have caused television receivers to proliferate[23] and have produced a tremendous demand for televised entertainment. The Japanese have overtaken Americans in terms of the amount of time spent watching television. Although the Japanese impose no regulatory barriers on program imports, most programming shown on Japanese television is domestically produced, principally because of their language barrier.[24]

3. Tier II Countries

In between the Tier I and IV extremes are other countries, in which the demand for diverse programming and other conditions favor a dynamic programming market. Nevertheless, a philosophy based on protecting national identity and culture along with a system of extensive government regulation in these nations, stands as an obstacle. The Tier II countries include the Soviet Union, China and other Eastern Bloc or totalitarian nations. In these countries long traditions of close governmental control of the media, censorship, and, in some cases, jamming of incoming communications make further significant development of the market place for programming unlikely in the immediate future.[25]

4. Tier III Countries

Tier III countries include industrialized nations with well established television systems combining elements of both government and private ownership, but with the public sector remaining dominant. Here, all the prerequisites to greater diversity—available resources, willing entrepreneurs, and consumer demand—exist, but

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[22] *See generally* W. MCCAVITT, BROADCASTING AROUND THE WORLD 77-86 (1981) (a discussion of public broadcasting in Japan). The publicly owned stations are a part of the Japan Broadcasting Corporation, also known as Nippon Hoso Kyokai (NHK). *Id.* at 76.

[23] As of the end of 1987 there were 97 full power television stations (supplemented by 6,791 low power repeaters) broadcasting to homes with approximately 31,954,635 television sets in use. TELEVISION DIGEST, INC., 56 TELEVISION AND CABLE FACTBOOK [STATIONS VOLUME] B-183 to -184 (1988).

[24] Although commercial television in Japan imported 10% of its programming in 1973, it imports only a negligible amount today. *See* S. WILDMAN & S. SIWEK, *supra* note 19, at 43.

[25] *See, e.g.*, Yang, *Guess What They Watch in China on Sunday Nights?*, BUSINESS WEEK, Jan. 19, 1987, at 91. The Soviet Union has ceased its jamming of incoming communications. *See infra* note 56 and accompanying text.

regulatory tradition and existing legal structures have held back the development of program markets. This group includes industrialized countries such as Great Britain, Canada, Australia, and the nations of Western Europe.

Three major differences exist between the development of broadcasting and the policies underlying television regulation in Tier III and IV. First, while Tier IV policy makers place more importance on the freedom of expression of the *communicator*, the Tier III countries place greater emphasis on protecting the interests of the *recipients* of the communications. Second, in Tier IV, media regulators are more comfortable than their Tier III counterparts in treating television programming as a commodity and permitting it to be subject to the same market forces as apply to any other good or service. Third, by virtue of geography and the early development of a strong, domestic program production industry, neither Japan nor the United States has had to contend with a serious problem of program "spillover" from a more dominant industry in a neighboring country or an influx of programs from a distant global production center.[26]

When broadcast systems were being established in most Tier III countries, government officials concluded that a system based on the economics of private enterprise alone could not be counted on to serve the needs of the citizens in the audience. In many of these countries, government ownership and control evolved in part from a desire to protect and preserve national identity and culture against corruption from a perceived onslaught of programming from neighboring countries or from countries with more advanced production capabilities.[27] Thus, despite an initial flirtation with free enterprise in the early days of broadcasting in several Tier III countries,[28] most

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[26] *See, e.g.*, Howell, *Broadcast Spillover and National Culture: Shared Concerns of the Republic of Ireland and Canada*, 24 J. BROADCAST 225 (1980).

> A nation's broadcasting system serves as a cultural mirror, reflecting and projecting the symbols and images of a society's culture and sense of identity. Some nations, through circumstances imposed by geography and history, find the process of cultural communication and national identity reinforcement more difficult than do others. Two countries similarly affected by such conditions are the Republic of Ireland and Canada. Their broadcasting systems have been shaped and continue to be influenced, especially economically, by largely geographic and cultural factors.
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> . . . Geographic proximity contributes to the broadcast spillover phenomenon between the Irish Republic and Great Britain, an Canada and the United States. Both nations' constitutions recognize two official languages—Irish and English in Ireland, English and French in Canada—resulting in bilingual broadcast services.

Id. at 225-26.

[27] *See, e.g.*, Hoffmann-Riem, *National Identity and Cultural Values: Broadcasting Safeguards*, 31 J. BROADCASTING & ELECTRONIC MEDIA 57 (1987); Christol, *Prospects for an International Legal Regime for Direct Television Broadcasting*, 34 INT'L & COMP. L.Q. 142, 155 (1985).

[28] In Great Britain, for example, the development of radio broadcasting was initiated by equipment manufacturers such as the Marconi Company. *See* A. BRIGGS, THE HISTORY OF BROADCASTING IN THE UNITED KINGDOM 46-50 (1961). Although radio broadcasting in Belgium also began as an advertiser-supported private sector activity, commercial opera-

rejected private ownership in favor of government-run systems.

a. Program Markets in Developed English-Speaking Tier III Countries

Although the use of dubbing and subtitles permits programming produced in one language to be exported to a country where another language predominates, international traffic in television programming flows more smoothly when the nations supplying and receiving the program have a common language and culture. As a result, certain countries, especially Brazil, Mexico, Egypt and Hong Kong, have developed into important program suppliers for their regions, and the Soviet Union supplies most of the programs televised in Eastern Europe.[29] Nevertheless, the major global producer and exporter of television programming remains the United States with Great Britain as a somewhat distant second.[30] Because countries in which English is a dominant language currently account for about thirty-eight percent of the world's television receivers[31] and also rank first economically among other linguistic markets,[32] this survey of Tier III countries begins with a review of prevailing conditions in two English-speaking nations with well-developed television markets, Great Britain and Canada.

Given the common language, similar culture, and close historic ties among Great Britain, Canada, and the United States, one might expect the traffic in television programming to flow freely among these countries. Reasons for the present trickle of programs from Tier III producers of English-language programming into the United States have been discussed above,[33] and similar factors no doubt have restricted trade in foreign-produced, English-language programming to some degree in Canada and Great Britain as well. Significant responsibility for impeding the internationalization of these markets, however, lies with governmental restrictions.

In Great Britain, television broadcasting has long been a predominantly nonprofit, public-sector activity, with the country's first two television services provided by the publicly chartered British Broadcasting Company (BBC).[34] After lengthy study and deliberation, the government allowed independent commercial television to be introduced, first with Independent Television (ITV) and later,

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tions were taken over by a government monopoly after less than a decade. *See* W. EMERY, *supra* note 21, at 124.

[29] *See* S. WILDMAN & S. SIWEK, *supra* note 19, at 41.

[30] *See The Daydream Machine*, *supra* note 19, at 72(14).

[31] The number of television receivers in the United Kingdom is 18,704,732. In Canada it is 12,120,000, and in the United States it is 214,250,000. TELEVISION DIGEST, INC., 56 TELEVISION & CABLE FACTBOOK [STATIONS VOLUME] B-202 (1988).

[32] *See* S. WILDMAN & S. SIWEK, *supra* note 19, at 86.

[33] *See supra* text accompanying note 20.

[34] *See generally* A. BRIGGS, THE BBC: THE FIRST 50 YEARS 30-33 (1985).

Channel Four.[35] Until relatively recently, the BBC, which is renown for its insistence on high standards and its award-winning productions, imported relatively little of its programming from abroad. It was the newly created, commercial independent services that first began to import programs in significant numbers, and independent broadcasting continues to rely more on imports today.[36]

The extent to which foreign-produced programming can be imported by either a public or private sector television in Great Britain today is affected by restrictions on content to which all Britain television broadcasters are subject. Britain's Broadcasting Act of 1981, for example, imposes on the Independent Broadcasting Authority, which oversees the operations of ITV and Channel 4, the duty of insuring "that proper proportions of the recorded and other matter included in the programmes are of British origin and of British performances."[37] The continuing British concern with protection of the audience can be seen more recently through the formation of a new Broadcasting Standards Council, which may lead to additional regulation of sex and violence, particularly on imported programming, on both the BBC and the two independent channels.[38]

Canada presents another, somewhat different case in point. Unlike Great Britain, which developed early dominance in English-language program production, Canada has long been plagued by the problem of spillover from the United States and the need to establish a Canadian television system that neither relies unduly upon nor imitates the United States. Thus, Canadian television has been kept under fairly tight governmental control.[39]

When the slow development of the country's initial broadcasting system proved unsatisfactory, policy makers concluded that only a publicly owned monopoly could provide adequate service to the country's widely dispersed, bilingual population.[40] Nevertheless,

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[35] *See generally* S. LAMBERT, CHANNEL FOUR (1986) (account of the development of independent television in Great Britain); Glencross, *Thirty Years of Independent Television in the U.K.*, 37 E.B.U. REV., Mar. 1986, at 34, 36.

[36] *See The Daydream Machine*, *supra* note 19, at 72(14).

[37] Broadcasting Act, 1981, § 4(1)(c); *see also* W. HOWELL, WORLD BROADCASTING IN THE AGE OF THE SATELLITE 64 (1986).

[38] *See* Harper, *British Push for Censorship of TV Imports*, 7 ELECTRONIC MEDIA, Oct. 17, 1988, at 14, 14.

[39] *See* Howell, *supra* note 26, at 52.

> Perhaps the most conspicuous action by the CRTC [Canadian Radio-television and Telecommunications Commission] to cope with the domination of Canada's airwaves by U.S. programming was its imposition of "Canadian Content" quotas on all domestic broadcasters in the early 1970s. These regulations now require that, between the hours of 6 PM and midnight, 60% of TV programming aired by the CBC and half of that telecast by private licensees must be made in Canada, with no more than 30% being imported from any one foreign country.

Id. at 53 (citations omitted).

[40] Canada initially established a private commercial venture, which operated under loosely regulated conditions. *See* Peers, *Canada and the United States: Comparative Origins and*

Canada followed the lead of other Tier III nations and eventually opened its market to limited private ownership of advertiser-supported television stations and the creation of a privately owned network, CTV, in 1960.[41] The system that has evolved in Canada is a mixture of forty-four public and eighty-one private television stations.[42] Some of the privately owned stations are affiliated with and receive much of their programming from the publicly run Canadian Broadcast Corporation (CBC), a major national network. All private stations are under the regulatory control of the Canadian Radio-Television Commission (CRTC).[43]

Despite the advent of private commercial broadcast operations and a growing cable television industry, the *official* broadcast system in Canada still provides its audience with more limited viewing choices than are available to the U.S. audience. The regulatory history of television in Canada consists of continuous initiatives to limit the amount of foreign-produced programming that can be shown. Over the years, Canada has required that as much as sixty percent of all programming must be of Canadian origin,[44] and has imposed numerous restrictions aimed at keeping the program market relatively closed, in particular to U.S. imports.[45]

b. Non-English Speaking Western Europe[46]

There are a number of similarities in the television systems of the individual non-English speaking nations of Western Europe. Most began under state ownership, and public sector television, with or without structural and legal measures to insure independence from the political process, remains the norm in most Western European countries today. From a philosophical standpoint, most of these governments (even those such as France and Italy that have sanctioned some private broadcasting) continue to view television broadcasting more as a public service than a commercial enter-

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Approaches to Broadcast Policy, in CULTURES IN COLLISION, THE INTERACTION OF CANADIAN AND U.S. TELEVISION BROADCAST POLICIES 11, 14-15 (Canadian-U.S. Conference on Communications Policy, 1983).

[41] *See* E. HALLMAN, BROADCASTING IN CANADA 24-25 (1977).

[42] TELEVISION DIGEST, INC., 56 TELEVISION AND CABLE FACTBOOK [STATIONS VOLUME] B-127 to -172 (1988).

[43] *See* E. HALLMAN, *supra* note 41, at 25.

[44] *Id.*

[45] Broadcasting Act, 1967-68, R.S.C., Vol. B, ch. B-11, § 3(d), (f) (1970); *Rewriting the Communications Rules in Canada*, 116 BROADCASTING, Jan. 16, 1989, at 102, 102-04; Byrne, *Canadian Legislation May Trim U.S. Shows*, Multichannel News, July 11, 1988, at 1, col. 4; *CBC Draws Up Plan to De-Americanize Canadian Television*, 110 BROADCASTING, Jan. 27, 1986, at 78, 78-79 (reports on legislative proposals directed against U.S. television program imports in Canada.).

[46] Because the scope of this Article does not permit a detailed discussion of the unique features of the broadcasting systems of each Western European nation, examples of unusual or fairly typical requirements have been selected for purposes of this discussion.

prise.[47] Regulations based on such philosophical underpinnings are the norm.

Intent on protecting their national sovereignty, culture, and, in some cases, their home-based production industries, most countries in Western Europe have adopted fairly strict regulatory barriers against foreign ownership and investment and foreign-produced programming.[48] In addition, restrictions exist on commercial advertising that range from total bans in Denmark and Sweden to content and time limitations in West Germany and several other countries.[49] Such advertising regulations indirectly impede the development of open program markets by limiting economic support for program acquisition and development.

The situation that exists consists of a patchwork of complex and slightly different requirements and restrictions, in many cases imposing quotas or bans on foreign programming. These restrictions stand in the way of greater program choices for the audiences in the restricting countries and impede the development and deployment of technology such as direct broadcast satellites, which is capable of expanding viewer choices even more. Thus, in recent years, interest has grown for creating a unified European television market, similar to the Common Market that exists with respect to other goods. A major study, "Television Without Frontiers," completed by the European Economic Commission in 1986, acknowledged this problem. It states:

> The present position brings advantage to nobody— neither to the consumer nor to the potential entrepreneur, nor indeed— although they may be slow to admit it—to existing or future television producers themselves. The whole philosophy of the unified market consists of bringing together willing sellers and willing customers, in a way which increases consumer choice, ensures economic efficiency, and provides the supplier with the largest possible market from which to recoup his costs. Manifestly and lamentably, the present situation in Europe fails to do that: it cannot be in the long-term interests of the European television industry that its market is so segmented and inconsistently regulated.[50]

II. Forces for Change

To some extent, language differences will continue to limit international traffic in television programming. New technology, however, such as satellite distribution of programming with soundtracks

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[47] *See* Hoffmann-Riem, *supra* note 27, at 60.

[48] *See generally The Privitization of Europe*, *supra* note 8, at 60-68.

[49] *See, e.g.*, Mosteshar, *The Future of Television in Europe*, 12 INT'L BUS. LAW. 357, 358 (1984); Morrow, *Developments in European Telecommunications Law and Policy*, 24 COLUM. J. TRANSNAT'L L. 165, 166 (1985).

[50] *See* Cockfield, *supra* note 6, at 9.

in several different languages,[51] likely will remove that obstacle in the near future. Thus, regulatory restrictions in Tier III countries will continue to bear major responsibility for closing borders and minimizing viewer choice. Nonetheless, recent developments strongly suggest that even the most firmly entrenched legal and regulatory barriers ultimately will fall.

In the industrialized democracies and even socialist countries that constitute most of Tier III, government officials and policy makers ultimately are responsive to the will of the people. As television viewers realize what is available in the world market and that greater diversity in the programming in their own country is possible, pressures will become great enough, restrictions will be repealed, and an influx of new programming will begin.[52]

The force of popular demand becomes even more powerful when coupled with advances in technology. As the technology capable of creating more distribution outlets with more channels is perfected and becomes affordable, an increase in varied programming becomes feasible. Distribution technology such as satellite communications, which is capable of reaching a wider audience more economically, or cable television, which provides vastly expanded channel capacity and is unaffected by the "scarcity" constraints of over-the-air broadcasting, are now available and in use. Their benefits are readily apparent to countries that have not yet deployed such systems. Once these new technologies are deployed, there will be more channels and, hence, a need to find more programming.[53] Chances are excellent that unless and until domestic production industries become capable of meeting the demand, much of that programming will come from the international market.

Finally, one cannot ignore the impact of economic forces and the almost unstoppable quest by entrepreneurs to find new ways to make money. As the demand for more diverse programming has grown, entrepreneurs throughout the world have begun investing in highly profitable delivery systems. Furthermore, once the delivery systems are in place, other entrepreneurs will fill the empty channels by producing programming. As one observer of television in Western Europe has pointed out, "[t]he worldwide communication mar-

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[51] *See* Brown, *Europe Braces for Free-Market TV*, 109 FORTUNE, Feb. 20, 1984, at 74, 76.

[52] It has been observed that "groups experiencing a discrepancy between the information they want and the information they actually have access to" create pressure for the opening of closed and controlled national communications systems. White, *Communication Strategies for Social Change: National Television Versus Local Public Radio*, in WORLD COMMUNICATIONS, A HANDBOOK 279, 282 (G. Gerbner & M. Siefert eds. 1984). The same can be said for entertainment. An example of this phenomenon has occurred in Greece, which recently officially opened its borders to U.S. and European programming in response to popular pirate TV operations. *See* Comms. Daily, Aug. 26, 1988, at 5.

[53] *See* Adamson & Hsiung, *Direct Broadcast Satellite: A Proposal for a Global/Regional System*, 10 COMM. & THE LAW, Feb. 1988, at 3, 5.

ket is a 'logical' market for multimedia enterprises operating on a multinational basis."[54]

The impact of these forces for change is already taking its toll. In the past, when a nation's legal and regulatory structure prevented the public's demand for programming from being met within the country, sources outside the country, such as off-shore "pirate" broadcasters or stations in neighboring countries, filled the need. Thus, "[i]n the days when the BBC and the other European noncommercial national systems were still too paternalistic to respond to popular tastes, commercial stations located abroad made inroads on their audiences."[55] More recently, even the closed systems in Tier II Soviet Bloc nations are opening as governments respond to the people's desire for more information and programming through a cessation in jamming foreign broadcasts and a stepped-up cultural exchange program.[56]

The number of available television channels in the world is increasing through the authorization of new conventional TV stations (many of them commercial) and through the use of new distribution technologies such as cable television and direct broadcasting satellites. Initially it will be less expensive to fill those channels with programs produced abroad than to increase domestic production. Even in the United States, the amount of foreign programming being shown on television has increased because of new channel space made available by cable television.[57] In 1988, for example, the Discovery Channel, a cable programming service, offered programming from Soviet television, making five nightly newscasts from the U.S.S.R. available to about thirty-one million American cable subscribers.[58]

The increase in coproductions and joint ventures between foreign and domestic companies is evidence of entrepreneurship at work in the television market.[59] Even though regulations placing quotas or other restrictions on the broadcast of foreign programming exist, entrepreneurs can bypass the restrictions by producing programs jointly with local Tier III (and eventually even Tier II) companies. This trend can be expected not only to increase the di-

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[54] *See* Hoffmann-Riem, *supra* note 27, at 63.

[55] S. HEAD & C. STERLING, BROADCASTING IN AMERICA 20 (1982).

[56] *See* Schmemann, *Soviet Union Ends Years of Jamming of Radio Liberty*, N.Y. Times, Dec. 1, 1988, at A1, col. 6.

[57] *See The Daydream Machine*, *supra* note 19, at 72(13).

[58] *See* Unger, *Soviet Evening News Comes to U.S. TV Screens*, Christian Sci. Monitor, May 25, 1988, at 21.

[59] *See, e.g.*, Stilson, *U.S. TV Companies Take Growing Interest in Europe*, 7 ELECTRONIC MEDIA, Oct. 17, 1988, at 18, 18; Kneale, *NBC Talks with European Broadcaster About Receiving an Option to Buy Stake*, Wall St. J., July 5, 1988, at 26, col. 1 (recent effort by U.S. TV companies to invest in European media); Comms. Daily, Oct. 3, 1988, at 9 (acceptance by Central China TV of co-production proposal from International Public Television Consortium).

versity and amount of programming available on television in Tier III countries, but also to make audiences accustomed to different kinds of fare. If the demand for these newer forms of programming grows, popular pressure for elimination of formal regulatory barriers will increase as well.

The results of these forces for change can be seen today in Great Britain, with the release of two reports, one making recommendations for the introduction of cable television[60] and the other, a more recent Broadcasting White Paper, containing proposals for British television in the 1990s.[61] The earlier Hunt Report on cable television was prompted by the availability of new technology. It recommended lifting the restrictions on the amount of overseas programming and advertising. The government undertook the study culminating in the recent Broadcasting White Paper for the following three reasons: To position the country to participate in and profit from the opening of a pan-European market for services (including television programming) as well as goods, to take advantage of new technology, and to satisfy the growing public demand for more diverse programming. These two reports call for a major effort to revitalize British television by increasing competition through the authorization of more distribution outlets and a greater reliance on the private sector as a source for programming. Although the elimination of content regulations and standards is not an important component of the White Paper's recommendations, the removal of structural barriers and the resulting increase in competition will set up additional pressures that the older, content-oriented regulations and import quotas may not be able to withstand.

Finally, as individual Tier III countries seek to benefit from economic opportunities created through the use of new technology and increase demand for programming, international organizations such as the European Economic Community will continue their efforts to extend trade agreements and treaties to goods such as films and services such as television programming.[62]

III. Conclusion

As in the case of any major change, nothing can be expected to happen overnight. Just as Great Britain did, other Tier III nations will be tempted to engage in lengthy periods of study before discard-

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[60] *See* Munro, *The Hunt Report*, PUB. L., Spring 1983, at 40, 40.

[61] *See Two Views of British Television Reform*, 115 BROADCASTING, Dec. 12, 1988, at 60, 60-61; Toman, *Britain Proposes Wide Shakeup of Broadcasting*, Wall St. J., Nov. 8, 1988, at A17, col. 5. The White Paper, entitled *Broadcasting in the 90's: Competition, Choice and Quality—The Government's Plans for Broadcasting Regulations*, was released in Great Britain on November 7, 1988.

[62] *See generally* Schwartz, *Broadcasting and the EEC Treaty*, 11 EUR. L. REV. 7, 41-47 (1987).

ing old and familiar forms of regulations. In Great Britain the Hunt Report had numerous critics, who viewed its recommendations to lift restrictions on importation of programs and advertising as a "recipe for an endless diet of regressive rubbish."[63] Others believe that increased commercialization and the opening of borders create a market dependent on the economics of mass appeal and, accordingly, result in more homogeneous, rather than more diverse, programming.[64] Thus, policy makers in Tier III countries can be expected to resist relinquishing their traditional role of protector of the public and to cling to quality standards, quotas, and content regulations that impede the international flow of television programming.

A world in which television programming is treated purely as a commodity, with no concern as to the powerful impact of the medium or the quality of programming available may not be desirable. Through a proliferation of channels and the corresponding need to fill them, new programs, some bad, but others undoubtedly of excellent quality, will certainly be created. From an economic standpoint, once less expensive, imported programs have allowed new channels and broadcast services to become established, the profits from new services may be used to stimulate domestic production. The forces for change are indeed powerful, and the benefits of opening world markets are more likely, in this author's view, to outweigh the advantages of retaining the present restrictions.

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[63] *See* Munro, *supra* note 60, at 41-42.

[64] *See* Hoffmann-Riem, *supra* note 27, at 65.

Appendix

Selected Statistics on Television Stations and Audiences, 1987

Tier I	Stations*	Sets in Home (in Thousands)
Afghanistan	1	—
Bangladesh	8	368.7
Burma	2	52.7
Ethiopia	7	50.0
Haiti	2	13.0
Honduras	4	135.0
Kampuchea	1	30.0
Senegal	2	50.0
Swaziland	1	5.6

Tier II	Stations*	Sets in Home (in Thousands)
Bulgaria	13	1,900.0
China (PRC)	56	9,200.0
Czechoslovakia	75	4,331.0
Poland	82	9,466.5
Romania	38	3,912.0
USSR	102	88,000.0

Tier III	Stations*	Sets in Home (in Thousands)
Australia	278	6,116.0
Austria	904	3,574.0
Belgium	38	2,983.2
Canada	396	11,816.0
Denmark	45	1,965.0
France	500	25,000.0
W. Germany	476	25,330.0
Italy	163	14,530.5
United Kingdom	100	18,704.7

Tier IV	Stations*	Sets in Home (in Thousands)
Japan	200	31,954.6
United States	1,333	214,250.0

* Does not include low power stations or repeaters

Source: TELEVISION DIGEST, INC., 56 TELEVISION & CABLE FACTBOOK [STATIONS VOLUME] B-173 to -196 (1988).