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Television without Frontiers

Cover Page Footnote
International Law; Commercial Law; Law
Television Without Frontiers?

Suzanne Michele Schwarz*

I. Introduction

On October 3, 1989, the European Community adopted the highly controversial "Television Without Frontiers" Directive. The Directive, which imposes quotas on European broadcasters and requires the development of local productions, raises a number of unique questions regarding probable changes in the international broadcasting industry.

This Article will examine the "Television Without Frontiers" Directive and its ramifications in the United States by tracing the origins of the "Television Without Frontiers" Directive, reviewing its relevant articles, and examining the impact of the Directive on the member states in the European Community. The European Community's reasons for promulgating the Directive will be assessed in light of the importance of broadcasting to both the European Community and the United States. The arguments that the Directive is culture-based and non-binding will be set forth, as well as the United States response to those arguments. Next, U.S. actions and available countermeasures to the Directive will be discussed, including the House Resolution dealing with the Directive, GATT dispute settlement mechanisms, and section 301 of the Trade Act. Finally, coproduction and other options available to U.S. producers will be noted. The Article concludes that the GATT remedies should be invoked by the United States' Trade Representative to counteract the Directive.

II. History of the Directive

With the advent of cable and satellite television programming, the number of television channels in Europe is expected to double over the next decade.1 To meet this new demand, producers in the European Community2 are at a competitive disadvantage by being

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2 The European Community consists of Italy, Great Britain, France, Spain, West
small, fragmented, and linguistically separate, while U.S. producers benefit from being able to program for a single ninety million household market. European television and film producers, who are fearful of being inundated by cheaper American programs, have supported quotas as a method of protecting their domestic broadcasting industries.

The "Television Without Frontiers" Directive was adopted by the European Community by a vote of 10 to 2 after months of debate. On April 13, 1989, European Community trade ministers approved a broadcasting directive which was then sent to the European Parliament. Opposition to the Directive grew, however, prior to Parliament's meeting in May. Members of the European film industry urged Parliament either to strengthen the Directive or to abandon it altogether. European cultural personalities urged the Parliament to defeat the Directive unless strict quotas on non-European programs were included. United States Trade Representative (USTR) Carla Hills sent a letter of protest to European Parliament members and officials in European Community member states asserting that the proposed Directive's local content requirement would violate the General Agreement on Tariffs and Trade (GATT).

In May Parliament passed the Directive, approving a plan that
would curb pornography, racism, and violence in domestic and cross-border television broadcasts and would restrict advertising to 15% of total programming time. The Directive was amended to require television stations to show a minimum of 50.1% of European programs by 1993.

The Directive, however, failed to gain the approval of the European Community Council of Ministers when the Council met July 17 and 18. Diplomats said France, the Netherlands, and Greece opposed the plan because they considered the language of “where practicable the European Community should require the majority of programs to be from Europe” (emphasis added) insufficient protection for European productions. West Germany questioned whether the rules encroached on their national responsibilities. Other countries opposed any binding limit on imports.

On October 3, 1989, the Council, with a greater spirit of compromise, passed a diluted version of the Directive. West Germany withdrew an earlier negative vote after an interpretive declaration that articles 4 and 5 are merely political obligations was put on the record. The Netherlands, Greece, and France then gave full support to the Directive.

According to many in the European Community, excessive anti-quota lobbying by the United States also contributed to the passage of the Directive. David Webster, a former BBC director and currently a United States based media consultant, stated:

[the American pressure has been of such a nature that it has irritated most European countries. It may have persuaded the French that the Directive may have been a good idea after all, because if it annoys the Americans that much, there must be something good]

11 Parliament Proposes Amendment, supra note 8 at 50.
12 U.S. Hard Line, supra note 9, at 1021.
13 Dawkins, supra note 6, at 2, col. 3.
17 Europe Agrees to ’TV Without Frontiers’, supra note 16, at 42.
As a European Community spokesman stated, "[w]e have a Directive today, thanks to the Americans."19

III. The Directive

A. Final Form

In its final form, the "Television Without Frontiers" Directive addresses the establishment of free channels to cross borders without being blocked or unfairly regulated.20 The law sets common television standards throughout the Community but excludes news, sports, advertising, and teletext services from the quota.21 The Directive, which must be incorporated into national legislation by each member state within two years, consists of a preamble and twenty-seven articles. Three broad areas are covered in the Directive: (1) quotas on European programs and on independent European production; (2) advertising rules; and (3) youth protection rules.22 The pertinent articles dealing with European programs are set forth below.

1. Article 4: Quotas

The primary controversy surrounding the "Television Without Frontiers" Directive involves article 4. Paragraph 1 of the article states:

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Member states shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding . . . news, sports events, games, advertising and teletext services. This proportion . . . should be achieved progressively, on the basis of suitable criteria.
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This article gives the state, not the channel, the authority to decide what is practicable.24 An interpretive declaration attached to the Di-
rective states that articles 4 and 5 (independent production quotas) are politically rather than legally binding. Furthermore, the Commission stated it would not litigate the matter. The Commission was clear, however, that the 50% program target was to be reached and, if the Directive's wording was considered unclear on this point, the text would be reexamined.25

Paragraph 2 of article 4 states that "[w]here the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned."26

The Directive's framers intended this paragraph to mean that a channel which does not reach 50% Euro-content cannot fall below its 1988 average. As written, however, the text actually suggests that if a channel cannot reach 50%, it must not fall below the 1988 Euro-content average for the entire state.27

Paragraph 3 of article 4 requires each state to report bi-annually to the Commission on the compliance record of broadcasters within its jurisdiction, to set forth explanations for any failure to fulfill the quotas, and to describe measures adopted to remedy those failures.28

2. Article 6: What is European?

Article 6 defines a European broadcast as follows:

1. (a) works originating from Member States of the Community.
   (b) works originating from European third states party to the European Convention on Transfrontier Television of the Council of Europe;
   (c) works from other European third countries . . .
2. The works . . . are mainly made with authors and workers residing in one or more States referred to in Paragraph 1(a) and 1(b) . . .
   (a) they are made by one or more producers established in one or more of these States; or
   (b) production of the works is supervised and actually controlled by one or more producers established in one or more of these States; or
   (c) the contribution of co-producers of those States to the total coproduction costs is preponderant and coproduction is not controlled by one or more producers established

The Disney Channel is an example of impracticability. One European Community staffer asked, "How can you have a channel called Disney if it's not allowed to play Disney product?" Id. 25

26 Id.

26 Alderman, Quid Pro Quota?, supra note 5, at 51.

27 Alderman, Quid Pro Quota?, supra note 5, at 51. The West German average in 1988, for example, was 74%. Thus, German Channel Sat 1, which rated a 43%, would be required to program 74% rather than 50% Euro-content. Id.

28 Id.
outside those States.\textsuperscript{29}

\section*{3. Article 3: Greater Restriction}

Article 3 allows members to "require television broadcasters under their jurisdiction to lay down more detailed or stricter rules in the area covered by this Directive."\textsuperscript{30} Thus, countries are allowed to impose 60\% or greater quotas on their own national broadcasters.\textsuperscript{31}

\section*{4. Article 5: Independent Producers}

Intended to help independent producers, article 5, like article 4, is politically and not legally binding,\textsuperscript{32} and provides that "where practicable and by appropriate means broadcasters [must] reserve at least 10\% of their transmission time, excluding news, sports events, games, advertising and teletext services . . . for European works created by producers who are independent of broadcasters."\textsuperscript{33}

\subsection*{B. Particular Countries}

The most difficult task in forging a European consensus on the Directive was that each member state supported or opposed it for different reasons. Most states agree, however, that the United States produces common denominator entertainment that no other country is able to match. While on European screens local programs do better in most individual markets than the United States programs, French programming, in general, is not popular in the Netherlands, and vice versa. On the other hand, programming from the United States is popular almost everywhere.\textsuperscript{34}

In the United Kingdom, since both the BBC and commercial TV

\textsuperscript{29} 32 O.J. EUR COMM. (No. L 298) 27 (1989); Alderman, \textit{Quid Pro Quota?}, supra note 5, at 63.

\textsuperscript{30} 32 O.J. EUR. COMM. (No. L 298) 26 (1989).

\textsuperscript{31} Alderman, \textit{Quid Pro Quota?}, supra note 5, at 63.

\textsuperscript{32} Id. Other pertinent articles in the Directive include the following:

Article 2: This article allows a State to suspend the retransmission of a broadcast coming from another country if certain conditions are met. In sum, the broadcaster must break Article 22 of the Directive, which involves violence and pornography, at least twice in a one-year period. The country can then suspend only if after a series of warnings it continues to do so. The Commission does, though, have the option of intervening and stopping the suspension.

Article 7: Unless otherwise agreed by broadcasters and rights holders, Article 7 imposes a two-year theatrical-to-TV window. The time limit is reduced to one year for the coproducer in the case of coproduction with a broadcaster.

Article 8: Allows countries to retain its national quotas of 50\% of program content in order to protect languages.

Article 9: Exempts local channels that are not part of a national network.


\textsuperscript{34} 32 O.J. EUR COMM. (No. L 298) 27 (1989); Alderman, \textit{Quid Pro Quota?}, supra note 5, at 63.

\textsuperscript{34} Marcom, \textit{Empty Threat}, \textit{FORBES}, Nov. 13, 1989, at 43.
already follow compulsory and voluntary restrictions, the Directive should have little effect on United States producers. The BBC has a self-imposed quota averaging 15% non-European Community product. ITV and Channel 4 must follow foreign quotas imposed by an act of Parliament that require not more than 14% of all programs airing 6 A.M. to midnight to come from outside the European Community. Programs deemed to have educational, cultural, or archival value, in addition to all movies more than forty years old are excepted from the quotas. After midnight, there is a 25% quota on non-European Community material.\footnote{35}

The French, who already have national quotas that apply to both government and privately owned stations, led the way for Europe-wide limits. As a concession in getting the Directive passed, France reduced its 60% Euro-content proposal to 50% Euro-content.\footnote{36} Television stations in France are not allowed to show more than 192 movies a year, and only 40% of those films may be produced in non-European Community countries.\footnote{37} Thus, a maximum of seventy-six American films per year may be broadcast.\footnote{38} In contrast, RAI 3, the smallest station in Italy, aired 409 films in 1988, 232 of which were American.\footnote{39} French producers are also waiting for a decree that would set certain time periods during which the quotas would be counted: prime time, lunch time, and weekend afternoons. This quota is designed to stop stations from fulfilling quota restrictions by televisual French programs during low periods.\footnote{40}

The United States must continue to monitor the member states’ positions regarding the Directive, particularly when the quota is implemented into member states’ national laws. At that time, the United States will have twelve times as many broadcasting laws to monitor.

**IV. European Community’s Reasoning for the Directive**

The European Community sets forth several reasons for its promulgation of the Directive, including the economic interests involved, the non-obligatory nature of the Directive, and the cultural aspects of the broadcasting industry.

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A. Economic Justifications

Both Americans and Europeans are concerned with the scope and effect of the Directive because of the economic interests at stake. In 1989, the United States broadcasting industry returned a $2.5 billion trade surplus, with half of its worldwide revenue from sales to Europe. Producers such as Paramount, Fox, and Universal made $630 million in television programming revenues in the European Community for 1989, which represents two-thirds of their program sales outside the United States.41

British media magnate Robert Maxwell is highly critical of the United States entertainment industry. According to Maxwell’s statement to United States industry representatives, quotas will force American producers to lower their costs and become more competitive:

Because you’ve had no competition, costs have gone sky high. It now costs about $28 million to produce an average American film, $18 million more than it cost five years ago. You need the competition, . . . . now it is our turn . . . [y]ou will not be able to drive us into the ground.42

B. Binding Force

In reference to the Directive’s quantitative restrictions on the amount of American programs aired in Europe, Martin Bangemann, the European Community’s commissioner in charge of carrying out the program, stated “[i]t’s not a legal obligation. It’s a political commitment.”43 Indeed, many in the European Community stress that a European Community directive is non-binding and of a non-obligatory character.44

A directive is only one measure at the disposal of the European Community’s authorities.45 Directives are binding with regard to

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43 U.S. Hard Line, supra note 9, at 1020.
44 Greenhouse, Europe Reaches TV Compromise, supra note 36, at A1, col. 5.
Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter Treaty of Rome]. The following are also available to the EC:
Regulations — measures of general applicability that are binding upon states and, if they extend to them, individuals (Treaty of Rome, art. 189(2)).
Decisions — individual measures or members applied to all member states that are binding both as to their objective and to their means 189 (Treaty of Rome, art. 189(4)).
Recommendations or Opinions — advisory and non-binding (Treaty of Rome, art. 189(5)).
Treaty of Rome, supra, at 78-79.
their objective, but leave the choice of means to member states. If the choice of means is limited, however, a measure which appears to be a directive may operate directly with binding effects and be considered a regulation or a decision. Thus, although directives are not directly applicable, their provisions can nevertheless have direct effect depending on the nature, background, and wording of the provisions.

Therefore, it appears that the Directive may be directly enforceable in the member states. Corrado Perzio-Biroli, the acting head of the European Community delegation in Washington, D.C., said the Directive "was passed by a large majority of member states and it is EC law." According to Jack Valenti, as our lawyers have read and as non-lawyers have read the EC's charter, all directives of the EC are binding on all of its 12 members. One of the commissioners said this was only politically binding. They did that in order to get several countries, like West Germany, to go along with this, because eight countries of the twelve don't have any quotas to date, don't want them, don't need them. Furthermore, American officials claim that even non-binding rules amount to protectionism that discriminates against American programs. Officials also say that even non-binding rules could serve as the first step toward mandatory quotas.

C. Cultural Justifications

Many European producers argue that quotas are necessary to protect Europe's cultural identity from the onslaught of Hollywood programs. "There is no European culture, but several. Each country should be able to defend its own," said Jacques Delors, president of the European Commission, the Community's executive branch, in closing the Paris conference. "Culture is not a piece of merchandise like other things. I say to the U.S. 'Have we the right to exist, to

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49 Truell, supra note 15, at A14, col. 5 (emphasis added).
51 Greenhouse, Europe Reaches TV Compromise, supra note 36, at A1, col. 5.
52 Id. "When you realize that children pass more time in front of television that at school, how could one not be alarmed if television makes them lose all relationship with the culture of their parents and grandparents?" said Nicolas Seydoux, Chairman of Gaumont, a French studio. French Culture Minister Jack Lang headed the campaign for quotas. Greenhouse, The Television Europeans Love, and Love to Hate, N.Y. Times, Aug. 13, 1989, at E24, col. 1 [hereinafter Television Europeans Love].
53 European Community Adopts TV Without Frontiers Directive, EUR. COMMUNITY NEWS, Oct. 4, 1989, at 1, 2. "The combat we are leading isn't against the Americans," said Peter Fleischmann, a West German director and producer. "It's a combat for our own culture.
perpetuate our traditions?" 54

European Community officials dispute the U.S. suggestion that the Directive is not culturally based.55 They argue that since U.S. law does not allow foreigners to own a television station, this amounts to an admission that television films are a separate case of cultural identity.56 Moreover, they cite the bilateral free trade agreement between the United States and Canada as explicitly recognizing that cultural products are not to be placed on the same footing as other merchandise.57

A free trade area between the United States and Canada was created in the U.S.-Canada Free Trade Agreement, which came into effect on January 1, 1989.58 Canadian opponents of the Free Trade Agreement were concerned that, given the power of the United States in the area of broadcast, film, and print media, closer economic ties with the United States could lead to the loss of Canada's cultural distinctiveness. As a result, article 2005 exempts industries engaged in broadcasting activities from the Free Trade Agreement.59

We have to find a way for Europe to produce more." Television Europeans Love, supra note 52, at E24, col. 1.

In the United States, the Senate unanimously passed a bill aimed at restraining sexually explicit and illicit drug-related material on the broadcast and cable. S. 595. Senator Jesse Helms stated "[o]bviously the networks have gone too far. Prime time has degenerated into sleaze time and the American people are fed up." Senate Tells Fifth Estate to Clean Up Its Act, BROADCASTING, June 5, 1989, at 27.

Greenhouse, Europe Reaches TV Compromise, supra note 36, at A1, col. 5 (quoting Jacques Delors).


57 European Community Adopts TV Without Frontiers Directive, EUR. COMMUNITY NEWS, Oct. 4, 1989, at 1, 2. Vice President Martin Bangemann of the EC stated that, criticisms addressed by the American Government are totally unjustified. No element of our directive infringes on the international trading rules. They are all the more unjustified because in the bilateral free trade agreement between the United States and Canada, the United States has explicitly recognized that cultural products are not to be placed on the same footing as other merchandise. They have formally accepted to respect very strict quotas concerning U.S. audiovisual products on Canadian soil.

Id. at 1.

EC officials scoff at the suggestion of a U.S. complaint to the GATT. They contend that TV programs don't fall under any current GATT rules. "Culture is not a commodity. You can't quantify it in dollars and marks," said EC Commissioner Martin Bangemann. DuBois & Truell, EC Ministers Back Open TV, Market Local Programs, Wall St. J., Oct. 4, 1989, at B6, col. 6.


59 FTA art. 2005 states the following:

1. Cultural industries are exempt from the provisions of this agreement, except as specifically provided in Article 401 (Tariff Elimination), paragraph
Officials in the United States claim that the Directive is commercially based rather than culturally based. Many members of the government and the broadcasting industry argue that the basis of the quota is economic because it is the location of the production and the nationality of the workers, not the subject or culture, which determines if it is subject to the quota. Undersecretary of Commerce Michael Farren reported to the House Telecommunications Subcommittee that if “Dallas” was produced in France with the same subjects and scripts it would constitute a European work. Motion Picture Association President Jack Valenti wondered whether “the culture of any European country [is] so flimsily anchored, so tenuously rooted, that European consumers and viewers must be caged and blinded else their links with their historic and distinguished past suddenly vanish?”

United States Trade Representative (USTR) Carla Hills described the protection of European culture argument as “fallacious” and maintained that a local content requirement restricted freedom

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4 of Article 1607 (divestiture of an indirect acquisition) and Articles 2006 and 2007 of this chapter.
2. Notwithstanding any other provision of this Agreement, a Party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this agreement but for paragraph 1.

*Id.* at 396. Cultural industry is defined in article 2012 of the U.S.-Canada Free Trade Agreement.

[C]ultural industry means an enterprise engaged in any of the following activities:

a) the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing,
b) the production, distribution, sale or exhibition of film or video music recordings,
c) the production, distribution, sale or exhibition of audio or video music recordings,
d) the publication, distribution, or sale of music in print or machine readable form, or
e) radio communication in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable television broadcasting undertakings and all satellite programming and broadcast network services;

*Id.* at 398, art. 2012. The exclusion of cultural industries from the agreement is not without its latent risks for Canada. Article 2005(2) provides that a party to the Agreement may use similar measures of equivalent commercial effect in response to the other party’s actions regarding its cultural industries otherwise inconsistent with the Agreement. Thus, if Canada attempts to impose unwarranted and inconsistent restrictions on the American television and movie industry, the United States may counter with what it considers appropriate action.

60 Johnson, *In Search of... the European T.V. Show*, EUROPE, Nov. 1989, at 22, 47.
of choice for consumers.\textsuperscript{63} Hills stated:

\[
\text{[w]e don't understand why the Spanish culture is more protected by a film produced in Germany by Europeans than by a Spanish film of Mexico origin. Or why the English culture is promoted more by a film produced in France by Europeans than by a film of New Zealand origin.}\textsuperscript{64}
\]

V. United States Responses

Condemnation of the Directive from the United States was swift and emphatic, with charges that the restrictions were protectionist and violated international trade rules. United States Trade Representative Carla Hills labeled the Directive "deplorable," "blatantly protectionist," and "unjustifiable."\textsuperscript{65} A spokesman for the Motion Picture Association of America stated, "[t]he European Community today, in my judgment, took a step backward in time. They said no to competition and viewer's choice, and yes to trade barriers."\textsuperscript{66}

A. House Resolution

On October 23, 1989, the United States House of Representatives voted 342-0 to denounce the Directive.\textsuperscript{67} The House Ways and Means Committee, which sent the resolution to the full House, claimed that the issue was not one of cultural sovereignty but was aimed at protecting the European industry from competition.\textsuperscript{68}

The House charged that the Directive violates several GATT provisions, including article I relating to Most Favored Nation (MFN) Treatment and article III relating to National Treatment, and also violates section 301 of the Trade Act of 1974.\textsuperscript{69}

\textsuperscript{63} U.S. Outraged by EC Move to Restrict Foreign TV Programs, 6 Intl. Trade Rep. (BNA) 1292 (Oct. 11, 1989).
\textsuperscript{64} Truell, supra note 15, at A15, col. 3.
\textsuperscript{65} Id.; See American Interests: Will American Business Be Welcome in a Unified Europe? (Blackwell Corp. Television Broadcast, Oct. 27, 1989).
\textsuperscript{66} Europe Agrees to 'TV Without Frontiers', supra note 16, at 42. U.S. Trade Ambassador Rufus Yerxa said, "This directive, which carries the wonderful misnomer 'television without frontiers' should be called 'television with European frontiers.'" Canada Wins Time to Consider Panel Finding Against Ice Cream, Yogurt Import Policies, 6 Intl'l Trade Rep. (BNA) 1547, 1548 (Oct. 18, 1989).
\textsuperscript{67} House Approves Resolution Urging U.S. Action to Protest Television Programming Directive, 6 Int'l Trade Rep. (BNA) 1384 (Oct. 25, 1989). The resolution H.R. 257, was introduced by Ways and Means Committee Chairman Dan Rostenkowski (D-Ill.) and Trade Subcommittee Chairman Sam Gibbons (D-Fla 101st Cong., 1st Sess. (1989)). Id.
\textsuperscript{68} House Resolution 257 is a simple resolution. A simple resolution is considered only by the body in which it is introduced and is not law. E. Willett, How Our Laws Are Made 8 (1980).
B. Possible Action by the United States

Many in the United States believe the European Community's policy is inconsistent with their obligations under GATT. GATT to ensure that each broadcaster reserves a majority of programming time for European works;
Whereas such broadcasting directive contains a local content requirement, in the form of both a quota and a minimum floor, that infringes upon the ability of United States broadcasting, film, and related industries to market their goods in the EC;
Whereas such local content requirement violates the General Agreement on Tariffs and Trade (GATT), specifically Article I relating to most-favored-nation treatment and Article III relating to national treatment;
Whereas the adoption of this restrictive and discriminatory broadcasting directive is inconsistent with claims by EC officials that the program to achieve the economic integration of Europe by the end of 1992 is not a program of protectionism and will not deny market access to non-European entities;
Whereas section 301 of the Trade Act of 1974 requires the United States Trade Representative to take action when the Trade Representative determines that rights of the United States under any trade agreement are being denied, or an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or is unjustifiable and burdens or restricts United States Commerce; and
Whereas such section 301 authorizes the United States' Trade Representative to take action in response to an act, policy, or practice of a foreign country that is unreasonable or discriminatory and burdens or restricts United States Commerce; Now, therefore, be it
Resolved, That the House Representatives—

(1) denounces the action taken October 3, 1989 by the EC Council of Ministers in adopting a broadcasting directive that is trade restrictive and in violation of the GATT;
(2) deplores the damage which will be inflicted on United States broadcasting, film, and related industries as a result of the implementation of the GATT-illegal restrictions under the broadcasting directive;
(3) regrets the adverse consequences which the EC action will have on—

(A) the bilateral trade relationship between the United States and the EC, particularly with respect to EC steps to achieve economic integration, and
(B) efforts to strengthen the multilateral trading system and achieve open and fair trade through the GATT Uruguay round of negotiations;
(4) strongly urges the President and the United States Trade Representative to take all appropriate and feasible action under its authority, including possible action under section 301 of the Trade Act of 1974, to protect and maintain United States access to the EC broadcasting market;
(5) requests the United States Trade Representative to consult regularly with the Committee on Ways and Means of the House of Representatives on the status of this dispute; and any action which it is considering with respect to the dispute; and
(6) directs the Clerk of the House to transmit a copy of this resolution to appropriate officials in the EC. H.R. Res. 257, 101st Cong., 1st Sess. (1989).

70 Some in the European Community preliminary advanced the argument that programming represents a service-sector of trade and is, therefore, not addressed by the GATT. Johnson, supra note 60, at 47. An analogous argument was raised in a countervailing duty case brought against Singapore. In that case, the Commerce Department's International Trade Administration (ITA) investigated whether the government of Singapore was subsidizing manufacturers, producers, and exports of computer-aided software...
describes both the legal agreement in the form of a multilateral treaty and an international organization of ninety-seven signatory states.\textsuperscript{71}

Under GATT, there are several potential actions the United States might use to retaliate against the European Community. One of these is to allege that the MFN provision has been violated. Article I states:

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation . . . any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties . . .\textsuperscript{72}

The MFN principle is a commitment of non-discrimination among the signatories to GATT which requires any GATT contracting party to treat another GATT country the same way it treats any third country.\textsuperscript{73} Thus, MFN treatment extends automatically without further negotiations among the GATT members. If a non-member is extended preferential trade treatment by a GATT state, identical treatment must be accorded to all GATT signatories. Therefore, bilateral trade actions effectively become multilateral, benefiting all of the countries that abide by it.\textsuperscript{74}


\textsuperscript{73} Note, Recent United States Trade Agreements: Implications for the Most-Favored-Nation Principle and United States Trade Policy, 17 Law & Pol'y Int'l Bus. 209, 215 (1985).

\textsuperscript{74} GATT does, however, provide limited exceptions to the MFN requirement. \textit{Id.}
The European Community is treated as a free trade area under article 24 of GATT. While article 24 is an exception to the MFN provision of GATT, a free trade area is not allowed to increase any rate or duty inconsistently with the provisions of GATT. Thus, the United States could allege that by placing a quota on non-European programs the European Community has violated the MFN provision of the GATT.

The United States also can allege under GATT that the European Community has failed to afford the same national treatment as it does its own goods. National treatment is a rule of non-discrimination that appears in GATT and a number of bilateral treaties, and means that foreign persons, products, or businesses are extended treatment "no less favorable" than that accorded to like-situated nationals (domestic persons, products, or businesses). National treatment is set forth in article III, paragraph 4 of the GATT as follows:

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application or differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

In a free trade area, associated countries eliminate barriers on each others trade. The purpose of free trade agreements is set forth in article XXIV, paragraph 4 of the GATT as follows:

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

Article XXIV, paragraph 6 states:

If, in fulfilling the requirements of sub-paragraph 5(a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing the compensatory adjustment, due account shall be taken of the compensation already afforded by the reductions brought about in the corresponding duty of the other constituents of the union.

A reading of article XXIV of the GATT reveals that the major MFN exception for trade groupings applies to three associations:

1. a free trade area;
2. a customs area; and
3. an interim agreement leading to one of the above within a reasonable period of time.


GATT, supra note 71, at 6, art. III, para. 4.
Thus, by giving advantages to member states' programs over those of Americans, the United States may claim that the European Community has violated article III of GATT.79 Furthermore, under article 4 of GATT, the conditions under which quotas may be applied to films have already been set forth.80

The primary dispute-settlement mechanisms in GATT are found in articles XXII and XXIII. Article XXII(1), which provides for consultations between GATT members, sets forth the following:

Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding,

79 GATT, art. XX, which sets forth general exceptions to GATT, provides in pertinent part the following:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(a) necessary to protect public morals;...

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;...

(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any other such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

The CONTRACTING PARTIES shall review the need for this paragraph not later than 30 June 1960.

GATT, supra note 71, at 37-38, art. XX.

80 Id. at 8, art. IV.

ARTICLE IV: Special Provisions relating to Cinematograph Films:

If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements:

(a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized, over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof;

(b) With the exception of screen time reserved for films of national origin under a screen quota, screen time shall not be allocated formally or in effect among sources of supply;

(c) Notwithstanding the provisions of sub-paragraph (b) of this Article, any contracting party may maintain screen quotas conforming to the requirements of sub-paragraph (a) of this Article which reserve a minimum proportion of screen time for films of a specified origin imposing such screen quotas; Provided that no such minimum proportion of screen time shall be increased above the level in effect on April 10, 1947;

(d) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination.

Id.
such representations as may be made by another contracting party
with respect to any matter affecting the operation of this
Agreement.\footnote{Id. at 39, art. XXII(1).}

Thus, the United States may use article XXII to consult with the Eu-
ropean Community regarding alleged violations of the MFN and Na-
tional Treatment provisions.

The United States can also invoke article XXIII of GATT which
provides for consultations when a party considers any benefit accru-
ing to it under GATT is being nullified or impaired by another party. If agreement is not reached under either article XXII or article XX-
III(1), the party may utilize article XXIII(2) which sets up a quasi-
arbitration proceeding by the GATT Council. Article XXIII(2) af-
fords a procedure that could ultimately result in a suspension of cer-
tain GATT obligations towards the European Community.\footnote{Article XXIII states the following:
1. If any contracting party should consider that any benefit accruing to it
directly or indirectly under this Agreement is being nullified or impaired or
that the attainment of any object of the Agreement is being impeded as the
result of
   (a) the failure of another contracting party to carry out its obligations
under this Agreement, or
   (b) the application by another contracting party of any measure,
whether or not it conflicts with the provisions of this Agreement, or
   (c) the existence of any other situation,
the contracting party may, with a view to the satisfactory adjustment of the
matter, make written representations or proposals to be concerned. Any
contracting party thus approached shall give sympathetic consideration to
the representations or proposals made to it.
2. If no satisfactory adjustment is effected between the contracting parties
concerned within a reasonable time, or if the difficulty is of the type de-
scribed in paragraph 1(c) of this Article, the matter may be referred to the
CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly
investigate any matter so referred to them and shall make appropriate recom-
mendations to the contracting parties which they consider to be concerned,
or give a ruling on the matter, as appropriate. The CONTRACTING PAR-
TIES may consult with contracting parties, with the Economic and Social
Council of the United Nations and with any appropriate inter-governmental
organization in cases where they consider such consultation necessary. If the
CONTRACTING PARTIES consider that the circumstances are serious
enough to justify such action, they may authorize a contracting party or par-
ties to suspend the application to any other contracting party or parties of
such concessions or other obligations under this Agreement as they deter-
mine to be appropriate in the circumstances. If the application to any con-
tracting party of any concession or other obligation is in fact suspended, that
contracting party shall then be free, not later than sixty days after such action
is taken, to give written notice to the Executive Secretary to the CON-
TRACTING PARTIES of its intention to withdraw shall take effect upon the
sixtieth day following the day on which such notice is received by him.

Id. at 39-40, art. XXIII.}
and has only occurred once in the history of GATT.\textsuperscript{83} The United States also has the ability to protect United States' access to the European Community broadcasting market by taking action under section 301 of the Trade Act. Section 301(a) and (b) provide the following:

(a) Mandatory Action—

1. If the United States Trade Representative determines under section 304(a)(1) that—
   
   A. the rights of the United States under any trade agreement are being denied; or
   
   B. an act, policy or practice of a foreign country—
      
      i. violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under any trade agreement, or
   
       ii. is unjustifiable and burdens or restricts United States commerce;

   the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice.

(b) Discretionary Action—if the Trade Representative determines under section 304(a)(1) that—

1. an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

2. action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice.\textsuperscript{84}

\textsuperscript{83} There are several weaknesses inherent in the article XXIII dispute-settlement mechanism. For example the GATT council must unanimously accept the panel report. Thus, the offending party can easily block the report. Also, contracting parties can revoke their original consent to the proceeding. However, such action would likely result in retaliation from other states. There is discussion at the present time to improve the GATT dispute-settlement mechanism during the Uruguay Round. Communications from the U.S., Negotiating Group on Dispute Settlement, April 22, 1987.


The Committee believes that a transfer of section 301 authority and responsibility from the President to the USTR will strengthen the negotiating authority and credibility of the USTR and provide greater certainty that action will, in fact be taken to protect and enforce legitimate U.S. trade interests. The transfer is also consistent with other provisions of H.R.3, as amended, which strengthen the statutory authorities and role of USTR in the inter-
Section 301 is therefore a powerful retaliatory weapon available to the United States. The method of retaliation is discretionary, and must be equivalent to the burden imposed and not otherwise eliminated by the foreign unfair practices on United States goods or services. These methods include suspending, withdrawing, or preventing the application of trade agreement concessions and imposing duties, quotas, or other import restrictions. Furthermore, the action may be taken against goods or sectors that have no connection to the acts concerned. Thus, section 301 gives United States trading partners cause for concern.

By denying the United States MFN status and National Treatment, the European Community has violated section 301(a) of the Trade Act, which requires action by the USTR, but the USTR still has total discretion in deciding whether or not to initiate an investigation. Thus, only once an investigation is initiated does the agency process as having lead responsibility for U.S. international trade policy development and coordination.


85 Bliss, supra note 84, at 522-24, 527-28. Prior to the 1988 Trade Act, the President had complete discretion in deciding whether to take action, and what type of action to take once he determined that United States' rights under a trade agreement had been violated, or that a practice was unreasonable, unjustifiable, or discriminatory and burdened United States' commerce. 19 U.S.C. § 2411 (1988). Now, once an investigation is initiated, the Trade Act requires mandatory action in cases involving violations of trade agreements or unjustifiable acts, maintaining the USTR's discretionary act only with respect to unreasonable or discriminatory practices. 19 U.S.C.A. § 2411 (1991). The United States Trade Representative may decide to not take retaliatory action in the following circumstances:

1) the GATT determines or issues a panel report concluding that the foreign action does not violate or deny U.S. rights or does not nullify or impair U.S. trade benefits;
2) the USTR finds that the foreign government is taking satisfactory measures to grant U.S. trade agreement rights, has entered into an agreement to eliminate the offending action or to remove the burden or restriction on commerce, or has agreed to an imminent solution to the burden which is satisfactory to the U.S.;
3) it is impossible for the foreign government to achieve the results but it agrees to provide compensation;
4) in extraordinary cases action would have an adverse impact on the U.S. economy substantially out of proportion to the benefits of the action; or
5) action would cause serious harm to the U.S. national security.


SEC. 2412. INITIATION OF INVESTIGATIONS

(a) PETITIONS
1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 2411 of this title and setting forth the allegations in support of the request.
2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.
3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.
Trade Act require action. The European Community could also be held in violation of section 301(b) by its allegedly discriminatory practices against the United States. Action under section 301(b) is at the complete discretion, however, of the USTR.\textsuperscript{87}

While the United States often uses section 301 to encourage more effective GATT dispute-settlements, many consider the use of section 301 to be inconsistent with GATT. The use of section 301 also can have unintended consequences to third parties.\textsuperscript{88}

VI. Future Options

At present, the United States is undergoing article XXII consultations with the European Community alleging the "Television

\textsuperscript{87} While the language of section 301(b) as revised is discretionary, Congress intended there to be a presumption that the USTR would take action where there was a reasonable indication that the action would be effective in eliminating the barrier. Bliss, \textit{supra} note 84, at 516. Trade Act of 1988 section 301(d)(3)(B) defines unreasonable acts:

Without Frontiers’ Directive violates the MFN and National Treatment standards. If consultations are unsuccessful, the United States probably will and should seek article XXIII(2) dispute-settlement procedures. The United States also has a number of other options and alternatives it should consider. For example, a new study of European television indicates that the 50% quota limit will have little effect on European programming. The study by a Paris-based research firm shows the twelve countries surveyed averaged 68% of European program content. The only country to fall below the 50% limit was Luxembourg with 48%; Italy was next with 54%. The United Kingdom, France, Portugal, and Spain approximated 70% European content.

A number of industry analysts shrug off the European quotas noting that quotas already exist in some form and are frequently ignored; moreover, European broadcasters will find it cheaper to acquire the in-demand American programs than produce original products on their own. Little attention was paid to the Directive at the international industry’s market. Silvio Berlusconi, an Italian television magnate stated that “this directive won’t change anything.”

A spokesman for the European Community pointed out that the quotas will benefit the United States and others because there will be less regulation to deal with than previously when the European Community was fragmented into twelve national broadcasting markets governed by twelve different sets of rules. “The American entertainment industry stands to lose a greater portion of the European broadcast market if the Council of Ministers cannot reach an agreement and the decision is relegated to the judgment and controls of individual European states,” stated Robert Maxwell. However, such statements are not necessarily correct. For example, France recently passed a decree setting a 50% French-origin and an additional 10% European Community-origin requirement for their broadcasting industry. Thus, this decree, which the European Parliament has declared is in violation of the European Community’s standards,

EC’s 50%-Euro Mandate Won’t Affect Most Outlets, VARIETY, Oct. 11-17, 1989, at 52 (hereinafter EC’s 50%-Euro Mandate). Sports, news, and game shows were not included in the count. Two sets of calculations were used by Bipe for its country averages. The first was weighted by ratings and the second was based on new data. Bipe discounted programs on stations with low penetration and boosted shows on top-rated networks in the first set. Only national channels were included based on the European Community Directive. Id. See Appendix 4.

EC’s 50%-Euro Mandate, supra note 89, at 52.


Marcom, supra note 34, at 43.

Greenhouse, Europe Reaches TV Compromise, supra note 36, at A1, col. 5.

Ybarra, Europe Will Place a Quota on U.S. TV Shows, Maxwell Tells Congress, L.A. Times, § 4, at 1, col. 5.
would limit American access to France to 40%. European Community Audiovisual and Cultural Affairs Commissioner Jean Dondelinger, in response to a question concerning the Directive, said the dispute has quieted down because "U.S. industrialists started seeing the directive's advantages," i.e., guaranteed access to the entire twelve member states—provided the standards were respected.

Furthermore, a group of North American and European broadcasting industry professionals, including representatives of the three major U.S. networks stated "[w]ith the Directive now adopted, there are new opportunities for growth and cooperation within Europe and with other countries." According to Capital Cities/ABC Video Enterprises President Herbert Granath, producing in Europe with Europeans for their own market will be "the real opportunity in the upcoming years."

In fact, coproduction is considered a viable alternative. The Europeans seek it because it eases their financial burdens, and the Americans consider coproduction not only a good investment, but also a method of circumventing quotas. ABC already has a stake in Germany's Tele Munchen, the part owner of Tele-5 with CLT, Lux-

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95 Panel Discussion with Jack Valenti, Europe 1992 and the U.S. Economy, Georgetown Law Center, April 7, 1990.
97 Alderman, *Quid Pro Quota?*, supra note 5, at 51.
98 *ABC Spells*, supra note 20, at 1.
99 *TV Trade War Heats Up*, Christian Science Monitor, Nov. 2, 1989, at 10. However, an underlying reason for the European Community's implementation of the Directive may have been to force foreign investment. Foreign producers are more likely to consider coproduction as a method of meeting the mandatory Euro-content quota on broadcasting. According to Paola Mengozzi, professor of law at the University of Bologna, Italy, many of the European Community's directives in the telecommunication field are drafted in order to encourage foreign investment. Mengozzi stated that investment in technically advanced fields has to be increased for the European Community to remain competitive with American and Japanese. Such argument is strengthened by considering other European Community's laws that "encourage" Community investment. For example, the European Community's 1987 "screwdriver" law is used to extend anti-dumping duties to products assembled in the European Community if the direct export of the product in question is already subject to the duty, and more than 60% of the components (by value) comes from the country considered to be dumping. Many European officials have always considered these rules as a useful means of attracting foreign investment to the Community. Japan challenged the "screwdriver" law as discriminatory and a breach of GATT regulations. See Dullforce, *Japan Protests to GATT at EC's Screwdriver Measure*, Fin. Times, May 10, 1988, at 19, col. 1.

In March, a GATT panel ruled unequivocally that the duties that were imposed on Japanese electronic typewriters and other products assembled in the Community are inconsistent with GATT rules. Furthermore, the European Community's requirement forcing companies to ensure that at least 40% of the parts used in the assembly production should come from outside the exporting country was held illegal under GATT. See Dullforce, *GATT Backs Japan over Anti-Dumping Duties*, Fin. Times, March 29, 1990, at 124, col. 6. On May 16, 1990, the European Community allowed the Council of the GATT to adopt the panel's report. Dullforce, *EC Deters to Screwdriver Ruling*, Fin. Times, May 17, 1990, at 14, col. 6.
embourg, and Silvio Berlusconi. Paramount Communications is rumored to be interested in acquiring an interest in Caulton Communications Plc.'s Zenith Productions, a supplier to Britain's commercial network. General Electric's NBC unit continues to search for a European studio near London. Disney is building a new Magic Kingdom outside Paris.

NBC International told broadcasters they should concentrate on forming "broad, global partnerships" with the major players in the industry around the world instead of fighting European quotas. While the United States and most European countries limit foreign investments in broadcasting, an NBC International Vice President, J.B. Holston, suggested that majority shares could be swapped in order to create broad-based partnerships.

NBC has developed a double strategy in Europe. First, produce with Europeans on a project basis; second, find investments and partnerships. Holston noted that "[t]he market-place is becoming increasingly global. We need real partnerships and alliances that would include swapping directives and equity."

One entertainment law firm is preparing for a unified Europe by setting up shop in Rome, making it the first full-time American legal service operating in Italy. Many things are possible that were not a few years ago. For example, European Community produced "minis" and "made-fors" have caused an unprecedented number of cross-national production arrangements. Now, European producers can get together and fully finance ambitious, high quality products on their own—without Americans, if they so choose.

According to Lee Steiner, a senior partner at Loeb & Loeb, "[t]he more product that's being generated, the more potential business there is for us." The ability to combine people and financial resources on an international basis will be skills clients will require of entertainment lawyers of the future.

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100 ABC Spells, supra note 20, at 1, 4.
101 Marcom, supra note 34, at 43. Richard Frank, President of Walt Disney Studios stated "[w]e have seen the future and it is France." While one part of the French government is working to make Disney's "Euro Disneyland"—currently under construction outside Paris—a success, another part is acting contrary to those interests by drastically limiting Disney's presence on TV. U.S.Hard Line, supra note 9, at 1020.

"I don't think there is that huge a problem," says Vivien Wallace, managing director of Granada Television Intl. "Many Americans, in fact, are already seeking production alliances so they can qualify for being homemade in Europe anyway," she points out. Europe's Time Is Coming, VARIETY, Oct. 11-17, 1989, at 1, 6.

102 Alderman, NBC Seeking Global Partners, VARIETY, Sept. 13-19, 1989, at 1, 2 [hereinafter NBC Seeking].
103 Id.
105 Id.
106 Id. Hindering such an approach, however, is the long period of time required to establish not only United States law firms in the European Community but also to advance their status. Many member states limit the scope of non-European Community's lawyers
Technical and financial changes will also occur after trade barriers are down across Europe, such as currency transfers making it easier for producers to get loans from banks of other nations. But the United States also fears that the Directive may be only the beginning. Everett M. Ehrlich, Vice President for Economic Analysis at Unisys stated that “it is unavoidable that some European Community-wide trade restraints will be substituted for national restraints when the markets of the twelve member nations are unified.”

VII. Conclusion

The United States should utilize GATT procedures, specifically articles XXII and XXIII, in response to the “Television Without Frontiers” Directive. If the European Community fails to remedy its violation in the broadcasting area, the United States must utilize harsher actions in condemnation of the Directive such as a section 301 action. Follow-up action to the “Television Without Frontiers” Directive demonstrates the necessity for taking extreme measures to curtail any further restrictions on American programming. For example, the European Community presented plans in February 1991, for a copyright law that would not be limited by national boundaries but according to the zones covered by an emission and taking into account the effective audience.

Furthermore, France’s interpretation of the Directive has also caused concern in the United States. On January 18, the French government published a decree implementing the European Community directive, stating that 60% of all programming broadcast on French television between the hours of 6 P.M. to 11 P.M. must be produced in an European Community member state. “We are very unhappy about [the French legislation],” stated Carla Hills. “[The directive] is restrictive in nature and, as we predicted, it is being applied in a very restrictive fashion.”

practice in Europe and are attempting to have mutual recognition of law degrees with member states. Thus, an attorney in France could also practice in Italy or any other European Community state. Such actions further limit American access to European Community’s legal practice. Panel Discussion with Jack Valenti, Europe 1992 and the U.S. Economy, Georgetown Law Center, April 7, 1990.

107 Guider, supra note 104, at 7.

108 Copyright Application in Broadcasting is Key Priority, EC Commissioner Says, 7 Int’l Trade Rep. (BNA) 311 (Feb. 28, 1990).

Concerns about the ramifications of the European Community’s rules are not limited to the broadcasting industry alone. In “The Third World on the Margin” an article by Bimal Ghose, coordinator of the Geneva-based Committee on North-South Relations, Ghose warns that without adequate precautions the internal market of the European Economic Community could reduce trade with the Third World, hinder investment in developing countries, and cut back needed development aid. Percival, Europe: Third World “On the Margin” in Single European Market?, Inter Press Service, Jan. 11, 1990.

Thus, the European Community's subsequent action relating to the Directive demonstrates the necessity of the United States in utilizing all available procedures including section 301 to curtail any restriction on American programming. The United States broadcasting industry also should consider methods of increasing its position in the European Community market. As J. B. Holston stated, "[i]t's a good time for larger players in the entertainment industry around the world to sit down and find ways we can work together."\textsuperscript{110}

\footnotesize\textsuperscript{110} NBC Seeking, supra note 102, at 2.
### Appendix 1

#### Top Shows On British TV

<table>
<thead>
<tr>
<th>TITLE</th>
<th>NETWORK</th>
<th>TIMESLOT</th>
<th>AUDIENCE (millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coronation Street</td>
<td>ITV</td>
<td>Wed.,7:30pm</td>
<td>15.74</td>
</tr>
<tr>
<td>Coronation Street</td>
<td>ITV</td>
<td>Mon.,7:30pm</td>
<td>15.42</td>
</tr>
<tr>
<td>EastEnders</td>
<td>BBC-1</td>
<td>Thurs.,7:30pm</td>
<td>13.44</td>
</tr>
<tr>
<td>The Bill</td>
<td>ITV</td>
<td>Tues.,8:00pm</td>
<td>13.39</td>
</tr>
<tr>
<td>EastEnders</td>
<td>BBC-1</td>
<td>Tues.,7:30pm</td>
<td>13.17</td>
</tr>
<tr>
<td>The Bill</td>
<td>ITV</td>
<td>Thurs.,8:00pm</td>
<td>12.68</td>
</tr>
<tr>
<td>Neighbors</td>
<td>BBC-1</td>
<td>Tues.,5:40pm</td>
<td>12.39</td>
</tr>
<tr>
<td>After Henry</td>
<td>ITV</td>
<td>Tues.,8:30pm</td>
<td>12.28</td>
</tr>
<tr>
<td>Neighbors</td>
<td>BBC-1</td>
<td>Mon.,5:40pm</td>
<td>12.10</td>
</tr>
<tr>
<td>News at Ten</td>
<td>ITV</td>
<td>Mon.,10:00pm</td>
<td>12.06</td>
</tr>
</tbody>
</table>

#### Top U.S. Shows On British TV

<table>
<thead>
<tr>
<th>TITLE</th>
<th>NETWORK</th>
<th>TIMESLOT</th>
<th>AUDIENCE (millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Columbo</td>
<td>BBC-1</td>
<td>Sat.,8:00pm</td>
<td>10.08</td>
</tr>
<tr>
<td>Dallas</td>
<td>BBC-1</td>
<td>Wed.,8:00pm</td>
<td>8.80</td>
</tr>
<tr>
<td>Murder, She Wrote</td>
<td>ITV</td>
<td>Sat.,8:00pm</td>
<td>8.69</td>
</tr>
<tr>
<td>The Cosby Show</td>
<td>Ch. 4</td>
<td>Sun.,6:45pm</td>
<td>5.17</td>
</tr>
<tr>
<td>Kate &amp; Allie</td>
<td>Ch. 4</td>
<td>Mon.,8:30pm</td>
<td>4.24</td>
</tr>
<tr>
<td>Cheers</td>
<td>Ch. 4</td>
<td>Fri.,10:00pm</td>
<td>4.14</td>
</tr>
<tr>
<td>Roseanne</td>
<td>Ch. 4</td>
<td>Fri.,10:00pm</td>
<td>4.06</td>
</tr>
<tr>
<td>Tracy Ullman Show</td>
<td>BBC-2</td>
<td>Fri.,10:00pm</td>
<td>2.65</td>
</tr>
<tr>
<td>Mork &amp; Mindy</td>
<td>Ch. 4</td>
<td>Tues.,6:00pm</td>
<td>1.62</td>
</tr>
<tr>
<td>The Lone Ranger</td>
<td>Ch. 4</td>
<td>Tues.,5:00pm</td>
<td>1.54</td>
</tr>
</tbody>
</table>

#### British TV at a Glance

- **Population:** 52.7 million
- **No. of terrestrial channels:** 4
- **No. of satellite channels:** 8
- **No. of tv households:** 21 million
- **Cost of license:** €156
- **VCR penetration:** 65%

**Note:** Week ending April 30, 1989

**Source:** Broadcasters' Audience Research Board

### Appendix 2

#### Top Rated U.S. Series On Italian TV 1989

<table>
<thead>
<tr>
<th>RANK</th>
<th>TITLE</th>
<th>CHANNEL</th>
<th>AUDIENCE (millions)</th>
<th>SHARE (percentage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Miami Vice</td>
<td>RAI-2</td>
<td>5.213</td>
<td>20.0</td>
</tr>
<tr>
<td>2</td>
<td>Loving</td>
<td>RAI-2</td>
<td>4.742</td>
<td>47.0</td>
</tr>
<tr>
<td>3</td>
<td>Capitol</td>
<td>RAI-2</td>
<td>4.627</td>
<td>17.9</td>
</tr>
<tr>
<td>4</td>
<td>The Equalizer</td>
<td>RAI-2</td>
<td>4.100</td>
<td>15.8</td>
</tr>
</tbody>
</table>

**Source:** RAI
### Appendix 3

#### Top U.S. Shows on French TV

<table>
<thead>
<tr>
<th>TITLE</th>
<th>TYPE</th>
<th>NETWORK</th>
<th>RATING</th>
<th>TIMESLOT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year of the Dragon</td>
<td>feature</td>
<td>TF1</td>
<td>26.2%</td>
<td>primetime</td>
</tr>
<tr>
<td>French Connection</td>
<td>feature</td>
<td>TF1</td>
<td>25.0%</td>
<td>primetime</td>
</tr>
<tr>
<td>Jaws</td>
<td>feature</td>
<td>TF1</td>
<td>24.6%</td>
<td>primetime</td>
</tr>
<tr>
<td>Summer of '42</td>
<td>feature</td>
<td>TF1</td>
<td>24.6%</td>
<td>primetime</td>
</tr>
<tr>
<td>Santa Barbara</td>
<td>soap</td>
<td>Ant.2</td>
<td>21.1%</td>
<td>primetime</td>
</tr>
<tr>
<td>The Deer Hunter</td>
<td>feature</td>
<td>FR-3</td>
<td>21.0%</td>
<td>primetime</td>
</tr>
<tr>
<td>Hawaii Five-0</td>
<td>series</td>
<td>TF1</td>
<td>20.7%</td>
<td>daytime</td>
</tr>
<tr>
<td>The Streets of San Francisco</td>
<td>series</td>
<td>TF1</td>
<td>14.2%</td>
<td>daytime</td>
</tr>
<tr>
<td>Wiseguy</td>
<td>series</td>
<td>TF1</td>
<td>14.1%</td>
<td>daytime</td>
</tr>
<tr>
<td>Crazy Like a Fox</td>
<td>series</td>
<td>TF1</td>
<td>10.9%</td>
<td>daytime</td>
</tr>
<tr>
<td>Hunter</td>
<td>series</td>
<td>TF1</td>
<td>10.8%</td>
<td>daytime</td>
</tr>
<tr>
<td>MacGyver</td>
<td>series</td>
<td>Ant.2</td>
<td>10.8%</td>
<td>daytime</td>
</tr>
<tr>
<td>Turbo Interceptor</td>
<td>made for</td>
<td>La-Cinq</td>
<td>10.5%</td>
<td>daytime</td>
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<tr>
<td>In the Heat of the Night</td>
<td>series</td>
<td>TF1</td>
<td>10.0%</td>
<td>series</td>
</tr>
</tbody>
</table>

#### French TV at a Glance

- **Population**: 55.7 million
- **No. of tv households**: 19.0 million

<table>
<thead>
<tr>
<th>No. of channels</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
</tr>
<tr>
<td>National</td>
</tr>
<tr>
<td>Regional</td>
</tr>
<tr>
<td>Local</td>
</tr>
</tbody>
</table>

- **VCR penetration**: 26-29%
- **Cable penetration**: passed-16% subbed-1.2%

**Note**: Figures from May 15-Sept. 24, 1989

**Source**: Nielsen
Appendix 4

'88 Euro Program Content, By Country (in %)

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>Definition</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luxembourg</td>
<td></td>
<td>48</td>
<td>48</td>
<td>27</td>
<td>27</td>
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<tr>
<td>Italy</td>
<td></td>
<td>54</td>
<td>44</td>
<td>42</td>
<td>30</td>
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<td>Ireland</td>
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<td>61</td>
<td>61</td>
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<td>Spain</td>
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<td>65</td>
<td>57</td>
<td>54</td>
<td>44</td>
</tr>
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<td>Portugal</td>
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<td>49</td>
<td>47</td>
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<td>67</td>
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<td>52</td>
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<td>U.K.</td>
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<td>69</td>
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<td>Greece</td>
<td></td>
<td>78</td>
<td>75</td>
<td>76</td>
<td>71</td>
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<tr>
<td>W. Germany</td>
<td></td>
<td>83</td>
<td>69</td>
<td>74</td>
<td>57</td>
</tr>
</tbody>
</table>

(A) Uses EC definition of quotas (no sports, news, game shows, or ads); weighted by audience. The higher the ratings, the higher the show is counted. Certain channels are major ones, others are small; this weighting takes the variances into account.

(B) Uses EC definition of quotas, based on raw counting of minutes regardless of audience.

(C) Uses French definition of quotas, talk shows, variety shows, non-scripted magazines, news, sports, and ads not counted. Weighted by audience.

(D) Uses French definition; not weighted by audience.

Source: BIPE

<table>
<thead>
<tr>
<th>STATION</th>
<th>(Origin)%</th>
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<tbody>
<tr>
<td>Canal J (France)</td>
<td>54</td>
</tr>
<tr>
<td>TV-3 (Spain)</td>
<td>52.9</td>
</tr>
<tr>
<td>RTL (Luxembourg)</td>
<td>38</td>
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<tr>
<td>Sky Channel (U.K.)</td>
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<tr>
<td>Basque (Spain)</td>
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<tr>
<td>Galicia (Spain)</td>
<td>45</td>
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<tr>
<td>RTL TV1 (Belgium)</td>
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<tr>
<td>SAT-1 (West Germany)</td>
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<tr>
<td>La Cinq (France)</td>
<td>43</td>
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<tr>
<td>Rete 4 (Italy)</td>
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<tr>
<td>Odeon (Italy)</td>
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<td>Canal 5 (Italy)</td>
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<tr>
<td>TMC (Italy)</td>
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<tr>
<td>Italia 7 (Italy)</td>
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<td>Filmnet (Scandinavia/Benelux)</td>
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<td>Italia 1 (Italy)</td>
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<td>Lifestyle (U.K.)</td>
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<td>Teleclub (W. Germany, pay-tv)</td>
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<td>Rete A (Italy)</td>
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<tr>
<td>Premiere (U.K., pay-tv)</td>
<td>7</td>
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</tbody>
</table>

Source: BIPE