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Television Without Frontiers: An EEC Broadcasting Premiere†

INTRODUCTION

On October 3, 1989, the Council of the European Economic Community (Council) adopted Directive 89/552, which sets limits on and standards for television broadcasting within the EEC.1 The directive, which member states must implement into national law, will be in force by October 1991.2 The Council approved the directive after several years of research and debate on the best means of harmonizing audiovisual industry standards.3 The directive, issued more than three years before the European Economic Community's (EEC or Community) 1992 target date for removal of trade barriers, is yet another step forward in the establishment of a European market without frontiers—a market with potentially 320 million television viewers.4

Section I of this Comment addresses the historical background of Directive 89/552 and the current debate that it has sparked.

† An abridged version of this Comment appeared at 47 INT'L PRAC. NOTEBOOK 3 (July 1990).
2 Directive 89/552, supra note 1, at art. 25.
Section II examines the specifics of the directive. Section III discusses the directive's compatibility with existing international agreements, as well as its loopholes and exceptions. Section III also considers the directive's implications for the United States, a non-EEC state which nonetheless has strong television interests in Europe. This Comment concludes that, although the broadcasting directive may set a precedent for future barriers to the EEC in general, it does not at present severely restrict foreign access to the expanding EEC television market.

I. HISTORICAL BACKGROUND AND THE CURRENT DEBATE

Prior to the approval of Directive 89/552, national legislation protected the systems governing television broadcasting in the EEC member states. Since its earliest days, broadcasting has been viewed as an attribute of national sovereignty. Traditionally, each individual state has relied on its sovereign right to regulate broadcasting within its territory, and broadcasting systems in the EEC have had a strong national focus. Through the early 1980s, EEC television broadcasting systems varied widely. For example, several EEC states allowed television broadcasting monopolies, although a considerable number of member states were in the process of abandoning the public monopoly system in the 1980s. Some broadcasting companies in the EEC enjoyed great legal

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5 Community's Broadcasting Policy, supra note 3, at point 1.2.2; Interim Report, supra note 3, at 21; Hall & McGovern, Regulation of the Media: Irish and European Community Dimensions, 8 DUBLIN UNIV. L.J. 1, 6 (1986).


7 Green Paper, supra note 3, at 65, 98, 101. In the 1980s, the national government of Belgium held a monopoly in television broadcasting. Glenn, Legal Issues Affecting Licensing of TV Programs in the European Economic Community, 33 COPYRIGHT L. SYMP. (ASCAP) 115, 118 (1987). Similarly, broadcasting was placed under the immediate control of the Greek government. Green Paper, supra note 3, at 101. The Italian government had a slightly more limited monopoly, and an independent public corporation enjoyed a monopoly in Denmark. Id. at 65, 98. Finally, only two public law corporations were legally permitted to broadcast in the United Kingdom. Id. at 79.

autonomy and economic independence and were protected from any governmental interference.9

Technical change in the late 1980s began to alter the national focus of television broadcasting. Advances in technology increased the capacity of television broadcasting systems and their ability to transport programs effectively and inexpensively over large distances.10 Direct broadcasting from satellites is a recent development which significantly spurred the broadcasting directive.11 Direct broadcasting literally knows no frontiers because satellites can bypass different national standards to reach specific home receivers.12 An “internationalization of broadcasting” has arrived.13

To address this phenomenon and its consequences for the EEC, the Commission of the European Communities (Commission) published a background Green Paper in 1984 entitled “Television Without Frontiers.”14 The Green Paper was a preparatory document intended to provide a basis for the harmonization of national laws regulating television broadcasting.15 The Green Paper’s approach to harmonization was widely supported, and its recommendations were substantially followed, in the Commission’s 1986 proposal for a Council directive.16 The proposed

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9 Green Paper, supra note 3, at 95. Broadcasting companies in the Federal Republic of Germany were public corporations which possessed legal status and were entitled to run their own affairs.

10 Proposed Directive, supra note 3, at 3; Community’s Broadcasting Policy, supra note 3, at point 1.2.3; see also Vereniging Bond van Adverteerders, supra note 8.

11 Proposed Directive, supra note 3, at 3–4; Community’s Broadcasting Policy, supra note 3, at point 1.2.3. Direct broadcasting allows a bypassing of networks, local television stations, and cable systems. Lohr, supra note 4, at A1, col. 2; Green Paper, supra note 3, at 11–16.

12 Green Paper, supra note 3, at 11; Lohr, supra note 4, at A1, col. 1.


16 Proposed Directive, supra note 3, at 15; 1986 COMPUTER L. & PRAC. 1 (Editorial). The Commission of the European Community (Commission) also included in the proposed directive a chapter which was not featured in the Green Paper. European Television Task Force, Europe 2000: What Kind of Television? 70 (1988) [hereinafter Europe 2000]. This new chapter on distribution and production was added to highlight the EEC’s
Directive was later modified considerably in response to the European Parliament's (Parliament) amendments. One year later, the Council approved the proposed directive in principle and shortly thereafter adopted a common position on the directive. The Parliament approved Directive 89/552 in May 1989 and the Council formally adopted this directive in October 1989.

II. Directive 89/552

The main purpose of Directive 89/552 is the free transmission and reception of television broadcasts in all EEC member states. The directive includes a number of rules that set basic standards and coordinate the free circulation of television programs. The concern with facilitating the transmission of programs across Europe and to dispel doubts that the directive was strictly economic. Id.; see infra notes 47–50 and accompanying text.

17 Europe 2000, supra note 16, at 68. For a comparison of the 1986 proposal and the 1988 amended version, see Amended Proposal for a Council Directive on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Broadcasting Activities, COM(88) 154 final, 31 O.J. EUR. COMM. (No. C 110) 3 (1988) [hereinafter Amended Proposed Directive]. The 1988 version, however, did not contain a major revision that was ultimately included in the final text. Although rules and standards on television broadcasting copyright had been included in the proposal from its introduction, copyright later proved to be a volatile issue and was finally dropped from the proposal to save further delays.


19 Audiovisual Services, BULL. EC 4-1989, point 2.1.16. The Council must "adopt a common position" as part of the EEC cooperation procedure which applies to measures on the approximation of national laws, such as the broadcasting directive. CLIFFORD CHANCE, supra note 14, at 88–89.


21 32 O.J. EUR. COMM. (No. L 298) 23 (1989); Wall St. J., Oct. 6, 1989, at B1, col. 3; Greenhouse, Europe Reaches TV Compromise, supra note 1, at A1, col. 5.

22 Directive 89/552, supra note 1, at 23–25 (preamble); Proposed Directive, supra note 3, at 1; Community's Broadcasting Policy, supra note 3, at point 1.2.9.

legislatures of all EEC member states must approve equivalent provisions of these minimal rules to bring national legislation into compliance with the directive.24 Such harmonization should provide for the free circulation of television broadcasts because states will no longer have any incentive to impede programs.25

The EEC "is above all an economic community."26 Hence, the directive's objectives are mainly economic.27 The EEC hopes that the directive's provisions will encourage television production within each member state.28 A common market in television broadcasting could promote economies of scale and employment in EEC cultural industries.29 Finally, the EEC hopes that the directive will help to develop a modern communications infrastructure in its economy, aiding the Community's strength and future competitiveness in world markets.30

At the same time, Directive 89/552 should fulfill cultural objectives. The directive specifically seeks to enhance the cultural identity of each individual member state as well as to reflect the European identity as a whole.31 Many Europeans worry about the cultural impact of the television revolution.32 Some Europeans foresee a "cultural imperialism" from foreign states—particularly the United States—which a newly united Europe should resist.33


26 Hoffmann-Riem, supra note 13, at 66–67.


28 Proposed Directive, supra note 3, at 2; European Audio-Visual Market, supra note 23, at 7; Community's Broadcasting Policy, supra note 3, at point 1.2.1.

29 Proposed Directive, supra note 3, at 2; European Audio-Visual Market, supra note 23, at 7; Community's Broadcasting Policy, supra note 3, at point 1.2.1; see also Locksley, Direct Broadcast Satellites: The Media-Industrial Complex in the UK and Europe, 11 Telecommunications Pol'y 193, 200 (1987).


31 Id. at 2; European Audio-Visual Market, supra note 23, at 7.

32 Johnson, In Search of. . . the European T.V. Show, EUROPE, Nov. 1989, at 22; Lohr, supra note 4, at D18, col. 1. "We're not talking about protectionism. This is about the necessity to preserve the richness and diversity of our cultural heritage." News of the E.C., EUROPE, July/Aug. 1989, at 48, 50 (statement of Roberto Barzanti, Italian Minister of the European Parliament); see also Mosteshar, supra note 15, at 357; Greenhouse, Europe Reaches TV Compromise, supra note 1, at D20, col. 3.

Jacques Delors, President of the Commission, considers the television invasion a social issue, not a trade issue. European television experts warn that if culture is dominated by economic market forces alone, many smaller states will find that their native culture is not economically competitive. Thus, despite some foreign claims that the objectives of Directive 89/552 are solely economic, the directive addresses strong cultural concerns as well.

Directive 89/552's structure establishes minimal rules in three areas: advertising, protection of minors, and distribution and production. In its advertising provisions, the directive imposes a ban on tobacco and cigarette advertising and significantly limits advertising for alcoholic beverages. The directive attempts to protect minors against programs which may harm their physical, mental, or moral development, particularly those programs involving pornography or excessive violence. Additionally, the directive grants a right of reply to any natural or legal person whose reputation has been damaged through incorrect reporting of facts in a television program. These provisions, however, are broadly drafted and have caused little controversy.

Most of the debate over Directive 89/552 has focused on its provisions for distribution and production. This Comment focuses on the directive's provisions for distribution and production. Directive 89/552, supra note 1, at arts. 4–9.

34 Wall St. J., Oct. 6, 1989, at B4, col. 3. "Culture is not a piece of merchandise, like other things. . . . There will not be protection of the European market, but nor will there be laissez-faire." Greenhouse, Europe Reaches TV Compromise, supra note 1, at D20, col. 4 (statement of Jacques Delors, President of the Commission of the European Communities).
36 European Audio-Visual Market, supra note 23, at 7; Mosteshar, supra note 15, at 358. This Comment focuses on the directive's provisions for distribution and production. Directive 89/552, supra note 1, at arts. 4–9.
37 Directive 89/552, supra note 1, at arts. 13, 15. The directive also sets out standards for television advertising, and limits advertising to 15 percent of daily transmission time. Id. at arts. 11, 12, 16, 18. The chapter of the directive on advertising is found at articles 10 through 21. Id. at arts. 10–21.
38 Id. at art. 22; European Audio-Visual Market, supra note 23, at 7.
39 Directive 89/552, supra note 1, at art. 22. An application to exercise the right of reply may be rejected, however, if it is not justified, or would "involve a punishable act, would render the broadcaster liable to civil law proceedings or would transgress standards of public decency."
require member states to ensure that all EEC television broadcasters reserve, "where practicable," a majority of their programming time for EEC-produced programs. The provision excludes news, sports, advertising, game shows, and teletext services from the quota. Initially, the directive called for 60 percent of broadcast time to be reserved for television programs made in the EEC. After negotiations, the 60 percent proposal was reduced to the current 50.1 percent, or a majority of transmission time. The "where practicable" clause also creates a significant loophole, allowing member states a great deal of latitude in interpretation.

The directive's quota system has caused intense debate within the EEC. European actors, directors, and scriptwriters seek to stimulate European production, and thus support the quotas on foreign broadcasts. Broadcasting executives oppose the limits because they want to continue to buy foreign programs which are often less expensive and guarantee high audience ratings. Younger and smaller television stations worry that quotas on low-priced foreign programs will drive them out of business. On a national scale, the smaller EEC member states, which have almost no economies of scale in television broadcasting, worry about potential domination by the larger EEC nations. Now that Directive 89/552 has been approved, the debate continues with even greater force.

Member states are required to pass any domestic laws or regulations needed to comply with Directive 89/552 by October 3, 1991.

B1, col. 6; Farnsworth, U.S. Fights Europe TV-Show Quota, N.Y. Times, June 9, 1989, at D1, col. 3.

42 Directive 89/552, supra note 1, at art. 4(1). The operative language of article 4(1) reads: "Member states shall ensure where practicable and by appropriate means, that broadcasters reserve for European works . . . a majority proportion of their transmission time . . . " Broadcasters are also directed to reserve at least 10 percent of their broadcast time for European works created by independent producers. Id. at art. 5.

43 Id. at art. 4(1).

44 Amended Proposed Directive, supra note 17, at 22.

45 Greenhouse, Europe Reaches TV Compromise, supra note 1, at A1, col. 5.

46 Boston Globe, Oct. 4, 1989, at 28, col. 6; see infra notes 85-92 and accompanying text.

47 Greenhouse, For Europe, U.S. May Spell TV, supra note 41, at D1, col. 5.

48 Hoffmann-Riem, supra note 13, at 59; Greenhouse, For Europe, U.S. May Spell TV, supra note 41, at D1, col. 5–D6, col. 1.

49 Greenhouse, For Europe, U.S. May Spell TV, supra note 41, at D6, col. 1.

50 Wall St. J., July 10, 1989, at B4, col. 6. "It's especially a problem among the smaller countries like ours . . . . Even with European quotas, we are going to be overrun by the French, the Germans and the Italians." (statement of Jan Bauwens, director of programming and services of the Belgian television channel BRT).
1991. Currently, the directive seems to have fairly strong support at the member state level. Ten states voted in favor of the directive and some television stations have further pledged to uphold its standards. Some member states, however, may refuse to transpose the directive into national legislation.

In the case of a refusal to transpose the directive into national legislation, the EEC does have recourse. Under Article 169 of the Treaty Establishing the European Economic Community (EEC Treaty or Treaty), the Commission may bring suit in the European Court of Justice (European Court) against any member state that does not comply with its obligations under the directive. The Commission has taken such action in the past when it concluded that certain states had not enacted sufficient measures under other directives. As with the broadcasting directive, member states in those cases were required to bring directives into force. In at least one case, the suit served as an effective sanction: after the Commission filed its action, the member states

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51 Directive 89/552, supra note 1, at art. 25. Article 25 of the directive states: "Member states shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 3 October 1991."

52 Greenhouse, Europe Reaches TV Compromise, supra note 1, at A1, col. 5. For example, the two Luxembourg-based Dutch stations RTL/Veronique and TV10 have said they will comply with the directive. Fin. Times, Oct. 25, 1989, at VI, col. 7.

53 Several member states "face intense internal disputes over adoption of the rules." To Quota or Not to Quota, BROADCASTING, Oct. 16, 1989, at 57, 58.

54 Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11, at art. 169 [hereinafter EEC Treaty]. Under article 170, the same action may also be taken by one member state against another. Id. at art. 170.


56 See generally Commission v. Italian Republic, 1982 E. Comm. Ct. J. Rep. 739, [1981-1983 Transfer Binder] Common Mkt. Rep. (CCH) ¶ 8,816 (1982). Compare Directive 73/23, supra note 55, at art. 13 ("[t]he member[s]tates shall put into force the laws, regulations and administrative provisions necessary to comply with the requirements of this directive . . . .") with Directive 89/552, supra note 1, at art. 25 ("[m]ember[s]tates shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive . . . ."). In some cases, the European Court of Justice (European Court) has concluded that the defendant member states were in breach of the EEC Treaty, awarding a declaratory judgment against the member states and ordering them to pay the costs of the action. Commission v. Italian Republic, supra; Commission v. Italy, supra note 55, at 477.
adopted legislation to comply with that directive and the Commission removed its action from the European Court.\textsuperscript{57}

III. ANALYSIS OF DIRECTIVE 89/552

A. Compatibility With International Agreements

The television broadcasting directive appears to comply with relevant international agreements. Among other agreements, the directive follows the EEC Treaty, the European Convention on Transfrontier Television, and the General Agreement on Tariffs and Trade.\textsuperscript{58}

Directive 89/552 was authorized under the EEC Treaty\textsuperscript{59} and is fully compatible with the Treaty's goals. A major objective of the EEC Treaty is to establish a common market for goods and services, including broadcasting services.\textsuperscript{60} Several articles in the EEC Treaty establish the EEC as a communications community.\textsuperscript{61} The EEC Treaty guarantees the freedom of Community-wide broadcasting to television broadcasters, and guarantees the freedom of reception and selection of transmission to listeners and viewers.\textsuperscript{62} Although the EEC Treaty officially establishes an economic community, the Treaty more broadly protects all activities carried out for monetary compensation.\textsuperscript{63} According to judgments of the European Court, television broadcasting is a service.\textsuperscript{64} The EEC Treaty thus enabled the EEC to approve the directive as part of its regulation of services.

The European Convention on Transfrontier Television (Convention on Transfrontier Television or Convention) also parallels
Directive 89/552. The Convention on Transfrontier Television was approved by the Council of Europe a few months before the EEC agreed on Directive 89/552. The Convention sets guidelines on the same topics as the directive, and, like the directive, requires broadcasters to reserve a majority of transmission time for European programs "where practicable." Because the EEC itself wishes to become a party to the Convention on Transfrontier Television, the EEC member states took special care to ensure that the Convention would be compatible with Directive 89/552. As intended, the directive does comply with the terms of the Council of Europe's Convention on Transfrontier Television.

Community-wide television broadcasting is also secured by other international agreements which are binding on the EEC. For example, the European Convention for the Protection of Human Rights, ratified by all EEC member states, guarantees the freedom to receive and transmit information and ideas without interference. This freedom of expression and information is

66 European Convention on Transfrontier Television, supra note 65. The European Convention on Transfrontier Television was approved on May 5, 1989, five months prior to Directive 89/552. Id.; see supra note 21. The Council of Europe has twenty-three member nations, all from western Europe.
67 European Convention on Transfrontier Television, supra note 65. The European Convention on Transfrontier Television provides rules and standards for advertising, the right of reply, and other broadcaster responsibilities. Id. at arts. 11–16, 8, 7. To compare Directive 89/552's similar provisions, see supra notes 37–40.
68 New Developments, Council Approves in Principle Directive on Television Broadcasts, 4 Common Mkt. Rep. (CCH) ¶ 95,102 (1989). In the case of a conflict between the European Convention on Transfrontier Television and Directive 89/552, however, the latter will control. European Convention on Transfrontier Television, supra note 65, at art. 10. To compare the language of Directive 89/552, see supra note 42 and accompanying text.
69 Green Paper, supra note 3, at 24. See infra notes 70–73 and accompanying text.
70 Green Paper, supra note 3, at 24; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 215 U.N.T.S. 221, at art. 10 [hereinafter Convention for the Protection of Human Rights]; Hall & McGovern, supra note 5, at 3. It has been suggested that this objective of the Convention's article 10 (the free flow of information) might not entirely coincide with the EEC Treaty's aim to establish a common market. Bullinger, supra note 8, at 341.
also codified in the Universal Declaration of Human Rights, unanimously adopted by the United Nations General Assembly in 1948. Finally, the principle of freedom of broadcasting is a long-established rule of customary international law. Although there are certain limitations on this freedom, the EEC broadcasting directive conforms with these international agreements and principles.

Arguably, Directive 89/552 may be incompatible with one international agreement. Immediately after the directive was formally adopted, the United States objected that some parts of the measure were contrary to the General Agreement on Tariffs and Trade (GATT). Shortly thereafter, U.S. officials filed a trade complaint with GATT to protest the directive's quota clause as an unfair trade practice. U.S. Trade Representative Carla A.

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71 Green Paper, supra note 3, at 24; Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/810, at art. 19 (1948). Article 19 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

72 Hall & McGovern, supra note 5, at 2–3. After World War II, radio broadcasting was a commonplace activity. States generally acquiesced in transborder radio broadcasting, and a uniform practice developed over time. Id. at 2, citing N. Matte, Aerospace Law, Telecommunications Satellites 67 (1982).

73 See infra notes 93–97 and accompanying text.


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.

GATT, supra note 74, at art. 1. Article III provides, in part:

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 to like products of national origin . . . . [N]o regulations shall
Hills explained that the United States considered the directive protectionist, and rejected the cultural justification as unpersuasive.76 Responding to the U.S. complaint, the EEC argued that the directive did not come within the scope of GATT.77

The EEC is probably correct that GATT restrictions do not apply to the directive, for two reasons. First, GATT's international trade rules apply only to goods and products, not to services.78 The directive unambiguously regulates a service, and the EEC has always considered television broadcasting to be a service.79 Unless GATT is expanded to limit services as well as goods,80 GATT's restrictions simply do not apply to the directive. Second, under article XXI of GATT, the quota principle may well be exempt from the usual GATT restrictions.81 The EEC may be able to establish that television broadcasting is a cultural industry in need of special protection and exemption from GATT provisions.82 EEC officials have already claimed that the directive is intended to protect cultural sovereignty.83 Due to the dual cultural and economic nature of television programs, and the natural advantage of the United States in this field, the EEC may

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well have this right of exemption.\textsuperscript{84} Whatever the final outcome, GATT appears to be the only international agreement which threatens the directive.

B. \textit{The Nonbinding Distribution and Production Quotas: Loopholes and Exceptions}

Now that it has been approved, Directive 89/552 is binding on the EEC member states. Member states must comply with its provisions by October 1991. The television broadcasting directive, however, is unique because its quota provisions create loopholes and exceptions. These allowances render the quota system effectively nonbinding.

As discussed, Directive 89/552 requires that the member states insure, "where practicable," that broadcasters reserve a majority of transmission time for European works.\textsuperscript{85} This language creates a significant loophole for countries seeking to avoid the directive's limits.\textsuperscript{86} There appear to be no cases from the European Court interpreting a "where practicable" clause within a directive. By way of analogy, U.S. case law has developed a variety of interpretations.\textsuperscript{87} Most U.S. decisions have held that "when [or where] practicable" does not create a mandatory requirement of compliance.\textsuperscript{88} It may mean compliance is required only when commercially practical.\textsuperscript{89} In the EEC and elsewhere, the quota system is similarly viewed as nonbinding.\textsuperscript{90} The Commission and other EEC officials have publicly stated that the quota system only

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\textsuperscript{84} \textit{Europe} 2000, \textit{supra} note 16, at 71.
\textsuperscript{85} Directive 89/552, \textit{supra} note 1, at art. 4(1).
\textsuperscript{87} \textit{See infra} notes 88–89 and accompanying text. It is not likely that the European Court would be persuaded by U.S. case law, and U.S. examples are used here merely to illustrate the wide latitude the European Court may have when interpreting where practicable.
\textsuperscript{89} United States v. Boyce Motor Lines, 188 F.2d at 891 (citations omitted). "For we think that 'so far as practicable' means so far as commercially practicable from the standpoint of those engaged in the . . . business . . . ."
\end{flushleft}
represents a political, and not a legal, commitment.\textsuperscript{91} Assuming legal action is actually instituted against an EEC broadcaster at some future date,\textsuperscript{92} the European Court would likely accord wide discretion to the member states on what is “practicable.”

Member states may use one final exception to restrict cross-border transmissions, which could further erode the quota system’s effectiveness. The EEC Treaty allows broadcasters of any member state to limit foreign television transmissions if such restrictions can be justified on the grounds of public policy, public security, or public health.\textsuperscript{93} An example of a legitimate restriction would be the protection of minors, as the directive allows in article 22.\textsuperscript{94} The EEC concluded that this protection of minors could be justified as a necessary counterpart to the opening of national frontiers to broadcasting,\textsuperscript{95} Although the directive provides for such reservations, member states must justify discrimination under one of the above listed grounds.\textsuperscript{96} Thus, the exception may not be as broad as it initially appears.\textsuperscript{97} Together with the loophole and popular perception, however, the exception confirms that the quota system is truly nonbinding in nature.

C. \textit{Significance to the United States}

The United States is entangled in the debate over Directive 89/552 because of its own governmental and commercial interests abroad in the motion picture and television businesses. The quota issue in particular has threatened to erupt into a major trade dispute between the United States and the EEC.\textsuperscript{98} At a congres-


\textsuperscript{92} \textit{U.S. Distributors Say Quotas Won't Hit Pocketbooks, Broadcasting, Oct. 23, 1989, at 41.}

\textsuperscript{93} \textsuperscript{93} EEC Treaty, \textit{supra note 54, at art. 56(1). Article 56(1) provides: “The provisions of this chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.” Id.; see also Mosteshar, \textit{supra note 15, at 357; Schwartz, supra note 60, at 25.}

\textsuperscript{94} Directive 89/552, \textit{supra note 1, at art. 22.}

\textsuperscript{95} See Proposed Directive, \textit{supra note 3, at 31.}

\textsuperscript{96} Mosteshar, \textit{supra note 15, at 357.}

\textsuperscript{97} See Schwartz, \textit{supra note 60, at 27-29.}

sional hearing in June 1989, U.S. Trade Representative Carla Hills testified to the House Ways and Means Committee that the EEC's proposed directive was, in effect, censorship of U.S. television programs, and that the United States had registered very sharp and strong objections to the quota proposals. 99 EEC officials responded that the directive's proposed quotas had already been reduced by 10 percent to reflect American concerns. 100 U.S. motion picture industry officials have complained as well, protesting that the EEC's quotas impair free competition and establish trade barriers. 101

The U.S. government took prompt steps to protest Directive 89/552 upon its approval in October 1989. The U.S. Trade Representative filed a trade complaint with GATT alleging that the directive's quota provisions were a violation of free trade. 102 Additionally, the U.S. House of Representatives unanimously passed a resolution denouncing the directive's quota provisions. 103 The resolution charged that the directive violated specific GATT provisions, and directed the President and U.S. Trade Representative to take all appropriate legal action to protect U.S. access to the EEC broadcasting market. 104 Implications of the broadcasting quotas for the United States remain a current source of debate.

The EEC has always been an excellent market for U.S. television producers. 105 U.S. television exports rose more than 300 percent in the 1970s, 106 and U.S. producers in the EEC increased their revenues 600 percent during the 1980s. 107 In 1988 alone,

99 Farnsworth, supra note 41, at D1, col. 3.
100 Id. The final version of the directive recommends only that broadcasters devote a majority of their programming to EEC made programs where practicable. Directive 89/552, supra note 1, at art. 4(1). By contrast, the original proposal would have required that 60 percent of all broadcasts be EEC-produced. Proposed Directive, supra note 3, at art. 2.
101 Boston Globe, Oct. 4, 1989, at 28, col. 5. "The European Community today in my judgment took a step backward in time . . . . They said 'no' to competition and viewers' choice and 'yes' to trade barriers." Id. (statement of Jack Valenti, President of the Motion Picture Association of America); see also Europe Agrees to 'TV Without Frontiers', Broadcasting, Oct. 9, 1989, at 42; Wall St. J., Oct. 6, 1989, at B1, col. 4; Greenhouse, Europe Reaches TV Compromise, supra note 1, at D20, col. 3.
102 See supra notes 75–77 and accompanying text.
103 See supra note 75; House Seeks Action on EC TV Rules, 47 CONG. Q. 2851 (1989).
105 Glenn, supra note 7, at 125–24.
106 Id. at 116; N.Y. Times, Jan. 18, 1981, at F18, col. 3.
107 Farnsworth, supra note 41, at D1, col. 3.
U.S. producers sold $1.8 billion of television programs and motion pictures to EEC member states. The EEC is expected to increase its available broadcasting time between 60 percent and 100 percent by the mid-1990s. In the next few years, therefore, the EEC will remain an important market for U.S. television producers.

Advocates of the EEC quotas deny that restrictions on foreign programs will damage the U.S. television industry. U.S. programming does represent more than half of the broadcasts in some EEC member states, but the percentage is much lower in many others. Some broadcasters estimate that only 22 percent of all European programming is of U.S. origin and doubt that the U.S. industry could actually produce enough material to fill a 50 percent quota. In some cases, the directive's quotas would actually ease more stringent existing quotas in EEC member nations, resulting in greater access for U.S. producers than before.

Recognizing the EEC market potential, some U.S. producers have begun to establish joint ventures with European companies. Their idea is to combine U.S. marketing plans with Eu-

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110 Glenn, supra note 7, at 116. "From the point of view of the U.S. television program distributor, one of the most important effects of European restrictions on programming . . . is to detract from what would otherwise be an even better market for American programming." Id. at 123.
111 Wall St. J., July 10, 1989, at B4, col. 5; Farnsworth, supra note 41, at D1, col. 4.
115 European Quota Action by EC Angers U.S., TELEVISION/RADIO AGE, Oct. 16, 1989, at 19; Wall St. J., Oct. 6, 1989, at B4, col. 3. In the past, eight member nations have required that some degree of programming be European produced. Farnsworth, supra note 41, at D1, col. 3. Those eight member states are France, Spain, Italy, the United Kingdom, West Germany, Belgium, the Netherlands, and Denmark. For example, the United Kingdom has limited U.S. programs to 14 percent of the air time on its television channels. Wall St. J., Oct. 6, 1989, at B4, col. 3. If the United Kingdom adopts the television broadcasting directive, as expected, that quota could no longer be set any lower than 49.9 percent.
116 Johnson, supra note 32, at 47; The New World of International TV Programming, BROADCASTING, Oct. 23, 1989, at 75; see Wall St. J., Oct. 6, 1989, at B4, col. 3. Warner Bros., Capital Cities/ABC, King World, and New World are among the U.S. companies
ropean creativity to produce television programs in Europe for European viewers. This scheme would comply with the directive, and European producers are likely to be receptive to such collaboration.

CONCLUSION

The debate over Directive 89/552, and specifically over its quota provisions, is likely to continue unabated. Broadcasting technology will become more sophisticated, further increasing the need for compliance with the directive. The directive's provisions are likely to be found compatible with all relevant international agreements. Because the quota system is nonbinding in practice, there may be some violations and corresponding attempts to enforce the directive. Currently, the quotas do not place significant restraints on the U.S. television industry, which is already developing new ventures within the directive's framework. The U.S. government is concerned about barriers to free trade that the directive may impose and the precedent that the directive may set in the EEC's march toward 1992. Responding to those concerns, Mr. Jacques Delors expressed the current EEC sentiment: "I must say . . . that we have the right to exist and to maintain our traditions." The television broadcasting directive is scheduled to premiere in member states shortly before the 1992 deadline. The world awaits its ratings.

Kelly L. Wilkins

that have already announced such joint ventures. The New World of International TV Programming, supra, at 75.


118 Johnson, supra note 32, at 22 (statement of Jacques Delors, President of the Commission of the European Communities).