

THE SCREENING OF JACQUES TATI: BROADCASTING AND CULTURAL IDENTITY IN THE EUROPEAN COMMUNITY

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I: INTRODUCTION

The audiovisual sector is of great importance to the cultural identity of peoples, regions and nations. It is also a rapidly growing sector of the world economy, significant in its own right and with considerable multiplier effects on other sectors such as electronics, telecommunications, the space industry, and publishing.¹

The European Parliament's prioritization of "cultural identity" over economic and industrial factors as a policy issue is striking but representative. Terms such as "cultural identity," "national culture," and "national identity" are pervasively invoked as a basis for public policy with respect to various forms of cultural production of which the audiovisual sector—film and television—is the most important.

Technological change, the restructuring of the international political order on the bases of shared sovereignty, the growth of world trade, and the consequential increase of economic interdependence among states have made organization of media regulation and support of media industries by political authorities (and by national governments in particular) problematic.

Examples of public policy made in the name of national culture come from far-flung locations; there can be no doubt that the concerns voiced above by the European Parliament are ubiquitous. Kim Beazley, Australia's Minister of Communications in 1990, said that "[b]roadcasting plays a central role in sustaining and developing Australian cultural life. It is a powerful force in shaping a nation's identity and maintaining a democratic and pluralist society. Television and radio are an important part of peo-

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The research on which this paper is based was supported by the Economic and Social Research Council under research grant R 00023 2159. The author is grateful to the Council for its support.

¹ EUR. PARL. DOC. (A2-0347/88) 8 (1989) [hereinafter de Vries Report].

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ple's lives."² In Canada, similar arguments have long been made.³ As Minister of Communications Flora MacDonald said, "a nation's fictional repertoire is the life blood of its culture."⁴ Ms. MacDonald's comments and policies echoed the argument made thirty years earlier by the Canadian Fowler Commission: "we cannot accept, in these powerful and persuasive media, the natural and complete flow of another nation's culture without danger to our national identity."⁵ In Europe, Jacques Delors, President of the Commission of the European Communities, has stated (at the 1989 Assises de l'Audiovisuel in Paris)⁶ that

culture is not a piece of merchandise like any other and must not be treated as such. . . . [C]ulture cannot flower today unless control of the relevant technologies is assured. On the first point . . . we cannot treat culture the way we treat refrigerators or even cars. Laissez-faire, leaving market forces to operate freely, is not enough. . . . I would like to ask just one question of our American friends, . . . do we have the right to exist?⁷

These statements embody a number of pervasive assumptions that have informed regulation of the audiovisual sector and public policy-making for the cultural industries. These are: (1) that societies are held together solely through a shared culture; (2) that free trade and the market do not provide the cultural order necessary to maintain social cohesion; (3) that political authorities must redress market failure; and (4) that the mass media, particularly television, are vital agencies in maintaining and reproducing social cohesion. The assumptions embodied in the statements of Delors, MacDonald, Beazley, and numerous other public policy-makers conflict with others that are similarly pervasive and just as deeply held. Such contrary assumptions assert the importance of free information and the danger of state inter-

² Kim Beazley, Address at the Annual Convention of the Federation of Australian Radio Broadcasters 6 (1990) (transcript produced by the Dep't of Transport and Communications, Canberra, Australia).

³ For an extensive discussion of the Canadian case, see RICHARD COLLINS, *CULTURE, COMMUNICATION AND NATIONAL IDENTITY: THE CASE OF CANADIAN TELEVISION* (1990).

⁴ *U.S., Japan Bucking Trend by Urging Older Workers to Keep Their Jobs Longer*, THE TORONTO GLOBE AND MAIL, Feb. 10, 1987, at 12.

⁵ R. FOWLER, *REPORT OF THE ROYAL COMMISSION ON BROADCASTING* 8 (1957).

⁶ The Assises were held in Paris in 1989 and were jointly organized and sponsored by the Government of France and the Commission of the European Communities. They, and the action program which they initiated, are often known as the Audiovisual Eureka.

⁷ ASSISES EUROPÉENNES DE L'AUDIOVISUEL, *PROJET EUREKA AUDIOVISUEL* 47-48 (Ministère des affaires étrangères, République Française and Commission of the European Communities 1989).

vention in information markets; the dynamic, synthetic, and necessarily international character of culture; the essentially minor role played by culture in ensuring social cohesion; and consequentially, the greater importance of what has been called "the dull compulsion" of economic relationships, . . . the integrative effects of the division of labour, . . . [and] the coercive nature of law and politics"⁸ in holding societies together. Moreover, all these assumptions leave unanswered the central and notoriously difficult question: what is culture? Raymond Williams rightly wrote that "[c]ulture is one of the two or three most complicated words in the English language."⁹

It is easy when faced with such conceptual imprecision concerning fundamental propositions, to deny the validity of intervention in markets for cultural productions and to argue that "culture" simply provides a convenient and mendacious frosting that conceals protectionist industrial policies. Certainly, economic considerations are important; the cultural industries are increasingly important generators of employment and wealth. As Delors stated on another occasion:

the culture industry will tomorrow be one of the biggest industries, a creator of wealth and jobs We have to build a powerful European culture industry that will enable us to be in control of both the medium and its content¹⁰

Similar utterances can be found elsewhere,¹¹ and it is unequivocally clear that the roots of some national content regulations lie in protectionism.¹² Yet, the cultural arguments cannot be dismissed, not least because of the intensity and pervasiveness with which they are held. They may or may not be "wrong," but the problem posed by irrational arguments in support of unfair barriers to trade is no more likely to be solved by dismissing such beliefs as self-serving irrationalism than are problems of global population growth likely to be solved by relegating intensely held desires for children to a conceptual and ethical rubbish bin.

⁸ NICHOLAS ABERCROMBIE ET AL., *THE DOMINANT IDEOLOGY* Thesis 6 (1985) (interpreting Marx's perspective on the control of the subordinate classes).

⁹ RAYMOND WILLIAMS, *KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY* 76 (1976).

¹⁰ Jacques Delors, Address to the Opening of the European Parliament: Commission Program for 1985, 1985 O.J. (2-324) 64 (March 12, 1985) (Debates of the European Parliament).

¹¹ For a Canadian example, see DEP'T OF COMMUNICATIONS ANNUAL REPORT 1979-1980, 6 (1981).

¹² See the reports of the Australian Broadcasting Control Board's ("ABCB") measures for the "Encouragement of Local Talent." *ABCB Annual Reports* from 1952 to date.

Metropolitan English speakers often find nationalist cultural policies and protectionism particularly difficult to understand. An analogy may help to clarify the situation and redress misapprehensions. Let us substitute the word "language" for the word "culture." This substitution is not capricious, for many have identified an intimate interconnection between language and culture. Kedourie, for example, states that "[l]anguage is the means through which a man becomes conscious of his personality. Language is not only a vehicle for rational propositions, it is the outer expression of an inner experience, the outcome of a particular history, the legacy of a distinctive tradition."¹³

If we have, as I believe we do, serious conceptual problems in identifying culture and therefore in sustaining arguments for media regulation on cultural grounds, we do not have such intractable difficulties in relation to language. Languages other than English are potentially threatened by cultural free trade. Producers of English language films, television programs, books, and all kinds of other informational commodities have powerful advantages *vis-à-vis* competitors from other language communities. The English language producers are able to amortize costs and accrue revenues from markets that are considerably larger and richer than their competitors and sell high cost, high quality productions at relatively low prices in other language markets. The membrane between English language and other language markets is semi-permeable.¹⁴ Hence, the United States and the United Kingdom are perceived as "cultural imperialists." The anglophones' advantages result from the position of English as the language of the world's wealthiest, and possibly (depending on whether Chinese is classified as one or as several languages) the world's biggest, language community.¹⁵ English, moreover, is the world's preferred second language.

How then has the world's largest trading bloc, the European Economic Community,¹⁶ dealt with questions of broadcasting and national and cultural identity? Clearly, the term "national identity" is inappropriate for an obviously multi-national entity.

¹³ ELIE KEDOURIE, NATIONALISM 62 (1966).

¹⁴ See RICHARD COLLINS, TELEVISION: POLICY AND CULTURE 201-02 (1990); UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION ("UNESCO"), WORLD COMMUNICATION REPORT (1989).

¹⁵ See STEVEN S. WILDMAN & STEPHEN E. SIWEK, INTERNATIONAL TRADE IN FILMS AND TELEVISION PROGRAMS (1988).

¹⁶ The European Economic Community includes two anglophone states (the United Kingdom and Ireland) among its twelve members, and English as one of its nine official languages.

If, however, we consider national identity as a particular (and thus far dominant) form of collective identity, then we can expect the European Community's actions to foster a European identity as similar in structure and intention to the actions of other political authorities as nation states. To create a European identity therefore is to create national identity on a larger scale.

II. LEGISLATIVE APPROACHES TO EC POLICY

The Community's legislative policies have been confined almost exclusively to the audiovisual area. The Community has developed extensive regulations and initiatives for television (and to a lesser extent for film), but hardly any for print media. Although the focus of the European Community's policies has been the audiovisual and broadcasting sectors rather than the cultural industries as a whole, the story of its audiovisual policy is a complicated one. It involves shifts in the balance of power and activity between Community institutions and Community Member States; shifts in the priority given to hardware and software sectors; shifts in the Community's high policy goals (with consequential effects on audiovisual policy); shifts between the instruments (markets or administered allocations) chosen for the realization of policy goals; and shifts in the relations between the Community and other European agencies, notably the Council of Europe and the European Broadcasting Union. Moreover, these shifting relationships have led to often unanticipated repercussions on other sectors.

The contours of European Community broadcasting and audiovisual policy can be triangulated from three landmarks. These are the Directive on satellite television transmission standards (the Satellite Directive),¹⁷ the Directive on the single-market initiative for television broadcasting (the Television Without Frontiers Directive),¹⁸ and the establishment of the MEDIA program of support for the European audiovisual sector.¹⁹ Of these, this article will focus only on the single-market initiative and the ME-

¹⁷ Council Directive 86/529 of 3 November 1986 on the Adoption of Common Technical Specifications of the MAC/Packet Family of Standards for Direct Satellite Television Broadcasting, 1986 O.J. (L 311) 28 [hereinafter Satellite Directive].

¹⁸ Council Directive 89/552 of 3 October 1989 on the Coordination of Certain Provisions Laid Down By Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities, 1989 O.J. (L 298) 23 [hereinafter Television Without Frontiers Directive].

¹⁹ Council Decision 90/865 of 21 December 1990 Concerning the Implementation of an Action Programme to Promote the Development of the European Audiovisual Industry (MEDIA) (1991 to 1995), 1990 O.J. (L 380) 37 [hereinafter MEDIA Decision].

DIA program. The question of satellite television transmission standards has a less direct relationship to broadcasting and cultural identity, though it has important implications for the structure of the European television programming industry.

Jean Dondelinger, the Commissioner responsible for Audiovisual and Cultural Affairs, Information and Communication, defined the Community's audiovisual and broadcasting policy concerns as follows:

The so-called audiovisual field includes from a political point of view, a wide range of issues—from the free circulation of services to the support of the European consumer electronic industry, and from the preservation of the cultural identity of countries to regulations on copyright and competition.²⁰

Of these goals (or issues as Dondelinger called them), that which has come closest to realization is the "free circulation of services," as evidenced by the creation of a single market for television, a "Television Without Frontiers." Consequently, the Community has eroded long-established national²¹ and international audiovisual arrangements.²² As might be expected, the creation of a single-market initiative, whether in cultural or other domains, has not enjoyed the unanimous support of all Community Member States. Denmark in particular, which voted with Belgium against the Television Without Frontiers Directive,²³ has consistently argued that cultural policy is, and should remain, beyond the Community's powers. Denmark has usually had the support of the United Kingdom,²⁴ which, although not sharing Denmark's specifically cultural concerns, has argued consistently against the extension of the Community's powers. The United Kingdom, however, did not vote against Television Without Frontiers. The United Kingdom consistently supported the Delors proposals for a single market by January 1993 and indeed is one of the Community states that stands to gain from a single television market.

²⁰ Jean Dondelinger, *Europe's Media Future*, 1989 MEDIA BULL. 3.

²¹ I use the term "national" here as a convenient shorthand for "pertaining to a single state." This usage is convenient but sometimes confusing as the European Community includes multi-national states.

²² See, for example, the Commission's action against the provisions in the German Film Industry Support Act on the grounds that it discriminates against non-German EC nationals. *The Week in Europe, Anti-Fraud Tax Measures Adopted*, Origin Universal News Services Limited, Jan. 30, 1992, available in LEXIS, Nexis Library, WIRES.File.

²³ Television Without Frontiers Directive, *supra* note 18.

²⁴ See de Vries Report, *supra* note 1, at 14.

III. THE SINGLE MARKET AND THE UNITED KINGDOM

A. *The United Kingdom*

Jacques Delors introduced the goal of a Single European Market by 1993 during his first term as President of the Commission of the European Communities.²⁵ This policy was consonant with pervasive British assumptions concerning free trade and free markets. Jean Monnet believed that such assumptions underpinned British government thinking without regard to the political persuasion of a particular administration, and that they were held most strongly during the 1980s.²⁶ He contrasted these free-market assumptions with the protectionist reflexes of France.

A free-market policy will likely benefit the United Kingdom because it has a healthier international balance of trade than other Community countries.²⁷ Additionally, the United Kingdom has a comparative advantage over other Community states (except Ireland) in speaking the world's most important language. Other notable strengths include the competitive advantages of market size, wealth, and the presence within its borders of the factors required for audiovisual production. London is one of

²⁵ Delors took office on Jan. 6, 1985 and was appointed for a second term of office on Jan. 6, 1989. His term was extended for another two years at the Lisbon conference in June of 1992. Coopers & Lybrand, *EC Institutions and the Decision Making Process*, EC COMMENTARIES, Nov. 19, 1992, § 3.2. In 1985, the Commission published a White Paper foreshadowing the Single European Act (and the Single Market). Completing the Internal Market: White Paper from the Commission to the European Council, EUR. PAR. DOC. COM 310 final (1985). Subsequently, the Single European Act was signed and ratified in 1987. Single European Act, 1987 O.J. (L 169) 1.

²⁶ See, e.g., JEAN MONNET, MEMOIRS 49 (1978). Monnet, the architect of post-war European integration who was responsible for the reconstruction of post-war France, is commonly referred to as the "father" of the European community. Upon his death in 1979, the United States' State Department hailed Monnet as "[a] great democrat and a visionary builder of Europe. . . . [He] was a man of integrity, decency and intelligence who concentrated his life on a single ideal: the unity of the West." J.Y. Smith, *Jean Monnet: A Force for Unity, Peace; Architect of European Coal, Steel Community, Common Market*, WASH. POST, Mar. 17, 1979, at C5.

²⁷ The Organization for Economic Co-operation and Development placed the United Kingdom second only to the United States as an international trader in audiovisual works. *Towards Freer Trade in Services: Audiovisuals*, OECD OBSERVER, July 1986, at 23. The Bank of England reported that "[e]arnings from films and television amounted to 2.8% of exports and 3.5% of imports of financial and 'other' services in 1984, and showed a surplus of £131 million. Real growth in this sector has been strong, but somewhat erratic, in recent years." *Services in the UK Economy*, 25 BANK ENG. Q. BULL. 413 (1985).

Maggiore estimates that the United Kingdom accounted for 68.5% of total Community audiovisual exports in 1985. MATTEO MAGGIORE, AUDIOVISUAL PRODUCTION IN THE SINGLE MARKET 45 (1990). In 1990, the UK Central Statistical Office estimated that the United Kingdom had an overall surplus on its overseas trade in film and television programs. Within that surplus, television showed a slight loss that was more than compensated for by a surplus on the film account.

the three (all anglophone) global centers for cultural and audiovisual production. Pierre Moeglin has testified to the dominance of English and observes that of the twelve transnational European television channels that existed in 1990, five transmitted in English, one used English as one of its three languages, one used no language, and another used several languages (including English).²⁸ Of ninety-six national and regional television channels in the European Community, twenty-four used English, more than any other single language.²⁹

Thus, the United Kingdom reasons that the creation of a single market will tend to increase its export of broadcasting and audiovisual goods and services within the European Community. It further believes that resistance to Community interventionism and protectionism will help preserve the access of British producers to non-Community markets. However, the unexacting requirement in the Television Without Frontiers Directive that a "majority" of transmission time be filled with productions of European origin may be honored as much in the breach as in the observance.³⁰ This will result from the cost advantages of importing programs purchased on the international market and the obdurate resistance of European audiences to programming from other European states. As Ryclef Rienstra said, "the biggest problem in developing a European audiovisual culture is the resistance of European audiences to European productions."³¹

In spite of the United Kingdom's insouciance and the difficulties of attracting European audiences to European programming, the rhetoric of cultural and collective identity will continue to be heard in the Community. There can be no doubt that many

²⁸ FRANCOIS TRUFFAUT, *GUIDE DES TELEVISIONS EN EUROPE* (Medias-Pouvoirs (hors serie), Paris 1991)), cited in Pierre Moeglin, *Conférence Southam. Television et Europe: questions et réponses en questions*, COMMUNICATION, Autumn 1991, at 13, 17.

²⁹ Moeglin, *supra* note 28, at 17.

³⁰ For a discussion of the European origin requirement, see *infra* text accompanying notes 62-74.

³¹ Interview with Ryclef Rienstra, Executive Secretary of the Council of Europe program Eurimages, in Strasbourg, France (Dec. 17, 1991). Eurimages, the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual works, was established (following a French initiative) on October 26, 1988, by the Council of Europe in order to develop European cinematographic and audiovisual production. (Resolution (88) 15 modified by Resolution (89) 6 of the Committee of Ministers of the Council of Europe). It is a striking example of European "variable geometry," where by intergovernmental agreement institutions are created to achieve goals that have proven impossible to fulfill within the framework of the European Community. Due to the difficulties of establishing cultural support programs in the Community, and because of the limitations of the Treaty of Rome and the opposition of the United Kingdom, the European Community Member States, with the exception of Ireland and the United Kingdom, established Eurimages in conjunction with other Council of Europe members.

Member States are extremely concerned about the erosion of both a common European identity and distinct national cultural identities by exogenous film and television programming. Consequently, questions of cultural identity will remain important policy questions for the European Community. These issues, however, will not be resolved easily for several reasons. First, Community Member States have divergent interests with regard to such issues. Second, the Community still lacks jurisdiction over the cultural domain. Third, audiovisual and broadcasting markets remain stratified along linguistic and cultural lines. In short, as one United Kingdom official said "[w]e can't expect them to screen Jacques Tati films the whole time."³²

B. *The Single Market*

The Television Without Frontiers Directive has not been well received by those who emphasize cultural considerations in audiovisual policy. The Directive changed the structure of the Community's television broadcasting market. It has potentially profound effects on the shape of the Community's audiovisual industries and on the production and distribution of audiovisual culture. Some have perceived "supply specialization," which the Television Without Frontiers Green Paper anticipated would follow establishment of the single broadcasting market,³³ as a threat to cultural diversity in the Community.³⁴ In fact, the single market itself has been characterized as a system for delivering the European audiovisual market to the United States.³⁵

In order to redress undesired effects of the market integration,³⁶ the Community has developed support programs for its

³² Confidential interview with a United Kingdom official (Feb. 10, 1992).

Jacques Tati may be unfamiliar to many American readers. Tati was a French actor-director who directed five films that have been very successful and enduring throughout much, but not all of Western Europe. Comparisons can be drawn between Tati and Charlie Chaplin. Common elements of the works include their comic nature, their concern for the well-being of the common man, and their reliance on a highly visual mode of storytelling that helps to bridge language barriers. Particularly apropos for the discussion of cultural identity in this article, some of Tati's films seem to mourn the loss of traditional French values in the face of increasing industrialism and "Americanization." Dan Fainaru, *A Silent "Talkie,"* THE JERUSALEM POST, Dec. 15, 1989.

³³ Television Without Frontiers: Green Paper on the Establishment of the Common Market for Broadcasting, Especially by Satellite and Cable, issued by the Commission of the European Communities, EUR. PARL. DOC. (COM 300 final) 32-33 (1984) [hereinafter Television Without Frontiers Green Paper].

³⁴ R. Barzanti, *Audiovisual Opportunities in the Single Market*, MEDIA 92, Sept. 1990, at 1 (newsletter of the MEDIA 92 Program).

³⁵ *Id.*

³⁶ Community broadcasting and audiovisual markets remain imperfectly integrated notwithstanding the promulgation of the Television Without Frontiers Directive, the

audiovisual sector. Thus, while the creation of an integrated market and augmentation of competition has been the most important part of Community policy, a subordinate theme has been the development of measures to redress unwanted effects of the single market.

Community policy statements (such as those of the European Parliament and Delors cited above)³⁷ which affirm the primacy of cultural considerations³⁸ in the making of the Community's audiovisual policies are relatively easy to find. Examination of the Community's actual policies and practices, however, suggests that cultural considerations only take rhetorical precedence over economic and industrial considerations. Not only has the creation of the single market been the most important of the Community's policies for the audiovisual sector, but the Community has also allocated considerably more resources to hardware than to software sectors. Moreover, the EEC Treaty (The Treaty of Rome)³⁹ did not, and does not, provide cultural powers to Community institutions. The Community's cultural initiatives have thus far taken place under the provisions of Article 235 of the Treaty of Rome.⁴⁰ In order to avoid the inhibiting effects of the Treaty and to act effectively in the cultural sphere, some Member States have organized both outside the Community⁴¹ and have pressed for revision of the Treaty from within the

Community's commitment to "ever closer union," the Maastricht Treaties, and the Single Market initiative. Although Community measures have undoubtedly permitted and promoted some integration of audiovisual markets (for example, between France and the Walloon Community in Belgium, and between the Netherlands and the Flemish Community of Belgium), the most important factor in defining audiovisual markets is the difference in language and culture between different groups of Community citizens. For example, while Community policies have significantly reduced barriers for a German satellite television channel entering the United Kingdom market, United Kingdom viewers still watch nugatory amounts of German television.

³⁷ See *supra* text accompanying notes 1-10.

³⁸ Culture, however, was not mentioned in Delors's speech to the European Parliament in 1992. See Jacques Delors, 1992: A Pivotal Year, Address before the European Parliament (Feb. 12, 1992), in BULL. EUR. COMMUNITIES, Sept. 1, 1992, at 5.

³⁹ TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY], Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter Treaty of Rome].

⁴⁰ Article 235 of the Treaty of Rome reads:

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures.

Treaty of Rome, *supra* note 39, art. 235.

Article 235 provides for Community powers not explicitly mentioned in the Treaty. Unanimous support in the Council of Ministers is required for action under the provisions of Article 235.

⁴¹ The most important initiatives have been the creation of the Eurimages audiovisual production support fund under the aegis of the Council of Europe and the estab-

Community. These efforts culminated in the inclusion of a Culture Article in the Maastricht Treaty on Political Union.⁴²

Community broadcasting and audiovisual policies have to be understood not simply as the results of negotiation *within* the European Community and between its institutions (the Commission, the Council, and the Parliament in order of importance), but also as the products of *shifting institutional alliances and initiatives* that extend *outside* the bounds of the Community.⁴³ To understand European Community broadcasting and audiovisual policy, we must recognize that it cannot be defined in a neat and tidy way. Further, we must consider the changing balance of political forces within the Community in addition to explicit Community rules and policies.

The Community, though grammatically singular, is institutionally plural. Consequently, we find striking inconsistencies between the actions, goals, and policies of different Community actors. It would be surprising if this were not so, for the out-

lishment of the Audiovisual Eureka following the Assises Europeennes de l'Audiovisuel in 1989. Initiatives such as these, where Community Member States combine *outside* the Community in order to achieve goals that have been impossible within the Community are known as European "variable geometry."

⁴² 1992 O.J. (C13). At the time of this writing, the future of the treaty was unknown. In order to be implemented, it requires ratification by each of the twelve members states of the European Community. On June 2, 1992, Danish voters rejected the treaty in a referendum. The Danish Prime Minister, Poul Schluter, noted that although his country's voters "touched off the current political crisis in the European community when they narrowly rejected the proposed European union treaty, [they] would be asked to vote again in mid-1993." Stephen Kinzer, *Decision for Europe; Danes Will Vote Again on Europe, But Treaty May See Some Changes*, N.Y. TIMES, Sept. 23, 1992, at A16.

⁴³ Customarily, analysis of Community affairs is confined to the activities of the Commission of the European Communities and the Council of the European Communities. The European Parliament usually receives scant attention, for the Community is widely recognized to have a "democratic deficit." COMMISSION OF THE EUROPEAN COMMUNITIES AND THE EUROPEAN PARLIAMENT, *EUROPE, OUR FUTURE: THE INSTITUTIONS OF THE EUROPEAN COMMUNITY* 6 (1990). The primacy of the Commission has certainly been evident in broadcasting and audiovisual policy. The European Parliament, however, has played an unusually important role in audiovisual policy development. Thus, if we are to understand how Community policy has developed, and how it may develop in the future, we must not ignore the role played by the European Parliament.

Moreover, Community policy cannot be understood only through an examination of what goes on in Brussels, or indeed what goes on within the Community. Important areas of interdependence exist between the rules made by the Council of Europe and the Community and programs and policies that Member States have unsuccessfully attempted to implement within the Community. Some of these which were institutionalized outside the Community have had a significant effect on policies and practices within the Community. For example, the Audiovisual Eureka and the Eurimages program were both inspired and animated by France. The United Kingdom and its allies have been successful in supporting Community initiatives for a single television market and in limiting the Commission's room for maneuver in the cultural sector. Many observers, therefore, have underestimated the importance of initiatives made through intergovernmental agreements outside the Community. These initiatives "create facts," to which Community policy must respond, and set agendas for future action.

comes of long processes of political maneuvering are unlikely to be wholly internally consistent. Moreover, since sectoral policy dynamics (for example, between the hardware and software sectors) have often been asynchronous, the reverberations between sectors have resulted in unanticipated outcomes and policy problems.

Coordination of Community broadcasting and audiovisual policy is effected at regular Commissioner meetings attended by the President of the Commission of the European Communities (currently Jacques Delors) and the Vice-Presidents and Commissioners for Directorates-General ("DG") I, III, IV, X, XIII and XIX.⁴⁴ The Commissioner meetings are chaired by the Commissioner responsible for DG X (currently Jean Dondelinger). DG X is also responsible for preparation and documentation of Commissioner meetings. The Community's Council of Ministers maintains a subcommittee on audiovisual policy, which meets with the Commission approximately every second month. These meetings are convened by the Commission. In contrast, there is no regular institutional coordination between the Parliament (which assigns primary responsibility for broadcasting and the audiovisual to its Committee on Youth, Culture, Education, the Media, and Sport) and the Commission's Directorates on broadcasting and audiovisual policy.⁴⁵

IV. TELEVISION WITHOUT FRONTIERS

A single audiovisual and broadcasting market appeared to offer Europe the key competitive advantage of market size upon which, the Commission believed, the enduring success of the audiovisual industry in the United States had been based. The Commission argued that a single European broadcasting market would enable European television producers to develop an internationally competitive industry and enable European television channels to replace imported works with European productions.

The creation of a common market for television production is thus one essential step if the dominance of the big American,

⁴⁴ A Directorate-General ("DG") of the European Commission is an administrative body responsible for a particular subject matter of European Community policy. There are presently 23 DGs. DG I is responsible for External Relations; DG III for Internal Market and Industrial Affairs; DG IV for Competition; DG X for Information, Communications, and Culture; DG XIII for Telecommunications, Information Industries, and Innovations; and DG XIX for Budget. Coopers & Lybrand, *supra* note 25, at § 3.2.

⁴⁵ Confidential interviews (November 1991); J-P. BURGLEMAN & C. PAUWELS, *LA CONVERGENCE DE L'AUDIOVISUEL ET DES TELECOMMUNICATIONS EN EUROPE: LA POLITIQUE DES COMMUNAUTES EUROPEENNES* (C.S.N.M.I.T., Free University of Brussels 1991).

media corporations is to be counterbalanced. This is yet another area where the establishment of a Community-wide market will allow European firms to improve their competitiveness.⁴⁶

The integrative effect of the two chief Community initiatives to establish a Community-wide television market (the Television Without Frontiers Directive and the Satellite Directive) has engendered a compensatory interventionist response, namely, the MEDIA program.⁴⁷ It is designed to compensate for the integrative effects, and consequential decline in diversity, of a single European television market.

The MEDIA program supports the audiovisual sector in peripheral Community states and productions in minority languages. It also fosters co-productions involving several Community Member States. Member States who perceive their languages and cultures (and their audiovisual industries) to be threatened by the global internationalization of audiovisual markets and the integration of Community markets have therefore supported such measures. These supporters include the Community's small countries (sometimes including Denmark, which fears for the future of its film industry) and France (which despite being a large and powerful European Community member, tends to perceive its language, culture, and audiovisual industry as threatened).

The Directive on Television Broadcasting,⁴⁸ which came into effect in October 1991, formally established the European Community's single market in television. This Community law developed from the famous Green Paper of 1984, Television Without Frontiers.⁴⁹ The Commission official who took the leading role in progressing Television Without Frontiers from Green Paper to Directive, Ivo Schwartz of Directorate-General III, stated that its two most important policy goals were to secure access for all Community Member States to broadcast signals emanating from any other Member State and to harmonize Community broadcast advertising standards.

Schwartz asserted that the single broadcasting market was a logical consequence of the EEC Treaty and emphasized the eco-

⁴⁶ Television Without Frontiers Green Paper, *supra* note 33, at 33.

⁴⁷ See *supra* note 19 and accompanying text and *infra* sec. VI.

⁴⁸ Television Without Frontiers Directive, *supra* note 18.

⁴⁹ Television Without Frontiers Green Paper, *supra* note 33.

conomic importance of the single market.⁵⁰

A market capable of amortizing one's own productions must be created. National markets must be expanded by laying down the foundations for a real Common Market guaranteed by common rules National television programme production limited strictly to national markets cannot possibly be competitive in Europe or elsewhere, especially in the face of an American product whose costs have already been covered in a market of continental size.⁵¹

Schwartz also stressed that a single market would support the right of freedom of expression guaranteed in the European Convention of Human Rights,⁵² and downplayed the effect such an integrated market would actually have on the distinct cultural identities of Member States.⁵³ While granting that "[i]t is extremely important that each country retain its image and preserve its own identity,"⁵⁴ Schwartz challenged the notion that Member States would be exposed to "an out-and-out cultural invasion The Commission does not think so, for no individual member state holds a dominant share of the audiovisual market."⁵⁵

Cultural objections to the single market became increasingly important nonetheless. They were raised both during discussions of the Television Without Frontiers Green Paper and after promulgation of the Directive. Schwartz rebutted culturalist objections to Television Without Frontiers, which argued that broadcasting was a cultural rather than an economic activity (and therefore outside the Treaty of Rome). He responded that "the EEC Treaty applies not only to economic activities but also to all social and cultural activities carried out for remuneration. . . ."⁵⁶ Such arguments provided a basis prior to the Maastricht Treaty (which includes a culture article) for Community intervention in the broadcasting and audiovisual sectors, notably through Directorate General X's MEDIA program. However, it was the political bargaining between the culturalists/interventionists and the single-market supporters that took place in the period after publication of the Television Without Frontiers Green Paper and

⁵⁰ Ivo Schwartz, *The Policy of the Commission of the European Communities with respect to Broadcasting*, EUR. BROADCASTING UNION REV., Nov. 1985, at 21, 23.

⁵¹ *Id.*

⁵² *Id.* at 24.

⁵³ *Id.* at 24-25.

⁵⁴ *Id.* at 24.

⁵⁵ *Id.* at 25.

⁵⁶ *Id.* at 26.

before promulgation of the Directive that led to the inclusion of European television program content requirements in the Directive.

One important consequence of Television Without Frontiers lay in the Commission's acknowledgement that cultural matters were within its jurisdiction and that cultural concerns had a legitimate place in broadcasting policy. The logic, however, of the single market in which the division of labor and competition are intensified, tends to eliminate cultural production by less efficient producers—often those whose peripheral linguistical or geographical status leave them vulnerable. This tendency led to defensive action by those disadvantaged by the single market and to a redefinition of cultural goals in audiovisual and broadcasting policy.⁵⁷

A single broadcasting market was advocated initially for its integrative effects in the political, cultural, and economic domains. The Green Paper asserted that "[c]ross-frontier radio and television broadcasting would make a significant contribution to European unification."⁵⁸ The Green Paper also cited Hahn's⁵⁹ celebrated formulation to legitimize its advocacy of a single mar-

⁵⁷ In response to the intensified division of labor within the Community (and between the Community and other European states), the public broadcasters of eleven European states established a group for the Development of an AudioVisual Identity for Europe ("DAVID"). Broadcasters from Austria, Belgium, Denmark, Finland, Greece, Ireland, Netherlands, Norway, Portugal, Sweden, and Switzerland established DAVID in 1988 out of concern that the Television Without Frontiers Directive would disadvantage broadcasters in small countries. See *Belgium: An audiovisual identity for Europe*, EUR. BROADCASTING UNION REV., Sept. 1988, at 46.

⁵⁸ Television Without Frontiers Green Paper, *supra* note 33, at 28.

⁵⁹ Wilhelm Hahn was a German Christian Democrat Member of the European Parliament whose resolution on radio and television broadcasting in the European Community is often seen as the beginning of Community broadcasting policy.

In September 1980, the European Parliament's Committee on Youth, Culture, Education, Information, and Sport established a committee of enquiry (with Hahn as *rapporteur* [reporter]). The committee submitted its Report on Radio and Television Broadcasting in the European Community, EUR. PARL. DOC. 1-1013/81 (1982) [hereinafter *The Hahn Report*], to the Parliament on February 23, 1982. The report contained two draft resolutions: one emanating from Hahn and one from a parallel initiative on broadcasting—the Schinzel initiative. These resolutions were composited between the Parliament's receipt of the report and its promulgation of the Hahn Resolution. Resolution on Radio and Television Broadcasting in the European Community, 87/82, 1982 O.J. 110-12 [hereinafter *The Hahn Resolution*].

De Vries (a Member of the European Parliament ("MEP") and former member of the Parliament's Committee on Youth, Culture, Education, Information and Sport) has claimed that the Parliament, rather than the Commission or Council, was responsible for initiating Community audiovisual and broadcasting policy. The Parliament, he claimed, "prompted the Commission into publishing, first, the Interim Report, and in 1984, the Green Paper on the Internal Market in broadcasting . . . Parliament has thus *de facto* initiated legislation." EUROPEAN PARLIAMENT, AUDIOVISUAL POLICIES OF THE COMMUNITY: THE ROLE OF THE EUROPEAN PARLIAMENT II (Research and Documentation Papers, Economic Series No. 10/8-1987, 1987).

ket: "European unification will only be achieved if Europeans want it. Europeans will only want it if there is such a thing as a European identity. A European identity will only develop if Europeans are adequately informed. At present, information via the mass media is controlled at national level."⁶⁰

During the early 1980s, the themes of a single market and a unified European culture were dominant in European Community policy-making. The goal of unity rather than diversity was uppermost. Most believed the classic nationalist formulation that political institutions survive only when they are congruent with cultural communities; i.e., states are robust and legitimate only in so far as they are isomorphic with nations, which are themselves differentiated from others by culture. If the Community was to survive, therefore, it needed a common culture and a shared European identity. The Television Without Frontiers Directive⁶¹ is the most important embodiment of these Community goals. In both content and implementation, however, it also reflects the divergent interests and the absence of consensus within the Community regarding the relative weights to be attached to the rival goals of unity and diversity.

The Directive's European content regulations developed as a response to the apprehension that creation of the single market would increase the vulnerability of the Community's audiovisual sector to external competition.⁶² Their apprehensions were confirmed (and their qualified satisfaction in the Directive increased) by Jack Valenti's⁶³ hostile response to the Directive:

[T]he European Community's broadcast directive . . . aims to impose a majority quota on all non-EC material that comes into the European Community television marketplace—which, of course, means an impediment and a barrier to a free marketplace insofar as American programs are concerned. The President of the United States, the Secretary of Commerce and the United States Trade Representative have been supportive. They have made it clear to the chancellories of Europe that the

⁶⁰ Television Without Frontiers Green Paper, *supra* note 33, at 28.

⁶¹ *Supra* note 18.

⁶² Ironically, the Commission of the European Communities had difficulty in securing compliance between the national television content regulations of France, a Community Member State which had strongly advocated Community content requirements in the Directive, and the requirements of the Directive. France sought to reserve a specific requirement for programs of French, rather than Community, origin in its national regulations. The Commission, however, viewed such a provision as incompatible with a single Community broadcasting market, which was the goal of the Directive.

⁶³ President of the Motion Picture Association of America.

imposition of this quota is an intolerable thing to the US.⁶⁴

In fact, Valenti had less to worry about than he feared because the Directive is drafted more permissively and enforced less rigorously than many national content regulations. Indeed, a British commentator described the Directive as "a victory for commercial forces and those who favoured anti-protectionist policies. It could also emerge as a clear victory for US interests"⁶⁵

The sections of the Directive regarding the national origin of television programs are included in Chapter III of the Directive in Articles 4 and 6.

Article 4 of the Directive requires that:

[m]ember 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 the time appointed to news, sports events, games, advertising and teletext services. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.⁶⁶

Article 6.1 states:

Within the meaning of this chapter, 'European works' means the following:

- (a) works originating from Member States of the Community and, as regards television broadcasters falling within the jurisdiction of the Federal Republic of Germany, works from German territories where the Basic Law does not apply and fulfilling the conditions of paragraph 2;
- (b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 2;
- (c) works originating from other European third countries and fulfilling the conditions of paragraph 3.⁶⁷

These provisions require some exposition. Article 6.1(a) refers to the former German Democratic Republic (East Germany) and Article 6(b) exemplifies the important interdependence be-

⁶⁴ CANADIAN COMMUNICATION REPORTS, Dec. 31, 1989, at 2-3.

⁶⁵ R. NEGRINE & S. PAPATHANASSOPOULOS, *THE INTERNATIONALIZATION OF TELEVISION* 76 (1990).

⁶⁶ Television Without Frontiers Directive, *supra* note 18, art. 4.

⁶⁷ *Id.*, art. 6.1.

tween the regulations and practices of the European Community and the Council of Europe. Effectively, this clause and clause 6.1(c)⁶⁸ define the term "European" for the purposes of the Directive. Therefore, "European" means any legal or natural person domiciled in any of the Member States of the Council of Europe.⁶⁹ Clearly, this is a permissive definition. Indeed, the European Community is actively developing contacts and collaboration (including initiatives in the audiovisual sector) with Eastern Europe and Mediterranean countries. For the purposes of the Directive, Europe extends from Iceland to Vladivostock and from the North Cape to the Mediterranean littoral.⁷⁰ As one official noted, "there is a broad consensus that it is Europe in the cultural sense that is in question, not in the geo-political sense."⁷¹ The article, moreover, does not require that a European be a natural person. Productions of any European company may qualify as European content for the purposes of the Directive, though they may not have been produced by European natural persons.

However flexible the definition of "European" in Community regulation and subsidy programs, it should not be forgotten that the passing of regulations, even loose regulations, is only one component; ensuring adherence to them is another. The

⁶⁸ Article 6.1(c) must be read in conjunction with Article 6.3, which reads as follows:

The works referred to in paragraph 1(c) are works made exclusively or in co-production with producers established in one or more Member State by producers established in one or more European third countries with which the Community will conclude agreements in accordance with the procedures of the Treaty, if those works are mainly made with authors and workers residing in one or more European States.

Id., art. 6.3.

⁶⁹ At the time of this writing there are twenty-three Member States.

⁷⁰ Beginning in July 1992, MEDIA's new support program for independent television producers, GRECO, is open to producers in European Community states and states which are signatories to the Audiovisual Eureka. COMMISSION OF THE EUROPEAN COMMUNITIES, MEDIA GUIDE FOR THE AUDIOVISUAL INDUSTRY 186 (6th ed. 1991) [hereinafter MEDIA GUIDE].

A similar program, the Audiovisual Eureka, is a 1989 inter-governmental agreement to develop the European audiovisual sector. Twenty-six states have adhered to the Audiovisual Eureka (including Turkey and the former U.S.S.R.). It derives from a meeting held in Paris known as the *Assises de l'Audiovisuel* which was jointly sponsored by the Commission of the European Communities and the Government of France.

Although the definitions of Europe and European adopted for European Community regulation are very flexible, GRECO (and other MEDIA programs, such as CARTOON, MEDIA's program of support for animated films) has adopted the highly specific Canadian points system for determining the eligibility of a production for GRECO support. For example, the point system awards two points to a production (a production must score eleven points if it is to be recognized as European) for a European director. GRECO, however, defines neither whether the citizenship or domicile of personnel is determinative nor what is meant by "European."

⁷¹ Confidential interview (Dec. 18, 1991)...

Television Without Frontiers Directive became effective in October 1991. Thus far only four of the twelve European Community Member States have reported compliance with the Directive's provisions. While the United Kingdom has reported compliance, a senior United Kingdom official stated that the United Kingdom did not think it "appropriate" to require television film channels⁷² to conform to the Directive's requirement that a majority of programs be European works.⁷³ This official further remarked that "we can't expect them to screen Jacques Tati films the whole time."⁷⁴

Despite the intention of creating a single European television market, the most important effect of the Television Without Frontiers initiative has been to increase competition within the national (or, more precisely, linguistic) television markets of Community Member States. It has done little, however, to establish the Community-wide market envisaged by the Commission in 1983. Even without formal jurisdictional barriers to entry, Community audiovisual markets have remained stratified along largely national and linguistic lines. Changes in regulation and the establishment of subsidy programs have done little to rupture the cultural and linguistic membranes that separate Europeans.

Both the Satellite Directive⁷⁵ and the Television Without Frontiers Directive⁷⁶ expressed the dominant Community assumptions of the early and middle 1980s: that a single broadcasting market would unify the Community culturally (and therefore politically) and would assist the development of the Community's audiovisual hardware and software industries. Neither Directive, however, actually established the single market they were intended to implement. Cultural and linguistic barriers ensure that Community broadcasting and audiovisual markets remain separate. The Television Directive, however, has fostered some increase in transborder broadcasting—along with the consequential restratification of broadcasting markets on a linguistic, rather than political, basis—and an increase in competition within individual markets. On the other hand, divisions between sectors of the electronics industry, between the broadcasting and electronics industries, and between the spon-

⁷² The United Kingdom has two satellite-delivered subscription film channels.

⁷³ Confidential interview with United Kingdom official (Feb. 10, 1992).

⁷⁴ *Id.*

⁷⁵ *Supra* note 17.

⁷⁶ *Supra* note 18.

soring Member States, have all frustrated the Satellite Directive's goal of harmonizing transmission standards.

There were powerful countervailing forces against both Directives. From the first publication of the Television Without Frontiers Green Paper in 1984,⁷⁷ countervailing *dirigiste*⁷⁸ pressure was being mobilized against the single market in broadcasting. These forces of opposition to the single market (for fear of its outcome) often ran in harness with other forces that, although not opposed to the single market initiative, believed a pro-active approach to Community *political* and *cultural* unity would be required for the single market to work. An important center of opposition to the single market in broadcasting was the European Parliament.

V. THE HAHN REPORT

Roberto Barzanti described the European Parliament's Report on Radio and Television Broadcasting in the European Community, known as the Hahn Report,⁷⁹ as the "premier pierre" of Community broadcasting policy.⁸⁰ Compared to Television Without Frontiers, the Hahn Report advocated a different, more interventionist, vision of Community policy. Hahn proposed Community regulation and pro-active initiatives to foster a unified European culture and identity rather than the competitive, free-market approach that Television Without Frontiers emphasized.

Those who advocated the use of television as an instrument for making and disseminating unified European culture (whether via the market or intervention) were quickly disabused of their beliefs. Attempts in the 1980s to establish trans-national television services (whether commercial or public service) failed. The large scale nationalist conception of a unified European culture to complement and sustain a European polity became discredited, while the perception grew that television threatened indigenous national cultures. If we follow Kedourie's reasoning about

⁷⁷ See *supra* note 33.

⁷⁸ In European political discourse, the term *dirigiste* embodies an outlook that favors economic and financial intervention by the state or other central governing body (e.g., the European Commission). Opposing this view are laissez-faire or free-market practices, which are typically characterized as "liberal" in Europe. This terminology could be confusing to American readers, who generally refer to economic interventionists as "liberals" and free-market proponents as "conservatives."

⁷⁹ *Supra* note 59.

⁸⁰ Interview with Roberto Barzanti, former Chairman of the European Parliament Committee in Youth, Culture, Education, the Media, and Sport (Nov. 7, 1991).

the nature of the relationship posited by nationalism among language, culture, and political identity,⁸¹ we can see why the vision of a unified European culture took on aspects of a nightmare.

If, as nationalists believe, political structures must be congruent with cultural communities in order to be stable and legitimate,⁸² then to survive and develop satisfactorily the European Community would require not only a common culture but a common language. Undoubtedly, if a common Community language were to emerge, it would be English. There was, therefore, a retreat from the notion that a common Community culture (and thus language) was required; diversity, rather than unity, became the slogan for the Community cultural interventionists. The contemporary emphasis in Community policy on diversity, rather than unity, is a response to two factors. One is the failure of trans-national satellite broadcasting in the 1980s and the subsequent recognition of Europe's inescapably diverse cultural and linguistic landscape. The other factor is the threat presented by a single market to national audiovisual and broadcasting markets (and thus to national media industries). These threats were perceived to come from anglophone services and productions.

Barzanti eloquently advocated the interventionists' arguments. He argued that without action by the Community to compensate for the operations of the market, the single market would be fatal to the audiovisual sector in Europe. "Unless there is solid support from the outset, the audiovisual industry of all European countries will be thrown into the Single Market like a Christian to the lions in the arena."⁸³

Barzanti concluded that the threat came from anglophone, media and was dressed in the Stars and Stripes. He believed that only the film and television industries of the United States, and perhaps Japan, were organized on a sufficiently large scale to benefit from the single market.⁸⁴ Barzanti's comment testifies to the extent and manner of the changes in Community sentiment. Such changes stem partially from the creation of a single market, which fostered a collective European identity and culture. Similarly, they stem from the intervention and subsidy conceived to

⁸¹ See generally KEDOURIE, *supra* note 13.

⁸² This is core of the argument Hahn and others advanced in the context of Community audiovisual policy during the early 1980s.

⁸³ Barzanti, *supra* note 34, at 1.

⁸⁴ The President of France, Francois Mitterand, made a similar point at the Assises Européennes de l'Audiovisuel: "American pictures combined with Japanese technology today overwhelm the European market." ASSISES EUROPÉENNES DE L'AUDIOVISUEL, *supra* note 7, at 16.

preserve cultural and linguistic differences (and therefore national audiovisual industries) threatened by anglophone producers within and without the Community. The superordinate value changed from unity, in the name of which Community policy was promulgated, to diversity. Whereas Television Without Frontiers was the chief instrument of the Community's policy of cultural unity, the MEDIA program is the instrument of cultural diversity.

VI. THE MEDIA PROGRAM

Due to the perceived threat from the single market to the Community's cultural diversity,⁸⁵ intervention in the Community's audiovisual and broadcasting markets has grown steadily. Of these initiatives, the MEDIA program is the most important. It reflects the recent emphasis on diversity, rather than unity, in Community policy. However, the level of the Community's support is insufficient to ensure the survival of audiovisual industries in small Community countries such as Denmark.

The logic of the single market is that English language producers will prevail because they have powerful competitive advantages over producers in other languages. Their success, however, will be limited because the "cultural screens" that separate European audiovisual consumers are only partly permeable. These limits will be set by consumer preference rather than by national rule-making, and such changed limits are likely to disadvantage non-anglophone producers. Hence, Community policy has shifted in emphasis from unity to diversity because more producers in the Community are likely to lose by unity in broadcasting and audiovisual markets than are likely to gain from it.⁸⁶

The Commission of the European Communities established MEDIA 92 in 1988 through use of its own discretionary expenditure funds. MEDIA was built in two phases: a preparatory phase and a realization phase, which required approval by the Council of Ministers. The preparatory, or pilot, phase ended in 1990. In December 1990, the Council endorsed continuation of the MEDIA program until 1995. At that time, MEDIA 92 was granted

⁸⁵ The threat comes from the United States *outside* the Community and from the United Kingdom, thanks to the single market, *within* the Community.

⁸⁶ Interventionists within and without the Commission of the European Communities have not yet succeeded in establishing a large-scale support program for audiovisual production under Community law. The opposition of the United Kingdom (and Germany) has thus far inhibited it. Accordingly, advocates of such interventionist policies have established programs, such as Eurimages, under the Council of Europe, and the Audiovisual Eureka, outside the Community.

200 million ECU⁸⁷ for a period of five years commencing January 1, 1991.⁸⁸ Following the Council decision, MEDIA 92 was renamed MEDIA 95.

The role of MEDIA is "to promote the production and dissemination of audiovisual works throughout the Community."⁸⁹ Its specific focus is "training, preproduction, multilingualism of programs, use of new [sic] technologies, distribution and commercial promotion, the creation of a 'second market' and easier access to venture capital."⁹⁰ During the pilot phase of MEDIA 92, eleven projects or programs were launched.⁹¹ These separate initiatives were located in different Community countries, generated different levels of activity, were endowed with different levels of funding, and enjoyed different levels of success.

Added to them have been a new set of priorities that further extend the scope of the category "European,"⁹² and thus the term "European culture." Additionally, new institutions have been established. In 1991, GRECO,⁹³ MAP TV,⁹⁴ and MCD⁹⁵ were added to the MEDIA portfolio.⁹⁶

MEDIA is an excellent example of the Community's recent attention to a middle stage between hardware and software distribution, which interventionists formerly neglected. Although MEDIA's initiatives are extensive, if ungenerously funded, they will be limited to funding pre-production, post-production, and, in particular, promoting improved distribution and circulation. MEDIA does not support production; rather, it emphasizes cultural pluralism within the Community by supporting the circula-

⁸⁷ The European Currency Unit ("ECU") was created in 1979. Its value represents a weighted combination of the twelve currencies of the European Community. Under the Maastricht Treaty, the European Community would adopt the ECU as its single currency no later than 1999. Jonathan Fuerbringer, *All About ECUs: A European Currency Inches Toward Acceptance*, N.Y. TIMES, May 17, 1992, § 3, at 10.

⁸⁸ MEDIA Decision, *supra* note 19.

⁸⁹ Council Decision 91/115 of 16 January 1991 on the Joint Answer to Written Questions Nos. 2504/90 and 2505/90 Given by Mr. Bangemann on Behalf of the Commission, 1991 O.J. (C115) 18.

⁹⁰ MEDIA Decision, *supra* note 19, at 174.

⁹¹ These were: the European Film Distribution Office (EEDO), the Espace Video Program (EVE), Broadcasting Across the Barriers of European Language (BABEL), the European Film Club, the European Script Fund—Support for Creative Independent Production Talent (SCRIPT), Association Europeenne du Film d'Animation (CAR-TOON), the Media Investment Club (MIC), Regional Development of the Audiovisual Industry, Les Entrepreneurs de l'audiovisuel Europeene (EAVE), Media Venture, and Media Guarantee.

⁹² "[P]riority will be given to co-operation with professionals from Central and East European countries." Barzanti, *supra* note 34, at 3.

⁹³ Groupement Europeen pour la Circulation des Oeuvres ("GRECO").

⁹⁴ Memory, Archives, Programs ("MAP").

⁹⁵ MEDIA project for Creative Documentaries ("MCD").

⁹⁶ See MEDIA GUIDE, *supra* note 70.

tion of Community productions, particularly those made in minority languages.

The European Community views itself as disadvantaged by its trading relationship in culture and information with the United States (the dominant English-speaking state).⁹⁷ Similarly, non-English-speaking states *within* the Community regard themselves as disadvantaged in relation to their European partner, the United Kingdom. Moreover, the Community, both at the level of its Member States and the constituent parts of the Commission of the European Communities, is divided between *dirigistes* and "ultra-liberals." Indeed, the conflict between these is one of the "grand narratives" of the European Community. In most respects, and certainly with respect to broadcasting and culture, the United Kingdom is a liberal Member State.

Consequently, the United Kingdom has often advocated Community audiovisual and broadcasting policies that differ from those of other Member States. A senior United Kingdom official stated that the United Kingdom's first priority for Community broadcasting and audiovisual policy was to secure a "free market" (qualified by the requirements of taste and decency). He also stated that the policy goal of the United Kingdom towards the MEDIA program was to "close it down."⁹⁸

Thus far, pro-active measures such as the MEDIA program have been less important than those designed to establish a single television market. The Television Without Frontiers Directive and, to a lesser degree, the Satellite Directive were consonant with the goal of a single market. The *dirigistes* have been unable to command the political clout necessary to promulgate an interventionist Directive with respect to "software" in the broadcasting and audiovisual sector. Nonetheless, significant alliances and institutions⁹⁹ have been established *outside* the European Community to secure *dirigiste* goals that have been frustrated by the opposition of a minority within the Community.

⁹⁷ See Delors, *supra* note 10.

⁹⁸ Confidential interview with United Kingdom official (Feb. 10, 1992).

In general, the United Kingdom traded concurrence with pro-active Community financial support in the audiovisual sector for increased harmonization and integration of Community audiovisual markets. The United Kingdom's specific concern that money should not be wasted on the MEDIA program was shared by Germany. See *Statement by the German Delegation to the Council of Ministers*, Doc. No. 10927/90 ADD 1 (Dec. 20, 1990). However, the United Kingdom-Germany alliance has not held for all broadcasting and audiovisual issues.

⁹⁹ Notably Eurimages and the Audiovisual Eureka.

VII. CONCLUSION

The issue of whether too few or too many Jacques Tati films are screened may seem trivial, too trivial for the fate of Europe to hang on it. The issue, however, implies two fundamental and difficult questions. First, does culture have the central role in maintaining the coherence and legitimacy of political institutions that nationalists and Euro-nationalists cede to it? Second, do modern societies hold together better on the basis of an acceptance of diversity and loose pluralism, or on a strongly normative unity? The answers to these questions are difficult to find. Yet, they inform strongly held beliefs which are played out and translated into policies, rules, and institutions in modern states. Audiovisual policy in the Community has been riven by disagreements between advocates of diversity and advocates of unity. Strife over the diversity/unity couplet is compounded by disagreement over which policy instruments (markets or administered allocations) should be used.

The rejection of the Maastricht Treaty by a very thin majority of Danish voters suggests that the European Community may well survive better on a loose basis of diversity than on a basis of common and normative unity. Yet, as Danish "yes" voters argued strongly, the Community may well prove a more effective guarantor of Denmark's audiovisual sector and distinctiveness than Denmark alone. The questions arising from the issue of broadcasting and cultural identity are not readily answered. Accordingly, the answers must be highly conditional and context specific, not least of all in the European Community where the question "too much or too little Jacques Tati?" will continue to exercise policy makers, and sometimes even television viewers.