

**WHY HOLLYWOOD LOST THE URUGUAY ROUND:
THE POLITICAL ECONOMY OF MASS COMMUNICATION REVISITED**

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ABSTRACT

In this dissertation I examine the reasons why the U.S. film industry lost the GATT-Uruguay Round negotiations on audiovisual services and intellectual property rights (IPRs) related to copyright. I revisit the political economy approach to communication and implement Mosco's (1996) suggestions on the approach's renewal. Mosco notes that political economists of communication thematically view the state as supporting transnational business (1996, p. 94). However, Jarvie's (1992) analysis of the relationship between the U.S. government and film industry between 1920 and 1950 suggests that this 'support' theme does not adequately capture the often antagonistic and unproductive relationship between the two parties. I extend Jarvie's (1992) work by developing themes from his scholarship and applying them to a case study on the Uruguay Round.

I review the literature on the media-cultural imperialism thesis and focus on Herbert Schiller's (1969 [1992], 1976, 1989) scholarship. Schiller's thesis implies that outcomes in international relations are dictated by domestic determinants such as the influence of corporate lobbyists. However, I argue that the reasons why Hollywood lost lie not in domestic determinants alone, but in a broader perspective (derived from the discipline of international relations) that focuses on the interaction between domestic trade politics and international relations (Putnam, 1988 [1993]). Putnam characterises international negotiations as an interactive process involving the bargaining between negotiators and the separate discussions each delegation has with constituents in its domestic market on the ratification of the agreement. I assess themes from Jarvie's work and propositions from Schiller's thesis using Putnam's (1988 [1993]) two-level analysis and empirical evidence from primary documents and thirty-five interviews conducted over a three-year period (1994 to 1997) with U.S. and European negotiators and film executives.

I argue that U.S. domestic trade politics hampered efforts by U.S. negotiators to reach a bilateral accord on audiovisual services and IPRs related to copyright because of linkages forged by EU Member States between progress in those talks and progress in talks on agriculture, maritime transport services, geographic indications related to wines and anti-dumping. A second obstacle to a bilateral accord was an influential hawkish minority of the Hollywood lobby, who set an aggressive agenda for U.S. negotiators and set off a chain reaction in the final moments of the Round that led to Hollywood's defeat.

Finally, I present an alternative scenario to the argument (cf. Waregne, 1994; Dehousse and Havelange, 1994; Joachimowicz and Berenboom, 1994) that the French government dictated the outcome of the audiovisual services and IPRs negotiations. My scenario emphasises the preeminent status of the General Affairs Council, the role of EU Member States *other* than France, and Commission efforts to forge a bilateral deal. In the end, the hawks dictated the outcome of the audiovisual services talks, while a majority of EU Member States dictated the outcome of the talks on IPRs related to copyright.

To Tracy and Max

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ACRONYMS

- ACTPN — U.S. Advisory Committee on Trade Policy and Negotiations
- AFMA — American Film Marketing Association
- L'ARP — Societe des Auteurs, Realisateurs et Producteurs (Association of Writers, Directors and Producers)
- BF&DC — U.S. Dept. of Commerce's Specialties Division of the Bureau of Foreign and Domestic Commerce (later known as the Motion Picture Division)
- CSA — Conseil Superieur de L'Audiovisuel
- CNC — Centre National de la Cinematographie
- CUFTA — Canadian-U.S. Free Trade Agreement
- COREPER — Committee of Permanent Representatives of EU Member States
- DM — German mark (currency)
- EBU — European Broadcasting Union
- EC — European Community
- EEA — European Economic Area
- EFTA — European Free Trade Association
- EU — European Union
- GATT — General Agreement on Tariffs and Trade
- GOP — Grand Old Party (Republican)
- IPE — International political economy
- IPRs — Intellectual property rights
- ITO — International Trade Organisation
- IIPA — International Intellectual Property Alliance
- IPAC — U.S. Industry Policy Advisory Committee
- ISAC 13 — U.S. Industry Sector Advisory Committee on Services for Trade Policy Matters
- MFN — Most-favoured-nation principle
- MPA — Motion Picture Association (foreign division of MPAA; formerly MPEAA)
- MPAA — Motion Picture Association of America
- MPEAA — Motion Picture Export Association of America (formerly MPEA)
- MPPDA — Motion Picture Producers and Distributors of America
- MTN — Multilateral trade negotiation
- NAFTA — North American Free Trade Agreement

NIEO — New International Economic Order
NTB — Non-tariff trade barrier
NWICO — New World Information and Communication Order
PAC — Political Action Committee
RIAA — Recording Industry Association of America
SAC — Sector Advisory Committee
SPAC — U.S. Services Policy Advisory Committee
STR — Special Trade Representative
TNC — Transnational corporation
UIP — United International Pictures
UN — United Nations
USTR — United States Trade Representative (formerly STR)
VOD — Video-on-demand
WIPO — World Intellectual Property Organisation
WTO — World Trade Organisation

INTRODUCTION

Media scholars should take note of the U.S. government's inability to satisfy the U.S. film industry in the GATT-Uruguay Round. Scholarship abounds on the success of the U.S. film industry in foreign markets. One camp focuses purely on commercial and economic reasons (c.f. Bjorn, 1992; Hoskins and Mirus, 1988; Hoskins and Mcfadyen, 1991; Kruse, 1994; Pragnell, 1985; Pool, 1990; Wasko, 1985). A second camp focuses on the comparative economic advantage of English-language producers (c.f. Collins, 1989, 1994; Wildman and Siwek, 1988). And a third camp highlights, to varying degrees, commercial and economic reasons along with the effects of two World Wars and/or the close relationship between the U.S. government and Hollywood film companies (c.f. Bettig, 1990; Guback, 1969, 1977, 1985; Jarvie, 1992; Schiller, 1969 [1992]; 1989; Strauss, 1930; Thompson, 1985; Tunstall, 1977 [1994]). But very little research, if any, has been done on situations in which the U.S. government has failed to remove barriers to Hollywood's products in foreign markets.

Even more significant, Hollywood's defeat in the Uruguay Round was the fourth in a series of defeats for the film industry under the U.S. government's stewardship between 1986 and 1993: Canada's cultural industries were excluded from the 1988 U.S.-Canada Free Trade Agreement (CUFTA) and 1992 North American Free Trade Agreement (NAFTA),¹ and the European

¹Article 2005(1) of the CUFTA exempts most of Canada's cultural industries from the treaty's provisions (CUFTA, 1988, p. 396), while annex 2106 of the NAFTA contains the cultural exclusion language found in Article 2005(1) (NAFTA, 1992, p. 21-11).

Community enacted the 1989 Television Without Frontiers Directive² (Council of the EU, 1989; hereinafter Television Directive). In this dissertation I examine the reasons why Hollywood lost the Round. I present the most comprehensive analysis of the Round's audiovisual sector talks³ written to date, incorporating the perspectives of all significant players and examining key details, some of which are admittedly sensitive, to correct some of the problems of previous accounts. A distinguished scholar at The LSE described the study of trade negotiations as watching a poker game and trying to determine what each player is thinking and the hand each player holds. However, by interviewing the participants in the Round's audiovisual sector talks — who were willing to show me their 'hands' — I in a sense joined the game and watched as it progressed.

²Article 4 of the Directive (Quotas on European Programming) states: "Member states shall ensure where practicable and by appropriate means, that broadcasters reserve for European works...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 international, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria" (OJ L 298, 17 October 1989, p. 26). Article 5 (Quotas on European Independent Productions) states: "Member states shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 percent of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternatively, at the discretion of the member state, at least 10 percent of their programming budget for European works created by producers who are independent of broadcasters. This must be done progressively on basis of suitable criteria, earmarking an adequate proportion for recent works (within five years of production) (OJ L 298, 17 October 1989, p. 27).

³ In this dissertation 'audiovisual sector talks' will often serve as a shorthand phrase for the Uruguay Round's negotiations on audiovisual services and IPRs related to copyright.

I also confirm the interdisciplinary nature of media studies by building a theoretical bridge between the political economy approach to communication and international relations. I examine why Hollywood lost by assessing Herbert Schiller's (1969 [1992], 1976, 1989) media-cultural imperialism⁴ thesis. Schiller (1976) defines media-cultural imperialism as the spread of capitalism: the "sum of the processes by which a society is brought into the modern world system and how its dominating stratum is attracted, pressured, forced, and sometimes bribed into shaping social institutions to correspond to, or even promote, the values and structures of the dominating center of the system" (p. 9).⁵ Schiller (1969 [1992], 1989) argues that U.S. media corporations, whose leaders sit on the U.S. Business Roundtable of Industrialists, dominate Western European cultures and media systems with

⁴Scholars disagree over the definition of 'imperialism.' Etherington (1984) notes the multidisciplinary nature of studying imperialism and the problem of the word's shifting meaning. Cohen (1973) argues that the term imperialism "has become too emotive and value-laden, too tied up with partisan politics and propaganda as a catchword or slogan. Indeed, for some it has actually become an epithet...." (p. 9) Nevertheless, if one had to choose among the myriad of definitions, Cohen's based on "the asymmetry of dominance and dependence" best represents the meaning of the word. Cohen defines it as "any relationship of effective domination or control; political or economic, direct or indirect, of one nation over another" (p. 16).

⁵It is often difficult to distinguish between *media* and *cultural* imperialism. Put simply, where does the media side of imperialism end and the cultural side begin? Tomlinson (1991) advises against defining media-cultural imperialism because of the "hybrid nature of the term," suggesting instead that the concepts "must be assembled out of [their] discourse" (p. 3). Schiller (1991) asserts that the "cultural and economic spheres are indivisible" (p. 14). Lee (1980) argues that programming exports and foreign ownership must be considered along with, inter alia, the effects of the 'capitalist world views' on, and 'infringement' of, a receiving nation's way of life. Yet Roach (1990) argues that media imperialism is simply a political theory, no aspect of which pertains to message reception.

support from the U.S. government.⁶ Schiller's thesis offers media scholars a paradigm to apply to the Uruguay Round audiovisual negotiations and to the contemporary U.S. government/media corporation relationship in multi-sector trade negotiations. His thesis implies that outcomes in international relations are dictated by domestic determinants such as the influence of corporate lobbyists. However, evidence suggests that the reasons why Hollywood lost lie not in domestic determinants alone, but in a broader perspective from the discipline of international relations that focuses on the *interaction* between *domestic* trade politics and *international* relations (Putnam, 1988 [1993]). Putnam (1988 [1993]) characterises international negotiations as an interactive process involving two levels: the bargaining between negotiators and the separate discussions each delegation has with constituents in its domestic market on the ratification of the agreement.

Why bring media studies together with international relations theory and methods? To start, studying the trade in audiovisual products is not simply about the economics and social-psychological influence (if any) of these products on the audiences of receiving nations; it is also about international relations — the ways in which nations interact with each other at political and economic levels, and the political, social and economic effects of these

⁶What makes Schiller's revised thesis so difficult to examine is that a complete statement of it cannot be found in one text and that he tends to be inconsistent with his terminology. One must piece his thesis together using several texts and articles. For example, Schiller believes the number one priority of all the U.S. Roundtable members is the removal of barriers to information flows across the globe, and that this priority cuts across all industry categories. But Schiller (1989) limits his criticism to the assistance provided to U.S. media corporations by the U.S. government both domestically and abroad. And Schiller refers in one instance to transnational corporate culture in general, and in another to U.S. corporate dominance.

interactions on both individual nations and the global system as a whole. Furthermore, the study of trade in audiovisual products requires an interdisciplinary approach to solving research problems. While economists apply their own econometric models and historians use their own historiographic techniques, mass communication researchers must be methodological borrowers. When a research problem involves understanding trade negotiations associated with film and television programmes, legal scholars, political scientists and experts in international relations usually examine the give-and-take of the talks, while media scholars determine the cultural and industrial *implications* of the talks. But does this division of labour make sense?⁷ Golding and Murdock (1996) write that researchers in the social sciences and humanities “tend to approach communications with rather different interests and reference points, even when there is a strong desire to cut across disciplinary boundaries, as there often is” (p. 12).⁸

⁷Similarly, Gomery (1994) argues that media scholars should be aware of the division of labour that places responsibility for influencing communication policy in the hands of lawyers, while media scholars, particularly media economists, evaluate proposals for regulation and analyse their effects. Gomery believes media scholars should take a more active role in the lobbying process.

⁸Levy and Gurevitch (1994) note that the field is split into redeemers and reformers, the former advocating that media studies become a separate discipline; the latter interested in strengthening interdisciplinary ties. The reformers are on the right track. Miller (1983), a classic redeemer, distinguishes between the early days of media studies — “derivative, borrowing heavily from the theoretical and empirical contributions of scholars in other social and behavioral sciences” (p. 40) — and today, with media research moving toward ‘maturity’ as graduate programmes confer degrees on media scholars, rather than other departments conferring degrees on scholars with a particular interest in media. The danger of his comparison is that it denigrates the derivative nature of media studies and implies that scholars who venture outside the communication department in search of

I also extend the work of Mosco (1996) by implementing some of his suggestions for the 'renewal' of the political economic approach to communication. Mosco suggests scholars take a closer look at the role of the state in the media industry. He notes that political economists of communication thematically view the state as supporting transnational business (p. 94). However, Jarvie's (1992) analysis of Hollywood's export system between 1920 and 1950 includes details of the relationship between the U.S. government and film industry. His work, based on 10 years of research and relying primarily on documentary evidence, suggests that this 'support' theme does not adequately capture the often antagonistic and unproductive relationship between the two parties. Indeed, very little is known about the contemporary relationship between the U.S. government and film industry because of the reluctance of Hollywood executives and U.S. trade officials to discuss their joint activities, and because of the difficulty of obtaining primary documents related to negotiations on film and TV exports.⁹ I extend Jarvie's

theory and methodology are heretical, or, as Miller puts it, too eager "to describe themselves and their scholarly interests using labels from other fields" (ibid). Miller and his fellow redeemers fail to see that by accepting the field's historical links with other departments, by borrowing theory and methods when appropriate, and even by collaborating on interdisciplinary research projects, media scholars will strengthen their intellectual bona fides. Contributions to the advancement of media studies will often be contributions to the advancement of other disciplines and vice versa.

⁹On the U.S. motion picture industry, Guback (1979) comments: "Companies and trade associations in the industry dispense information when it serves their interests. The industry exercises a monopoly of knowledge and therefore is in a position to impose selective ignorance" (p. 230). To be fair, Guback should have included the U.S. government, EU Member States and EU supranational institutions in his comment as well, for they, too, dispense information 'when it serves their interest.'

(1992) work on the U.S. government/film industry relationship using empirical evidence from primary documents and interviews conducted over a three-year period (1994 to 1997).

Hollywood Lobby

In April 1994 the eighth Round of the General Agreement on Tariffs and Trade (GATT) officially concluded in Marrakesh, Morocco, after the multilateral trade negotiations had commenced seven years earlier in Punta del Este, Uruguay. Technically the negotiations had ended four months earlier in Geneva, Switzerland, where trade delegations from 125 countries had gathered to engage in last-minute bargaining towards the global liberalisation of trade in goods and services. Milestones reached in the Uruguay Round include the coverage for the first time of the agriculture¹⁰ and services sectors¹¹ and intellectual property,¹² and the signing of a new

¹⁰Ingersent, Rayner and Hine (1994) comment: "Previous rounds in the GATT had fostered a process of trade liberalisation in industrial products but had been unable to reduce agricultural trade barriers and distortions" (p. 1). The authors add: "In the absence of effective international rules and disciplines, domestic pressures led to increased distortions in world agricultural trade in the period leading up to the launch of the Uruguay Round negotiations" (ibid).

¹¹The reasons why trade in services had not been covered by previous GATT rounds are many and varied. However, McCulloch (1990) argues that not all services industries desire global liberalisation of trade: "Diverse in many respects, the services industries do not share common objectives with respect to expansion abroad. Indeed, some industries with well-established foreign operations are hesitant to participate in a generic sectoral push to expand market access abroad lest their own firm-specific and industry-specific needs receive less favourable attention from foreign governments (p. 341). Also, prior to the Uruguay Round countries had viewed efforts to remove barriers to trade in services as a threat to national sovereignty, as many services are highly regulated to protect both consumer and economy alike (Commission of the European Communities, 1995b). In the Uruguay Round, the services sector included financial services, telecommunications, maritime transport services and audiovisual services.

intergovernmental treaty that, *inter alia*, created the World Trade Organisation (WTO), which now serves as the GATT's new administrative body — in effect establishing the first bona fide organisation to oversee the functions and structure of the GATT since the abortive effort to create the International Trade Organisation (ITO) in the late 1940s.¹³

Among the throng of U.S. lobbyists in Geneva were representatives of the U.S. motion picture, television and music industries,¹⁴ who expected the U.S.

¹²Maskus and Konan (1994) note that “in the 1970s, most developed countries adopted a relatively benign attitude about any damages their firms may have suffered as a result of weak foreign protection” (p. 403). However, Maskus (1990) argues that because global trade in intellectual property rose faster than overall merchandise and manufacturing trade in the 1980s, developed countries shifted their attention towards strengthening global rules and disciplines in IP.

¹³Between 1946 and 1948, four international conferences were held to develop the GATT and the charter for the Agreement's governing body, the ITO (Jackson, 1969). At the fourth conference, known formally as the 1948 UN Conference on Trade and Employment (the Havana Charter) held in Havana, Cuba, a draft charter for the ITO was signed, but, according to Jackson, the United States failed to ratify the charter, thereby turning the GATT into “a very different type of instrument than had been originally envisaged” (pp. 50-51). Jackson adds: “A pragmatic and sometimes groping attitude towards constitutional and legal structures was thus forced upon GATT, which found itself without an adequate legal and constitutional base and required to fill a vacuum created by the failure of the ITO” (p. 51). Dam (1970) describes the first GATT as assuming “the commercial-policy role that had been assigned to the ITO” (p. 11). Feketekuty (1988) notes that “the ITO would have established international disciplines in many areas not traditionally covered by the GATT, such as competition policy, investment policy, and services” (p. 156). Not until almost 50 years later during the Uruguay Round would multilateral negotiations lead successfully to a new world trade governing body known as the WTO and the final GATT return to its original role as an instrument of trade liberalisation.

¹⁴During the Round members of the lobby included officials from the Motion Picture Association of America (MPAA) and executives from Fox Studios, MCA-Universal, Walt Disney, the Recording Industry Association of America

government to strike a bilateral deal¹⁵ with European Commission¹⁶ negotiators on audiovisual services (market access,¹⁷ national treatment¹⁸ and

(RIAA) and the talent guilds. A majority of the lobby's members were executives and lawyers from the U.S. film industry. In this dissertation I focus on the film members of the lobby and refer to the music members when appropriate. The MPAA and its foreign arm, the Motion Picture Association (MPA), represent the eight major Hollywood studios: The Walt Disney Co., Warner Bros., Sony Pictures Entertainment Inc., Metro-Goldwyn-Mayer Inc., Universal Studios Inc., Paramount Pictures Corp., Twentieth Century Fox Film Corp., and Turner Pictures.

¹⁵To avoid confusion, one must make a distinction between bilateral trade agreements negotiated between two governments (such as the CUFTA between the United States and Canada) and a GATT bilateral agreement negotiated between two governments (such as the United States and EU) that must be multilateralised (accepted by the rest of the participants in the negotiation). However, both kinds of bilateral agreements can involve more than one industry sector in the negotiations. Bettig (1990) notes that the U.S. government supports U.S. media corporations on a bilateral basis in their efforts to protect intellectual property in foreign markets because "the increasing importance of information-based products and services for the U.S. economy requires an international intellectual property system that guarantees remuneration to owners of copyrights and patents (largely transnational corporations)" (p. 58).

¹⁶The European Commission oversees all treaties, proposes and implements the Union's legislation and negotiates trade agreements on behalf of Member States. Each of the 20 Commissioners has responsibility for one or more of the Commission's departments called Directorates-General. The key 'DGs' responsible for audiovisual issues are DG-X (information, communication, culture and audiovisual media), which initiates policy on the free movement of services related to products and services originating from the United States, such as films and quotas restrictions; DG-XV (internal markets and financial services), which also formulates policy on free movement of products and services issues in general, including media concentration, intellectual property and the Information Society; and DG-1 (external economic relations), DG-IV (competition) and DG-XIII (telecommunications, information market and exploitation of research).

¹⁷Article XVI(1) of the GATS on 'market access' provides that each contracting party "shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule" (GATT,

MFN¹⁹) in the GATS and on national treatment of IPRs related to copyright in the TRIPs²⁰ that covered both areas under GATT rules and disciplines and

1994b, p. 341). This principle applies to the four modes of service supply set out in Article I(2): cross-border (trade crosses from one country to another, such as satellite broadcasts), consumption abroad (nationals of one country consume services in another country, such as tourism), commercial presence (service supplier establishes itself in another country, such as a foreign subsidiary of an entertainment corporation) and presence of natural persons (natural persons who temporarily provide a service in another country, such as a self-employed person) (ibid, p. 328). The cross-border and commercial presence modes have the most relevance to the audiovisual sector. The GATT Working Group on Audiovisual Services (1990b) defines audiovisual services as “any activity related to the production, distribution and broadcasting of audiovisual works whatever the means used” (Working Group, draft Article 2 of Annex, p. 1).

¹⁸Article XVII(1) of the GATS on ‘national treatment’ provides that a signatory “shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers” (GATT, 1994b, p. 342). Note that national treatment applies to both imported services and to foreign service suppliers in the domestic market (Commission of the European Communities, 1995b, p. 30). Note also that GATS principles are not mutually exclusive: for example, satellite transmissions of programming and films require access to a country’s telecommunications system, and “the notions of national treatment and market access therefore become interchangeable since they both hinge on access to a country’s network” (GATT Working Group, 1990a, pp. 4–5). Nevertheless, Article XX(1) requires all Members to place commitments to market access and national treatment in a schedule.

¹⁹The principle of MFN (most-favoured-nation) is the mainstay of the GATT. Article II(1) of the GATS states: “With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country (GATT, 1994b, p. 329). However, Article II(2) states: “A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions” (ibid).

²⁰Intellectual property rights related to copyright are the rights of IPRs owners to control the copying of their work. Industries, known in the United States

therefore removed non-tariff barriers (NTBs) to the export of U.S. films, television shows and sound recordings. The lobby was particularly interested in preventing EU Member States²¹ from imposing a quota higher than 51 percent on European programming in the Television Directive and from applying the quota to new broadcasting technologies and systems (such as video-on-demand). According to an MPAA official, the Hollywood lobby feared being excluded from EU markets — the U.S. film industry's²² most lucrative export markets (interview with author, 23 February 1996).²³

as the 'core copyright industries,' that create copyrighted works as their primary product include the motion picture industry (TV, theatrical and home video), music and recording industry, publishing industry, computer software industry, legitimate theatre, advertising and the radio, television and cable broadcasting industries (Siwek and Furchtgott-Roth, 1995, p. 5). Article 3(1) of the TRIPs on 'national treatment' states: "Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement" (GATT, 1994, p. 368).

²¹The twelve EU Member States during the Round were Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and the UK.

²²Throughout this dissertation I will refer to the historical and contemporary relationship between the U.S. government and 'U.S. film industry,' despite the fact that the U.S. film industry, which usually includes the U.S. television industry, has become absorbed by larger media corporations.

²³Wildman and Siwek (1988) concur that "foreign sales are critical to the health of the U.S. film industry" (p. 35). Finding that in some years export revenues and rentals have provided the industry with as much as half of its total income, the authors admit: "Regulations and events that affect the trade of films between the United States and other nations are therefore of vital interest to the success of the American motion picture industry" (1988, p. 35).

According to the lobby, the Television Directive threatened the over \$3.5 billion in trade surplus generated each year by the U.S. film industry (MPEAA News Release, 26 April 1991). Another main concern of the lobby was EU Member States' levies on the sale of recording devices and/or blank audio and video tapes to compensate authors, producers and performers for home recording; and Member States' subsidies generated in part by levies on box-office receipts to fund domestic productions.²⁴ The Hollywood lobby wanted EU Member States to allocate on a non-discriminatory basis to U.S. authors, producers and performers as much of the proceeds from the levies as they allocated to EU entities.²⁵

GATT 'Marketplace'

That U.S./EU audiovisual agreements on market access and national treatment of IPRs related to copyright were not reached does not diminish the importance of the debate that crescendoed over the Round's seven-year period on global trade in cultural products between America's advocacy of free trade and market liberalisation to maximise the contribution of the U.S. copyright industries (see Figure 1) to the U.S. economy,²⁶ and EU Member

²⁴For a comprehensive analysis of state levy systems on private copying throughout Eastern and Western Europe, see Stichting de ThuisKopie (1997). According to the report, most European countries have passed national legislation for levies on either equipment or tapes (audio and visual) or both, administered by collecting societies, and distributed to audio and video authors, performers and producers based on percentages determined by either legislators or rightsholders.

²⁵What complicates matters is that often the terminology used for an issue depends on the 'eye of the beholder.' For example, 'levies' on audiovisual products, the proceeds from which might go to a Member State's production fund, can also be viewed as 'subsidies,' which may or may not have a distortive effect on trade.

²⁶As Figure 1 suggests, the core copyright industries' real annual growth rate

States' varying degrees of support for government intervention and market protection to minimise external influences on their cultural identities and external competitive pressures on their domestic cultural industries.²⁷ To a country with a long-standing suspicion of free-trade such as France, U.S. demands for a standstill on the Television Directive and a clarification of its applicability to new forms of delivery technology and systems smacked of media-cultural imperialism and threatened its cultural identity.²⁸ However, to U.S. film lobbyists, preventing the Television Directive from applying, inter alia, to terrestrial television broadcasting and to 'on-demand' services made good business sense, as restrictions on U.S. content might affect sales of syndicated programmes or even affect the launch of new TV shows and films.

(adjusted for inflation) has been more than twice the growth rate of the economy as a whole (Siwek and Furchtgott-Roth, 1995, p. 6).

²⁷Jack Lang (1988), former French minister of culture, argues that the 'fragility' of Europe's cultural industries makes government intervention and support imperative. Lang lists as features of Europe's industries the fact that each product is a prototype and economies of scale cannot apply particularly when production companies often produce only one film; that cultural products are sensitive to criticism and need support because some masterpieces are not successful until long after their creators' death; and that Europe's language diversity makes it impossible to produce one film and release it throughout the varying markets. Collins (1993) argues that several assumptions underpin Europe's policy of interventionism in the audiovisual sector: "(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 (p. 362).

²⁸Here I rely on Fiske's (1989) definition of culture as "the constant process of producing meanings of and from our social experience" (p. 1).

Figure 1 Estimated Average Annual Real Growth Rate (percent)

	<u>1977-1993</u>	<u>1987-1993</u>	<u>1991-1993</u>
Core Copyright Indus.	5.8	4.5	5.6
<u>US Economy</u>	<u>2.4</u>	<u>2.1</u>	<u>2.7</u>

Source: Siwek, S., & Furchtgott-Roth, H. (1995) Copyright industries in the US Economy: 1977-1993. [Report summary provided by the International Intellectual Property Alliance, Washington, DC, p. 6.]

However, legal scholars on both sides of the Atlantic (cf. Garret, 1994; Waregne, 1994) tend to view the Uruguay Round audiovisual sector talks as simply a clash between cultural and commercial interests.²⁹ Yet the negotiations embodied a great deal more. Evidence suggests that the outcome of the talks had as much to do with issues *outside* the audiovisual sector involving U.S. and EU politics as it did with issues *inside* the sector. To U.S. negotiators, the Hollywood lobby's expectations had to be weighed against those of other U.S. lobbyists responsible for dossiers on industries ranging from agriculture to telecommunications and on issues ranging from anti-

²⁹From a historical perspective Jarvie (1992) writes on the commerce versus culture theme: "The officials and businessmen of the countries that struggled with the United States over motion pictures had a tendency to fuse these two matters, sometimes confusedly, sometimes deliberately. That tendency strengthened the conviction of American officials that all parties were concerned about commerce but that foreign countries sometimes talked about it in the deceptive and mystifying rhetoric of culture" (p. 19). Jarvie adds: "Time and time again...officials in Britain concocted position statements that spoke of a determination to defend British culture and ways of life, while behind the scenes discussing why businessmen of British nationality were entitled to a share of the considerable profits being made out of films" (ibid). Dyson and Humphreys (1988) write: "European cultural identity was often a cloak for the defence or promotion of particular national interests. Cultural identity also has a sub-national dimension, with for instance the centralisation of media investment and production in London and Paris at the expense of regional centres" (p. 20). Collins (1993) concludes that an "examination of the Community's actual policies and practices...suggests that cultural considerations only take rhetorical precedence over economic and industrial considerations" (p. 370).

dumping to subsidies.³⁰ To Commission negotiators, supranational institutions and Member State governments primarily shape positions.³¹ In multi-sector talks, no single sectoral negotiation can be analysed as if it took place within a vacuum because of cross-linkages and tradeoffs with other sectors that negotiators, to varying degrees, build into their overall negotiating strategies, and because of the tendency for *all* sectors to be interlinked to some degree.

In essence, a multilateral trade negotiation is a 'marketplace' where trading countries meet to strike a deal that satisfies their individual trade agendas (Hoekman, 1989). Negotiators representing the trading countries enter the market with an agenda; as with any bargaining process, not all of the items on individual agendas can be met for any number of reasons, including a chief negotiator's need to sacrifice the interests of one industry in order to preserve overall gains reached for others. Twiggs (1987) comments: "Controversy in trade policymaking is expected. Decisions involve a reconciliation of domestic interests with international economic and foreign policy concerns...." (p. 2). Indeed, the negotiations between the United States and EU on audiovisual services and IPRs related to copyright did not escape the influence of linkages and tradeoffs.

³⁰The *Wall Street Journal* reported that during the final days of the Uruguay Round, the hotels in Geneva were full of lobbyists from all sectors, including the financial services, shipping, telecoms and aircraft sectors (15 December 1993, p. A6).

³¹This is not to say that corporate forces do not influence policy-making at the national level in the EU.

Historical Relationship Between Hollywood and Uncle Sam

Jarvie's (1992) analysis of why American films dominated the Canadian and British markets after World War I is unique in that it "straddles economic history and diplomatic history" (p. 10), and relies on primary documents such as memoranda and letters written by government officials and film executives.³² Jarvie not only presents a history of Hollywood's export system and efforts by Canada and Britain to curb U.S. film imports and develop domestic industries between 1920 and 1950, but also sets an example by employing document analysis in effect to 'let the actors speak for themselves.' Jarvie's rigorous documentary approach stands in sharp contrast with Schiller's tendency to buttress his arguments on the U.S. government's support of Hollywood with Marxist rhetoric and quotes from major U.S. newspapers. Moreover, while their work is essential reading, Guback (1969) and Thompson (1985) rely heavily on data from trade publications to support their arguments. Data on global entertainment flows indicate trends, but cannot offer documentary evidence of the reasons for the trends. From Jarvie's work I have identified two themes on the U.S. government/film industry relationship with which to examine the GATT talks. First, *in international trade negotiations involving many industry sectors, the U.S. government tends to place the interests of other U.S. industrial lobbies ahead of the those of the Hollywood lobby.* Second, *influential Hollywood moguls,*

³²Jarvie writes: "The American film industry, exploiting the lessons learned in the competitive domestic market, was able to take advantage of the disruption of film production in belligerent countries caused by World War I. Production capacity in the United States was raised to the limit and exports cultivated assiduously. Integrated corporations oligopolistically dominated supply at home and abroad. Advantage having been gained, product development and distribution policies were tailored to maintain that market share wherever legally permitted; where there were legal impediments they were disputed" (1992, p. 1).

who set the agenda for the lobby, expect their lobbyists and the U.S. government to approach international trade negotiations aggressively, despite the consequences.

Jarvie (1992) chronicles early tensions between the Motion Picture Producers and Distributors of America (MPPDA)³³ and the Motion Picture Division of the U.S. Commerce Department. Relations between the U.S. film industry and government were close enough for the two parties to work together to lobby against the 1927 British Films Act, yet "a bullying and unreasonable attitude was still abroad in the industry" (1992, pp. 346–347). Hays believed that Secretary of State Cordell Hull and Ambassador Kennedy had not worked hard enough to persuade the British to scuttle plans for the Films Act. However, Jarvie surmises that Hays protestations were designed

³³Jarvie notes that the formation of the Motion Picture Producers and Distributors of America (MPPDA), Hollywood's primary trade association between 1921 and 1945 and the early version of the MPAA, resulted from a 'slump' in revenues and "enhanced interest in using the federal government to assist the industry...." (1992, p. 302). The U.S. government's support for U.S. film exports stemmed not from the industry's revenues abroad per se but from the potential of the films as a promotion vehicle for American products and culture (1992, p. 311) and as a tool for international relations (p. 379). The Office of War Information's Bureau of Motion Pictures had been working for two years with Hollywood, though not always amicably, to produce films with a strict criteria based on the following question: "Will this picture help win the war?" (Koppes and Black, 1987, p. 84). Rosenberg (1982) quotes a phrase from a 1925 *Saturday Evening Post* article that aptly characterises the U.S. government's policy: "Trade follows the film" (p. 101). Rosenberg adds: "According to popular beliefs, American movies stimulated the demand for mass-produced American goods such as cars, telephones, cameras. Inspired by the movies, people around the world began building California-style homes, whether or not the architecture suited their particular climate" (1982, p. 101). However, Jarvie quips: "It is, in a way, remarkable testimony to its capacity for self-promotion and exaggeration of its own importance that the movie industry managed to continue to get favorable treatment out of its government throughout the period 1920–1950" (1992, p. 312).

to please his superiors: “a more effective approach would have been to educate his bosses in the facts of international relations and the domestic politics of Britain” (1992, p. 347). Moreover, Jarvie notes the concern of the Commerce Department that MPPDA officials were unrealistic in their expectations of a 1928 League of Nations Conference on the Abolition of Import and Export Prohibitions and Restrictions, which became the Geneva Convention on Export and Import Restrictions. According to Jarvie, Division officials believed European countries would place restrictions on film imports despite the Conference, and endeavoured to “din some international political realism into the MPPDA leaders (who may have been reflecting the views of their principals)....” (1992, p. 323). Jarvie also notes disharmony within the MPPDA over the best foreign policy for the U.S. film industry — manifested by arguments between Hays and his London representative, Fay Allport. Jarvie notes that despite the perception from abroad of the U.S. film industry, “looked at close up at home, it was riven with internal difficulties, uncertain, and often on the verge of chaos” (1992, p. 371).

Jarvie (1992) uncovers evidence that the Hollywood studios were not as important to the U.S. government as studio heads believed. According to Jarvie, Ambassador Kennedy argued that the U.S. film industry had the economic strength to survive in Britain despite making concessions to Britain’s 1938 Films Act (1992, p. 157). Here are early signs of the U.S. government weighing the benefits of helping Hollywood with perhaps larger aims in separate trade talks with Britain involving many sectors. Ambassador Kennedy contemplates sacrificing the interests of Hollywood — “but that would build up a debt that could be cashed by the United States in the trade talks” (ibid). Britain succeeded in excluding films from the bilateral

negotiations. Jarvie adds: "The harsh truth was that the motion picture business was a rather small industry.... They had a record of causing a good deal of irritation in international relations, while nevertheless building up an unshakable position of world domination" (1992, pp. 376–377).

The two themes from Jarvie's work apply to the Hollywood lobby in the Uruguay Round. For example, prior to the enactment of the Television Directive, one senior Hollywood executive commented that Hollywood lobbyists were overly aggressive towards EU efforts to impose broadcasting quotas (interview with author, 30 November 1995). Neil Turkewitz, executive vice president of international relations for the Recording Industry Association of America (RIAA), argued that the U.S. government's aggressive response to the Television Directive, encouraged by the U.S. film industry, set the tone for the debate in the Uruguay Round over the Directive and put the film industry on course for defeat (interview with author, 12 June 1997). Moreover, recall that the Hollywood lobby's defeat in the Uruguay Round followed the cultural exclusion in the CUFTA and NAFTA, as well as the enactment of the Television Directive in Europe. Each defeat has placed greater pressure on U.S. negotiators to satisfy the U.S. film industry. The source of this pressure has been the fund-raising capability of Hollywood moguls. According to a U.S. trade official, Hollywood executives fervently believed that they had helped fund and elect President Clinton and therefore they could control him (interview with author, 1 February 1996).³⁴

³⁴The U.S. media and entertainment industry contributed \$8 million to all federal campaigns during the 1992 election (Makinson and Goldstein, 1992, p. 50). According to Makinson and Goldstein (1992), 68 percent of the \$8 million came from individual donations, while 32 percent came from political action committees (PACs) (ibid). The authors add that 72 percent of the contributions went to the Democratic party, while 28 percent went to the

Jarvie's analysis of the discord within the MPPDA could equally apply to the U.S. film lobby during the Uruguay Round, as the Hollywood film companies did not operate according to majority-rule. Interviews with Hollywood executives and U.S. trade officials suggest that the leadership and legal counsellors of two corporations in particular, The Walt Disney Co. and MCA/Universal Studios, dictated the agenda of both the Hollywood lobby and U.S. negotiators. As Hollywood's chief lobbyist, Jack Valenti is viewed as the mastermind of the Hollywood's lobbying efforts, and indeed, his longevity as chief Hollywood lobbyist for over three decades attests to his success. However, Mr. Valenti ultimately reports to the heads of the Hollywood studios. At the conclusion of the Uruguay Round, Mr. Valenti came under criticism for the Hollywood lobby's loss. But Mr. Valenti did not agree with the aggressive stance advocated by the Hollywood hawks. One senior Hollywood executive commented: "Jack Valenti is very well read and understands European culture, and he knows what he's doing. But he was pushed by some of the companies, and he didn't stand up and say no" (interview with author, 30 November 1995).³⁵ The influence and activities of

Republicans (p. 51). Moreover, the weekend before the 15 December 1993 deadline for the Uruguay Round, then-CAA's president, Michael Ovitz, held a fundraiser at his office, while Marvin Davis, former 20th Century Fox owner, invited California's congressional delegation — Representatives Feinstein and Boxer — and Governor Pete Wilson to a \$25,000-a-couple dinner. The efforts of Mr. Davis and Mr. Ovitz contributed \$2 million to the Democratic Party (*Premiere*, 1994, April, pp. 131–139; and Dow Jones News Service, 9 December 1993).

³⁵The Hollywood executive added: "The negotiations were to take place in Washington: they were going to take a tough line: no quotas, no subsidies, nothing. The pressure came primarily from people in California, who in turn put pressure on the MPA and Washington. The people in California didn't realise the anti-American sentiments that had built up over their strategy."

the 'Hollywood hawks' will be examined in greater detail throughout this dissertation.

Chapter Outline

In Chapter 1 I assess the political economic approach to communication research. I trace the intellectual heritage of the approach and highlight its problem of an incongruity between theory and empirical evidence found particularly in literature on the media-cultural imperialism thesis and largely a result of a lack of attention to units of analysis. To begin to correct this problem, Mosco (1996) suggests taking a microanalytical approach to the study of the role of the state in the media industry, emphasising Giddens' (1984) concept of 'agency' or the influence of individuals as social actors, to balance a tendency in political economy toward a macroanalysis that focuses on global structures and institutions. I argue that concepts of media globalisation suffer from a high degree of abstraction and suggest the need for a microanalysis of how individuals — not simply the personifications of globalisation such as Rupert Murdoch or Bill Gates, but corporate lawyers and executives — influence the process of media globalisation. I then take Mosco's micro-macro approach a step farther by showing how it fits within a movement known as 'second structuralism' (Palan, 1992), which advocates integrating units of analysis in the study of international relations.

In Chapter 2 I present a literature review on the media-cultural imperialism thesis and focus on Herbert Schiller's scholarship. I explore Schiller's unconventional approach to communication research and challenge his original and revised theses. I develop a set of propositions

based on Schiller's work with which to interrogate empirical evidence on the Uruguay Round negotiations between the United States and EU on audiovisual services and intellectual property related to copyright. I also show how the media-cultural imperialism thesis conceptually relates to theories of state behaviour in international relations. Specifically, I compare Mosco's 'micro-macro' approach with Putnam's (1988 [1993]) two-level analysis designed to flesh out the give-and-take of trade negotiations. I also present an overview of the processes of U.S. domestic trade politics and EU supranational politics as they relate to the Uruguay Round.

In Chapter 3 I discuss the difficulties of conducting research on sensitive topics and present my solutions to some of these problems. I discuss the use of disguises in social research and, in particular, the importance of using anonymous quotes in this dissertation. I describe my information sources and data-gathering methods. I then operationalise Schiller's propositions using Putnam's two-level analysis. I conclude by discussing the limitations on my research.

In Chapter 4 I examine Schiller's (1969 [1992]) belief that *U.S. media corporations dictate the U.S. government's foreign trade agenda* (p. 3).³⁶ I examine how U.S. domestic trade politics hampered efforts by U.S. negotiators to reach a bilateral accord on audiovisual services and IPRs related to copyright because of linkages forged by EU Member States between progress in those talks and progress in talks on agriculture, maritime transport

³⁶ Schiller (1969 [1992]) writes that the "politico-cultural influence of the corporate sector *domestically* is all-pervasive" (p. 3). He adds that the "media-cultural landscape is a corporate playing field" (p. 8).

services, geographic indications related to wines and anti-dumping. Moreover, I examine the U.S. government's choice at the end of the Round of either risking the entire Round by fighting for the Hollywood lobby's interests, or opting to let the negotiations on audiovisual services and IPRs related to copyright continue after the Round's conclusion and securing gains made in other sectors. Scholars and politicians display sensitivity to the products of dominant media systems and cultures (primarily American) and their varying degrees of influence on dependent systems and cultures precisely because of the cultural nature of the trade. Yet empirical evidence suggests that U.S. and EU negotiators haggled over movies and television programmes in the Uruguay Round as if cultural products had the same intrinsic value as crops and maritime transport services.

In Chapter 5 I examine Schiller's (1969 [1992]) belief that *U.S. media corporations are no longer dependent on the U.S. government in removing global trade barriers* (p. 7). I examine the U.S. government/film industry relationship during the CUFTA, the development of the Television Directive and the NAFTA, and how the U.S. film industry's defeats in these trade agreements and legislation led to the Hollywood lobby's high expectations of the U.S. government for the Uruguay Round. I examine the chemistry of the Hollywood lobby and highlight a 'micro power struggle' (Mosco, 1996) between hawks and doves. I then begin to examine the relationship between the U.S. government and film industry in the Uruguay Round audiovisual talks, focusing on the influence of the Hollywood hawks on the U.S. government's positions.

In Chapter 6 I continue my analysis of the influence of the Hollywood hawks on the U.S. government. I discuss President Clinton's intervention on behalf of the U.S. film industry during the final days of the Round. I then examine the chain reaction set off by the hawks in the final moments of the Round that ultimately prevented the United States and EU from forging a bilateral deal on audiovisual services and IPRs related to copyright. I argue that Hollywood lost the Uruguay Round because of the hawks' aggressive approach to the talks and misperception of their control over the Clinton Administration.

In Chapter 7 I examine Schiller's (1996) belief, shared by several European legal scholars (cf. Waregne, 1994; Dehousse and Havelange, 1994; Joachimowicz and Berenboom, 1994), that *the French government dictated the outcome of the Uruguay Round's audiovisual sector talks* (p. 121). I present an alternative scenario by suggesting that scholars have failed to appreciate the importance of EU protocol during the Round, the role of EU Member States *other* than France, and Commission efforts to forge a bilateral deal on audiovisual services and IPRs related to copyright. Dehousse and Havelange (1994) and Joachimowicz and Berenboom (1994) have focused on the activities of the French delegation, aided by the Belgian government, and the EU's Cultural Affairs Council, in which Jacques Toubon, then-French minister for cultural affairs, had some influence on audiovisual services. Their work is complemented and extended by mine, which focuses on the General Affairs Council. With the final say on EU offers in all sectors, the General Affairs Council had a different chemistry from that of the Cultural Affairs Council, one in which Alain Juppe, then-French foreign minister, had little support on the issue of market access in the audiovisual sector (but

more support on IPRs related to copyright).³⁷ I argue that in the end the Hollywood hawks dictated the outcome of the GATS talks but, ironically, handed the French government a victory. However, a majority of EU Member States dictated the outcome of the TRIPs talks on IPRs related to copyright.

³⁷The Council of the EU, also known as the Council of Ministers, is the predominant legislative body in the EU. Ministers from EU Member States meet in groups according to their responsibilities. For example, Foreign Affairs Ministers meet in the General Affairs Council to discuss foreign affairs and trade matters on behalf of individual Member States.

CHAPTER 1

AN ASSESSMENT OF THE POLITICAL ECONOMY APPROACH TO COMMUNICATION

The political economy approach to communication research falls within the research domain known as media policy studies and provides a theoretical framework for the analysis of the Uruguay Round's audiovisual sector negotiations. The approach is interdisciplinary in nature, with an intellectual heritage rooted in the broad frameworks of classical political economy (Smythe, 1984; Mosco, 1996) and critical theory (Murdock and Golding, 1979).³⁸ Three principal systems of ideas govern contemporary debates about media policy in general: the global transition to an information/post-industrial society, the public sphere and market competition. The founders of the political economy approach to

³⁸In general, the field of media studies is interdisciplinary. Schramm (1983) calls communication research "one of the greatest crossroads where many pass but few tarry" (p. 8). Comstock (1983) argues that to define media studies as what takes place within schools and departments of communication and journalism would "strip it of its past, its present energy, and its future" (p. 42). To ignore the field's interrelationships with other disciplines is to ignore the history and fundamental nature of media studies. As Berelson (1959) points out, the first media scholars 'carried their disciplines with them.' All reputable degree programmes in media studies cut across disciplinary boundaries both in subject matter and in staffing because the mass media pervade our lives on so many different levels — psychological, social, political, international, etc. Yet media scholars appear to have forgotten their epistemological roots. Noam (1994) writes: "Despite communications studies being broad in concept, there is an absence of strong links and even some hostility to some disciplines not at the center, such as technology, operations research, political science, law, and economics" (p. 213). Golding and Harris (1997) observe that the field of media studies has become insular, that media scholars have become "self-enclosed in their own ever more introspective dialogues" (p. 2).

communication,³⁹ Dallas Smythe and Herbert Schiller (Hardt, 1992; Mosco, 1996) have operationalised these ideas in terms of the structure and policy of U.S. communication agencies and spectrum allocation (Smythe, 1960), media and cultural imperialism (Schiller, 1969 [1992]; 1976; 1989; 1991; 1996) media and development (Smythe, 1974 [1994]); and links between capitalist production of media and audience consumption (Smythe, 1981).

Mosco (1996) distinguishes between a North American and European approach to political economy of communication. According to Mosco, the North American tradition, the focus of this dissertation, examines American media institutions and their influence throughout the world. The European approach, influenced primarily by Nicholas Garnham, Peter Golding, Graham Murdock and Armand Mattelart, tends to focus on political economy as it relates to cultural studies. Garnham (1990) describes the interest of the

³⁹There is no one flavour of political economy. On today's study of political economy Gilpin (1987) writes: "For the state, territorial boundaries are a necessary basis of national autonomy and political unity. For the market, the elimination of all political and other obstacles to the operation of the price mechanism is imperative. The tension between these two fundamentally different ways of ordering human relationships has profoundly shaped the course of modern history and constitutes the crucial problem in the study of political economy" (p. 11). Strange (1988 [1994]) defines international political economy as "the social, political and economic arrangements affecting the global systems of production, exchange and distribution, and the mix of values reflected therein" (p. 18). Gandy (1992), citing Whynes (1984), lists as four additional flavours, "1) the Austrian approach associated with Von Mises and von Hayek, which remains critical of neoclassical assumptions regarding equilibrium and rational choice; 2) the Institutionalist school, associated with Thorstein Veblen, J.R. Commons, and J.K. Galbraith, which gives due attention to the role of power in the economic system; 3) Contemporary or Modern Marxist schools, which contend with conceptions of class, and capital as a coercive social relation; and 4) the modern utilitarianism of the Public Choice school, which finds a market of sorts in the process of public policy formation" (p. 23).

European approach as the link between “access to and control over the means of cultural production within the capitalist social formation,” (p. 14) which “determines the type and range of symbolic forms circulated” (ibid). Mosco notes that the European emphasis is on “specific social problems from a sociological or social psychological perspective” (1996, p. 98): “problems facing young people, families, and communities, including the sociological concerns and communication needs of ethnic and racial minorities” (ibid).⁴⁰

The political economy approach to the study of mass communication encompasses a Marxist tradition that examines capitalism’s cyclical revolutions in means of production and its influence on labour and the wage system (Smythe, 1984; Mosco, 1996). While North American and European political economists of communication pursue different research interests, they both share a common goal of incorporating to varying degrees either a Marxist critique or a critique of Marxism in their work. For example, Mosco (1996) writes that of the numerous critiques of Marxism, one stands out as important to media studies: “Marx did not carry the social analysis of capitalism far enough” (p. 45). By focusing on labour’s “instrumental and productive nature,” instead of its “expressive and constitutive qualities,” Mosco argues that Marx’s defenders fail to “demonstrate how communication and culture are material practices, how labor and language are mutually constitutive, and how communication and information are dialectical instances of the same social activity” (pp. 45–46). However, neo-Marxist political economists of communication such as Smythe and Schiller attempt

⁴⁰Mosco (1996) notes that “there are no clear generational parallels in the development of a political economy tradition between Europe and North America” (p. 97).

to understand labour's 'expressive and constitutive qualities' by offering what Hardt (1992) calls "the most radical and steadfast economic critique in the field" (pp. 148–149), and by demonstrating through their work "the possibility and the potential for Marxist criticism beyond the 1960s" (ibid).

Smythe (1977) argues that a blindspot in Marxist theory is the economic, rather than ideological, function of mass communications for capital. He writes: "Marxists and those radical social critics who use Marxist terminology locate the significance of mass communications systems in their capacity to produce 'ideology' which is held to act as a sort of invisible glue that holds together the capitalist system" (1977, p. 1). However, Smythe (1981) then examines what he calls the 'consciousness industry,' a Gramscian phrase defined in one of his earlier works as "the mass media in the monopoly capitalist context" setting "the agenda which best serves the interests of the capitalist system" (1974) [1994], p. 253).⁴¹ Curiously, Smythe (1981) does not describe himself as Marxist but 'economistic.'⁴² In his own words his work has "tended to emphasize the power of capital through the policies and structures of capitalist communications, while slighting the resistance which people conduct to protect themselves against domination by capital" (1981, p. 268).

⁴¹Smythe (1974 [1994]) adds that "in principle this agenda is dominated by the process of selling commodities and producing audiences (out of people) to be used by capitalist industry to enhance its profitability and political security. This is the face of the capitalist mass media which is presented to ex-colonial countries, to socialist countries, and to the developed market areas of Europe" (ibid).

⁴²Garnham (1979) defines economism as "the concern for immediate physical survival and reproduction within the dominant relations of exchange" (p. 126).

A more productive critique of political economy and Marxism can be found in Garnham's *Contribution to a Political Economy of Mass Communication* (1979b), in which he argues that Marxism's simple economic determinism and focus on the ideology of mass media are not adequate explanations for understanding the structures of culture. To develop political strategies against developments within the cultural sphere that are based on commodity production, Garnham suggests examining relations between the public and private sector, the role of the state in capitalist accumulation, the role of advertising in late capitalism and the like. Garnham believes that the concept of ideology dominates cultural theory and calls the base/superstructure relationship problematic within the field. He writes: "The central problem with the base/superstructure metaphor...is that being a metaphor of polarity, essentially binary in form, it is unable adequately to deal with the number of distinctions that are necessary, in this instance between the material, the economic and the ideological" (1979b, p. 127).

Political economists of communication must begin to examine what Mosco (1996) calls "matters of emphasis" and "decisions about relative explicitness," which "have research consequences" (p. 134). A closer look is needed at units of analysis employed in political economy research. Critical theorists often fall into the trap of the ecological fallacy: observing one and making inferences about another — shifting units of analysis from institutions to individuals (Stevenson 1983). By employing bona fide methods from the more established disciplines, particularly international relations, in which a productive debate continues over units of analysis, scholars of the political economy of communication will begin to capture the

complexity and scope of their topics, which, no doubt, will 'have research consequences.'

Scholars of political economy must also address the problem of an incongruity between communication theory and empirical evidence. Put simply, does empirical evidence warrant the theoretical conclusions made? Stevenson (1983) warns that "theory, unless subject to rigorous and wide-ranging empirical test, is merely polemic" (p. 262). Livingstone (1996) discusses this incongruity in relation to media effects research and calls it a continuing problem. According to Livingstone, 'moral panics' over the hypothetical links between television and violence in vulnerable groups such as children have led researchers to conduct experiments, the results of which do not necessarily replicate in naturalistic settings. The debate over the conclusiveness of data is "more about the epistemological limitations of social science research than it is about the media in particular" (1996, p. 306). Historically, effects researchers moved from assuming that media had direct influence on individuals to questioning such an assumption through empirical measurement (McQuail, 1977). By rethinking earlier assumptions, effects researchers have advanced their tradition and opened new lines of inquiry.⁴³

⁴³A limited-effects model articulated by Klapper (1960) was subsequently adopted and later challenged by a return to the powerful-effects model, espoused by Noelle-Neumann (1973) and others. However, by the 1980s, researchers such as Morley (1980) and Hall (1980) found that audiences were more active in differentiating meaning than effects researchers had given them credit for, while Liebes and Katz (1990) found that different audiences derive varying meanings from programmes such as *Dallas*. Morley (1993) argues that the pendulum has swung from a focus on the passive audience to the active audience. Jensen (1993) notes that "reception analysis asks not only what media do to audiences, or even what audiences do with media, but how media and audiences interact...." (p. 20).

Similarly, ever since Harold Innis (1950) founded the modern study of media imperialism (Carey, 1989), media scholars have theorised that McLuhan's "electronically contracted world" (1964, p. 177) has led to 'cultural synchronization' (Hamelink, 1983), the 'homogenizing of television culture' (Lee, 1980), or the 'standardization and secularization of culture' (Katz, 1979). Schiller's (1969 [1992], 1989) argument that U.S. media corporations influence Western European cultures (examined in greater detail in Chapter 2) assumes that cultural identity is not only measurable but also vulnerable to the values of external cultures broadcast on television and radio and shown on movie screens. However, Schlesinger (1987) argues that very little conceptual thought has gone into the notion of cultural identity.⁴⁴ Holzner and Robertson (1980) note that the concept of identity is not a core sociological concept despite its frequent use by sociologists. The authors add that "identity has not received sustained analytic attention, in the sense of locating it in conceptual contexts and sharpening it to much more than connotative significance" (p. 2).⁴⁵

⁴⁴Schlesinger describes advocates of protectionism as relying on a *belief* rather than an argument that consumption of foreign programming affects identities. The author calls this pseudo-argument 'off-the-shelf,' whose "terms function as signals for competing politico-economic projects rather than offering analytical purchase upon actual developments and their causes" (1987, pp. 258–259).

⁴⁵Jarvie (1992) writes: "National identity, national character, national culture, ways of life, and outlook (anachronistically to mix terms we use today with terms used in the past) are vague and intangible entities that the social sciences teach us to treat gingerly. They all involve indefensibly broad generalizations about populations that just happen to be within a national boundary" (p. 20).

In an issue of *Intermedia* dedicated to the subject, Price (1992) describes the debate over the effect of TV programmes and films on cultural identity as involving 'dramatically contrasting views.'⁴⁶ While Smith (1992) argues that television cannot construct and deconstruct culture,⁴⁷ Schiller (1992) describes television as the 'mortal enemy' of national identity. Carrie and Ehrenberg (1992) note that perhaps the importance of television as a social force is exaggerated, but the effects of media content, cultural influence and national identity are still important issues. Scholarship on media-cultural imperialism needs to enter a stage similar to that of the effects tradition in the 1960s. New empirical evidence must be gathered and assumptions must be questioned and, if necessary, revised.⁴⁸

Herman and McChesney (1997) argue that the globalisation of media has an attending set of values promulgated by advertising agencies that promote increased consumption, which "weakens sympathetic feelings toward others, and tends to diminish the spirit of community and the strength of communal

⁴⁶Price writes: "Maybe every image, every programme, every gesture touches on the subject of national identity. Maybe, just maybe, national identities are so completely artificial that to talk about them as affected by pictures on television or voices on radio just compounds confusion. And, perhaps national and ethnic identities are so deep-seated, so historically based, so burning a part of a person's psyche that it is arrogant to think that something so superficial as a stream of television images can affect them" (1992, p. 9).

⁴⁷Smith (1993) comments: "The central difficulty in any project to construct a global identity and hence a global culture, is that collective identity, like imagery and culture, is always historically specific because it is based on shared memories and a sense of continuity between generations" (p. 180).

⁴⁸Thomas (1980) correctly reminds all scholars to examine the intrinsic legitimacy of any conceptual model in use in order to prevent a research bias from limiting the possible range of answers to a given research problem.

ties" (p. 153). The authors do not present anthropological data to support their claims, and admit that their methods are based "in part on an appraisal of observable fact, in part on values, and in part on extrapolations of current trends into the future" (p. 136). Political economists of communication tend to rely on rhetoric, Marxist or otherwise, to gloss over inconsistencies and gaps in reasoning. They need to emphasise 'observable fact' and de-emphasise 'values and extrapolations.'

Miege (1989) notes that "there is very little data or analyses that convey the reality of imperialist domination.... Thus it is necessary to make do with estimates, incomplete data or an indirect approach to the phenomenon" (p. 98). The influence of U.S. media corporations on Western European media systems and governments' communications policies is difficult to measure. Hirst and Thompson (1996) point out that the predominant activities (i.e. sales in the services and manufacturing sectors) of the world's transnational corporations is still 'home-oriented,' meaning in the corporation's home country and region. However, within the entertainment sector, EU Member States provide more than half of the U.S. entertainment industry's \$8 billion in foreign earnings (U.S. General Accounting Office, 1994, p. 116). Only four of the world's top ten media companies are U.S.-based (see Figure 2), yet the combined audiovisual turnover of the top two companies — Time Warner and The Walt Disney Co. — was \$29bn in 1995, the combined audiovisual turnover of their next *four* non-U.S. rivals on the list.⁴⁹

⁴⁹Time Warner merged with Turner Broadcasting and Walt Disney merged with Capital Cities/ABC in 1995.

Figure 2

**Top 10 Worldwide Media Companies
Turnover 1995
(\$U.S.bn)**

<u>Company</u>	<u>A/V Turnover</u>	<u>Total Turnover</u>
1. Time Warner	13.77	17.696
Turner Broadcasting	3.23	3.4374
2. Walt Disney Co.	6.001	12.112
Capital Cities/ABC	5.728	6.679
3. Viacom	9.172	11.688
4. Sony Corp.	8.618	47.619
5. Bertelsmann/CLT	8.331	18.438
6. TCI	6.851	6.851
7. ARD*	6.531	6.531
8. NHK*	6.043	6.043
9. Polygram	5.479	5.479
10. Seagram/Universal	4.570	5.772

Source: The Power Pack 1996, Screen International, pp. 16–18.

*denotes public service broadcaster

Eclectic Epistemology of the Political Economy of Communication

Garnham's (1979a) editorial on political economy of communication in *Media, Culture and Society* locates the approach as an alternative to the dominant neopositivist, behavioural paradigm in U.S. media research and the British culturalist tradition that emphasises the analysis of media content and ideology. Mosco (1996) notes that the approach "brings together an international collection, if not a community, of scholars united not so much by a singular theoretical perspective or problematic, as by an approach to intellectual activity" (p. 123). Mosco defines the approach as "the study of the social relations, particularly the power relations, that mutually constitute the production, distribution, and consumption of resources" (1996, p. 25). In the context of communication research, these resources include audiovisual products, books, newspapers, audiences and information as commodities. (Mosco, 1988, 1996). Garnham (1979a) describes the research interest of

political economists of communication as the 'industrialization of culture': "modes of cultural production and consumption developed within capitalist societies and determined by the specific economic organization of those societies" (p. 119).

As its name implies, the political economy approach to communication can be traced back to the work of the classical political economists Smith, Malthus, Ricardo and Mill (Smythe, 1984; Mosco, 1996).⁵⁰ Redman (1997) quotes Mill's (1811-1891) definition of classical political economy as a "science which traces the laws of such of the phenomena of society as arise from the combined operations of mankind for the protection of wealth, in so far as those phenomena are not modified by the pursuit of any other object" (vol 4, p. 323). According to Mosco (1996), political economists traditionally study social change and historical transformation, most notably "the great capitalist revolution, the upheaval that transformed societies based primarily on agricultural labor into commercial, manufacturing, and, ultimately, industrial societies" (p. 27).

The intellectual heritage of the political economy of communication also has been heavily influenced by critical theory (Murdock and Golding, 1979). The founders of critical theory — Horkheimer, Marcuse, Adorno, Lowenthal, Habermas and others who set up the Frankfurt Institute of Social Research during the late 1930s and early 1940s — based many of their tenets on German

⁵⁰Classical political economy was also considered interdisciplinary. Redman (1997) notes that Smith, Malthus and Mill "believed that no political economist could be useful or effective who did not have a knowledge of the other social sciences" (p. 355).

idealist thought on the nature of reason, truth and beauty, but placed history at the centre of their analysis (Held, 1990). The Frankfurt School's interest in integrating philosophy with social analysis signified a return to the Left Hegelians of the 1840s, who advocated transforming the social order through human praxis by engaging in materialist, dialectical analyses or critiques of society (Jay, 1973).

Max Horkheimer, the director of the Frankfurt Institute, describes the deficiencies of social philosophy as failing to consider "unprovable metaphysical presuppositions" (1942 [1989], p. 30). Horkheimer (1942 [1989]) argues that philosophy does not consider spirits of people and elements of being. But he does not see a difference between philosophy and the empirical sciences: "Instead, the philosophical questions themselves are dialectically integrated into the empirical scientific process. That is to say, the answers are to be found in the progress of substantive knowledge which also affects the form" (p. 32). Political economy also incorporates a moral philosophical dimension (Golding and Murdock, 1996; Mosco, 1996). Mosco writes that political economists "interrogate the range of moral stances and incorporate these questionings into their analyses" (1996, p. 133).⁵¹

Held (1990) writes that critical theorists "lay the foundation for an explanation, in an interdisciplinary research context, of questions concerning the conditions which make possible the reproduction and transformation of society, the meaning of culture, and the relation between the individual, society and nature" (p. 16). The Frankfurt School offered its own social and

⁵¹Mosco calls this a "sense of the descriptive and prescriptive" (1996, p 24).

political theory of society that rekindled Marxist debate in the United States after the 1940s in response to the social-scientific, positivist view of the world that influenced American social theory in general (Hardt, 1992) and the work of the founders of communication research in particular.

Critical theory places responsibility for changing society in the hands of the individual (Marcuse, 1964). As a “gadfly of other systems” (Jay, 1973, p. 41), critical theory views “obstinacy as a genuine quality of philosophical thought” (Marcuse, 1937 [1989], p. 64) and is concerned with the “potentialities of man and with the individual’s freedom, happiness, and rights contained in all of its analyses” (ibid, p. 63). Critical theory’s goal is to “unmask rather than augment the established structure of power” (Gerbner, 1983, p. 358-359). The ‘unmasking’ of power can be seen in works such as Marcuse’s (1964) *One Dimensional Man*, which rails against advanced industrial society’s technological social control and suffocation of the “ideas which may ‘promote the art of life’” (p. 247); and Horkheimer and Adorno’s (1944 [1973]) *The Dialectic of Enlightenment*, which exposes cultural industry as deception rather than enlightenment in its “achievement of standardization and mass production” (p. 121) and its “classifying, organizing, and labeling consumers” (p. 123).

Lash and Urry’s (1994) assessment of today’s cultural industries exemplifies the contemporary articulation of Horkheimer and Adorno’s views. According to Lash and Urry, who cite Bellah et al (1985), the entertainment industry’s output has become similar to that of the advertising industry. Rather than phrasing it in terms of ‘deception’ versus ‘enlightenment,’ the authors distinguish between ‘difference’ and ‘niche

marketing': it is not a "matter of 'difference' or 'pluralized life worlds' or even 'neo-tribes,' but instead a matter of niche marketing and disembedded lifestyle enclaves" (1994, p. 142). Similarly, Garnham (1985) argues that new computer networks, while allowing individuals to communicate economically and efficiently, will create us "in the image of the statistical artifacts of the marketing industry" (p. 73). Garnham also articulates Marcuse's distrust of technology and its effect on thought. He sees satellite technology in particular as undermining national control of policy, while at the same time providing government with fuel for economic growth and helping to converge communication and industrial policy. The result, he argues, is a dialectic of centralisation and decentralisation that affects public and private spheres.

Critical theorists in media studies see communication itself as an expression of power relations (Grossberg, 1987) and highlight "the vital link between epistemology and politics" (Slack and Allor, 1983, p. 215). Smythe (1984) argues that critical communication research has a developmental component to it, particularly in relation to the Third World. Mosco (1996) writes that a critical political economy of communication "drew from the socialist world the models, evidence, and inspiration for alternatives to market-based systems of communication" (p. 12). He cites as examples Lunn's (1982) work on artistic and cultural movements in pre-Stalinist Russia, Downing's (1984) work on the dissident and samizdat media of Russia and Eastern Europe, Smythe's (1981) work on revolutionary and Maoist China. However, Mosco adds that it was the New World Information and Communication Order (NWICO)⁵² that inspired much of the research (i.e.

⁵²In 1976, UNESCO and the Non-Aligned Movement — Third World

Mattelart and Siegelau, 1983; Schiller, 1976; Preston et al, 1989; UNESCO, 1979).

Problems of the Political Economy Approach

Jay (1973) notes that at its core, critical theory has "an aversion to closed philosophical systems. To present it as such would therefore distort its essentially open-ended, probing, unfinished quality" (ibid).⁵³ Critical methods are individualistic and protean, "expressed through a series of critiques of other thinkers and philosophical traditions" (Jay, 1973, p. 41). Political economist of communication also have an aversion to closed systems and reject "the view that all reality is reducible to one specific causal force" (Mosco, 1996, p. 136-37). Moreover, the founders of classical political economy adopted and rejected methods as they saw fit (Redman, 1997). While the founders of the Frankfurt School based their methodology on

colonial nations that advocated links with neither capitalist nor socialist powers — called for a New World Information and Communications Order (NWICO) and New International Economic Order (NIEO). In the early 1980s, proponents of Third World self-reliance convened several conferences and meetings, most notably the 1980 General Conference of UNESCO in Belgrade, at which the MacBride Report (1980), a list of recommendations for the NWICO, was approved. A year later, forces against the NWICO and UNESCO put forth their Declaration of Talloires, which countered the NWICO with the 'free flow' doctrine (Mattelart, Delcourt and Mattelart, 1984). Thus began an ideological and political war between capitalist and socialist forces over what in essence was the legitimacy of media-cultural imperialism. By rejecting the free flow doctrine, UNESCO became embattled with the United States and, in particular, the Reagan Administration during the 1980s, leading to the U.S. withdrawal from UNESCO in 1985.

⁵³Smythe and Van Dinh (1983) describe a range of applications of critical theory to media studies, from "spastic polemics against the status quo through 'criticism,' new or otherwise, of literature, drama or art" (p. 123) to "sharp critical analysis of communications phenomena in their *systemic* context" (ibid).

aspects of German philosophy, the founders of classical political economy based their approach to varying degrees on aspects of Newtonian and Baconian scientific techniques (Redman, 1997).⁵⁴ The methodology of the classical political economists was a mixture of inductive and deductive reasoning from an assumed hypothesis (Redman, 1997). The methodology of the political economist of communication is often more inductive than deductive and ranges from economic statistics and analytical tools of political science (Smythe, 1960) to 'spastic polemics' (Smythe and van Dinh, 1983).

Mosco (1996) argues that while political economists share thematic interests and an intellectual attitude that, for example, diachronic and synchronic methods are important, they differ on "matters of emphasis" and "decisions about relative explicitness" (p. 134). He writes that "there are important areas of difference between research that takes a value position, such as one organized around democratic communication, and those that concentrate on mapping the existing political economy of communication" (1996, p. 134). When empirical evidence from documents or interviews is difficult to obtain, political economic scholars examining communication issues make 'decisions about relative explicitness' by making sweeping generalisations based on Stevenson's (1983) ecological fallacy. Mosco writes that "there are a wide range of substantive perspectives within political economy that constitute areas of contention about what the approach should place in the foreground of analysis" (1996, p. 134). Mosco observes that "there

⁵⁴According to Redman (1997), the classical political economists embraced a mixture of inductive and deductive reasoning stemming from Newton's confirmation of mathematically derived hypotheses on nature through experimental observation, and Bacon's fact collection and classification.

are noteworthy differences between approaches that concentrate on the global political economy, stressing for example the power of transnational communication conglomerates, and those that look at how the logic of capital is contested within the internal operations of a media firm, such as at the point of production" (1996, p. 134). Ironically, little contention exists over the analytical legerdemain that equates institutions with individuals.

For example, Schiller (1969 [1992], 1989) argues that U.S. media corporations dominate European cultures and media systems. He equates media presence (i.e. Hollywood's foreign investment and performance at the box office) with individual and cultural influence without providing social-psychological data to support his claim. Similarly, Smythe (1981) describes his methods as 'critical historical materialism' in his analysis of the role of audiences produced by the 'consciousness industry.' Smythe and Van Dinh (1983) observe that critical theorists adhere to an ideology that links "'critical' researchable problems and critical tools with interpretations that involve radical changes in the established order" (p. 118). Indeed, to begin to address the concept of media-cultural imperialism and broader structures of modernity, Sreberny-Mohammadi (1997) describes the kind of support Schiller and Smythe need: "detailed historical investigation of the sequences, relative importance and enduring impacts of the institutions, structures and 'culture' of modernity, and its interface with older non-Western cultural environments" (p. 67). In this dissertation I provide a 'detailed historical investigation' of the Uruguay Round audiovisual sector talks to discover whether my findings confirm or qualify their analyses.

Schiller and Smythe are radical political economists who consider their Marxist views *as* methodology. Schiller in particular appears to be undaunted by the incongruity between his theorising and his evidence, or lack of it. Yet he cannot be marginalised because he has conducted research on important public policy issues, and, as well as Smythe, has inspired a new generation of scholars to follow in his footsteps. From the late 1960s to the early 1980s, the two scholars often set the agenda for media policy studies. Ideology cannot substitute for methodology, although critical theorists would disagree. But ideology need not be sacrificed in the name of scientism. The way forward is to import methods from other established disciplines. The approach will be enriched by its own self-assessment that will lead to a new breed of policy researcher who combines rigorous empirical methods from political science, international relations, economics or history with whatever levels of personal ideology and prescription deemed necessary.

Mosco's Suggestions for Political Economy's Renewal

Having traced the intellectual heritage of the political economy approach to communication research, and having highlighted some of the approach's problems, my next steps are to discuss some solutions to these problems and to operationalise them. Vincent Mosco's (1996) *The Political Economy of Communication* is the first attempt to build a systematic, integrated discussion of political economy in media and communication integrating theory and empirical evidence. After looking at Mosco's ideas, I present an assessment of the concept of globalisation as it relates to the media, and of the media-cultural imperialism thesis, which is one of many approaches to globalisation and an enduring approach to the political economy of communication. I then take Mosco's ideas one step farther by introducing

ideas and solutions from an ongoing debate over units of analysis in international relations before presenting my case study on the GATT/Uruguay Round.

Units of Analysis in Political Economy

Mosco (1996) argues that scholarship on the political economy of communication tends to examine power in a 'macroanalysis' consisting of "summary data on revenues, organizational structure, employment, as well as submissions to government bodies such as regulatory agencies" (p. 214). The work of Guback (1969, 1977, 1985), Rosenberg (1982) and Thompson (1985) on the success of Hollywood in foreign markets exemplifies Mosco's macroanalytic approach.⁵⁵ Mosco suggests that political economists should take a 'microanalytic' approach, emphasising how power "operates at the constitutive, interactive" (1996, p. 214) level. This requires looking at "the ideas of agency, social relations, social process and social practice" (ibid, p. 213) to balance macroanalytic tendencies toward featuring "structures, typically business and government institutions" (ibid). He offers as an example of a micro approach looking at how individual decision-makers in Hollywood influence the industry's success abroad and how macro pressures influence micro decisions.⁵⁶ Jarvie's (1992) unrivalled book on Hollywood's export system (1920 to 1950) exemplifies this approach, although it is not allied to the political economy tradition, nor is it mentioned by Mosco (1996). Mosco correctly notes that balancing the micro with the macro requires different

⁵⁵Mosco (1996) notes that Thomas Guback was a student of Dallas Smythe.

⁵⁶The micro approach, as the title of this dissertation suggests, should also look at how decision-makers in Hollywood influence the industry's failures abroad!

research tools from those typically employed by political economists of communication.

Mosco derives his micro-macro approach⁵⁷ from the work of Anthony Giddens (1984), whose theory of 'structuration' incorporates the concept of 'agency' — an individual's capability to 'make a difference' or to exercise some sort of power — into an analysis of social systems. Giddens argues that structure is usually understood by social analysts in terms of a patterning of social relations, such as the girders of a building, or an external constraint on an individual's free initiative. However, Giddens views structure as a duality involving both constraining and enabling qualities. His 'duality of structure' sees agents and structures as interdependent: "The structural properties of social systems are both medium and outcome of the practices they recursively organize" (1984, p. 25). Giddens adds that "structure has no existence independent of the knowledge that agents have about what they do in their day-to-day activity" (1984, p. 26).⁵⁸

Scholars in both media and cultural studies have also commented on the issue of units of analysis. Golding and Murdock (1996) cite Giddens (1976) by suggesting that political economists must avoid 'the twin temptations' of instrumentalism and structuralism.⁵⁹ The authors view instrumentalism as

⁵⁷Mattelart and Mattelart (1992) call this approach the "near versus the distant" (p. 124).

⁵⁸Cohen (1989) calls Giddens' theory a set of ontological assumptions about the social world and locates it between "thorough-going determinism and unqualified freedom" (p. 26).

⁵⁹The classic structuralist perspective comes from Wallerstein (1974), who characterises systemic forces in terms of capitalism and the 'world-system': "economic factors operate within an arena larger than that which any

ways capitalists use their economic power to ensure that public information is consistent with their interests. While structuralism tends to view structures as permanent and never changing, the authors agree with Giddens' reciprocal approach by examining "how it comes about that structures are constituted through action, and reciprocally how action is constituted structurally" (1976, p. 161). Grossberg (1987) locates critical theory of communication between the 'twin temptations' of essentialism and structuralism or "the dialectic between deconstruction and reconstruction" (p. 91). He argues that both elements and contexts articulate each other" (1987, p. 91).⁶⁰

Smythe's (1960) macroanalysis consists of examining government agencies regulating the mass media by linking the structure and policies of the agencies to their social settings. Smythe incorporates a microanalysis into his approach by looking at both group and individual behaviour associated with the products and services of the communications agencies. He also adds a microanalytic element by looking at the 'effects' of the agencies on individuals "in terms of the policies by which they are organized and

political entity can totally control" (p. 348). Hawkes (1977) notes that structuralism dominated the field of physical sciences in the early 20th century but also influenced other fields, including linguistics. According to Hawkes, structuralism posits that the elements in a given situation have no significance in themselves except in their relation to all other elements. Hawkes cites Saussure, a Swiss linguist credited as one of the founders of semiology, and his structural interpretation of language: "Language is a system of inter-dependent terms in which the value of each term results solely from the simultaneous presence of the others" (p. 26).

⁶⁰Grossberg writes that "the privileged self-identity and assumed self-sufficiency of communication...must be deconstructed in order to reveal how it is constituted, defined, and constructed — how its effects are determined — by its complex contextual relations" (1987, p. 92).

operated" (1960, p. 564). Indeed, Smythe views this as the central purpose of the political economy of communication.

In a compendium of essays exploring the cultural dimensions of globalisation, King (1991) notes that within cultural studies there is a debate over the development of a theory of culture within the context of globalisation. King views the globalisation of culture as a process of 'deterritorialization' as a result of international migration. He defines culture both as "socially organized systems of meaning expressed in particular forms," and as "the historical and sociological study of concrete cultural forms and practices" (1991, p. 1). King sees the debate over the globalisation of culture as a disagreement over units of analysis. Scholars differ over whether to develop a theory of culture at an international level versus one at the level of nationally constituted society. The central concern on both sides of the debate is the link between globalisation of culture and cultural homogenisation.

Mosco's suggestion to balance the macro with the micro is an important step toward correcting the mismatch between methodology and subject matter in the political economy approach to communication. However, Mosco does not describe how one should operationalise the micro-macro analysis based on Giddens' even more abstract notion of agents and structures functioning interdependently. How, for example, should one examine international audiovisual negotiations involving industry, government and individual negotiators? I attempt to operationalise Mosco's micro-macro approach by moving beyond the boundaries of media and cultural studies

into the territory of international relations theory, where a debate continues on the appropriate units of analysis to use for the study of state behaviour.

Media Studies Meets International Relations

Moravcsik (1993) explains the significance of categorising interstate relations by their unit of analysis: "The level of analysis tells the investigator where to look for the causes of state behavior by classifying competing explanations (or independent variables) according to the units in which they are conceptualized" (p. 5). Maghroori (1982) notes that the debate among international relations scholars is on the dichotomy between the state-centred perspective and the globalist perspective. Waltz (1986) characterises the debate in terms of *reductionist* versus *systemic* theories. Waltz argues that reductionist theories "explain international outcomes through elements and combinations of elements located at national or subnational levels. That internal forces produce external outcomes is the claim of such theories" (1986, p. 47). On the other hand, systemic theories "explain how the organization of a realm acts as a constraining and disposing force on the interacting units within it. Such theories tell us about the forces the units are subject to. From them, we can infer some things about the expected behavior and fate of the units" (1986, p. 60).

Moravcsik's (1993) observes that a majority of international relations theorists recommend giving priority to international explanations. However, Putnam (1988 [1993]) argues that searching for domestic causes of international effects (Waltz, 1959) or international causes of domestic effects (Gourevitch, 1978) fails to capture the 'interaction' of domestic and international factors — the essence of what Putnam calls a 'general' rather

than 'partial equilibrium' approach. Putnam (1988 [1993]) has developed an approach to studying international trade negotiations that analyses a given negotiation from the eyes of chief negotiators who must simultaneously satisfy domestic constituents while negotiating an international agreement — what he calls 'double-edged diplomacy.' Chapter 3 will discuss how I plan to operationalise Putnam's approach and concepts to apply them to the Uruguay Round.

Mosco's argument for balancing the micro with the macro finds intellectual kinship among the 'second structuralists' (Palan, 1992).⁶¹ Palan describes the movement toward integrating units of analysis in the study of international relations as 'second structuralism,' whose advocates "seek to explain the dynamics of international relationships in the context of groups and social classes residing in different societies.... They are primarily interested in the various routes by which international relationships are *related to the state and to the world economy*" (1992, p. 27). Palan's second structuralists (cf. Mann, 1986; Braudel, 1979; Strange, 1988 [1994]) argue that *both* units of analysis are important in determining the actions of states — that the way societal groups and governments interact to develop foreign policy dictates the state's actions toward other states.

It is interesting to note the similarities and differences between Giddens' duality of structure that influenced Mosco's argument and Putnam's

⁶¹Interestingly, the debate over the globalisation of culture (King, 1991) has yet to move to the 'interactive' level and remains stuck in the international versus national polarity. Perhaps an enterprising scholar might someday apply an interactive approach to this debate.

interactive approach based on a 'general equilibrium.' Giddens sees agent (individual as social actor) and structure (social system) *reciprocally* influencing and reproducing each other. Putnam sees agent (negotiator) and structure (domestic and international politics) *interacting* to create yet another structure in the form of an international trade agreement. Both approach agency as simultaneously enabled and constrained by structure. Both view the agent's latitude of freedom as dependent upon the agent's competence to perform (Cohen, 1989). And both are based on the idea that rules and resources not only effect social reproduction (or trade agreements), but are also effected by the outcome of this process (ibid). Chapter 2 will further develop the links between political economy of communication and international relations using the media-cultural imperialism thesis.

Interestingly, Comor (1997) approaches my argument from the opposite direction. He argues that the political economy of communication and international political economy should move closer together because they share research interests.⁶² But he sees the micro level of political economy of communication investigating the *audience* and its relation to production and distribution of entertainment or information, rather than Mosco's 'ideas of agency' involving, for example, the activities of key decision-makers in Hollywood.⁶³ However, Comor and Mosco share similar macro levels, which look at global developments in communications. Comor suggests that the

⁶² Recall that IPE is defined by Strange (1988 [1994]) as "the social, political and economic arrangements affecting the global systems of production, exchange and distribution" (p. 18).

⁶³ Comor's (1997) view of the micro is similar to Smythe's (1981) interest in audiences produced by the 'consciousness industry.'

macro level falls within the research domain of IPE, but he argues that IPE should focus more on the mass media audience as the basic unit of analysis, rather than on the *state* as the basic unit.⁶⁴ Comor notes that IPE, within the field of international relations, does not have the research tools to address how global developments affect mass communication audiences.

The State's Role in the Media Industry

As to the incongruity between theory and empirical evidence in political economy of communication, Mosco (1996) suggests that scholars revisit themes in the approach from underdeveloped angles. For example, Mosco notes that one of the central goals of the approach's North American tradition is to understand the relationship of government or the state to the media industry. Political economists of communication tend to focus on the technological and economic aspects of corporate power, while underplaying the political aspects, which call "attention to the *constitutive* as well as the reactive role of the state" (1996, p. 200). Mosco comments: "The challenge here has been to explain the role of the state without suffering the extremes of viewing it as either an independent arbiter of a pluralistic field of pressures, or, alternatively, as the instrumental and dependent arm of capital" (1996, pp. 91–92).⁶⁵

⁶⁴Liebes and Katz (1990) agree with Comor. The authors examine whether the TV show *Dallas* is universally understood and find differences in modes of retelling an episode and collective-meaning making. They argue that the unit of analysis of media-cultural imperialism should be the audience itself.

⁶⁵Surprisingly, Smythe does not see the need for examining theories of the state in relation to the mass media. Smythe (1978) describes such theories as being "at a level of abstraction remote from the nitty-gritty level where daily the institutions of monopoly capitalism use commodity marketing and the mass media to push capitalist ideology...." (p. 122).

Mosco argues that political economists of communication tend to view corporate power as capital's expansion through its use and improvement "on the means of transportation and communication" and its ability "to shrink the time it takes to move goods, people and messages over spaces" (1996, p. 173). Mosco characterises the process of capital's technological and economic expansion as 'spatialization,' based on the notion that capitalism controls and shrinks space and time (Marx, 1939 [1973]; Lefebvre, 1979; Lash and Urry, 1987, 1994).⁶⁶ Spatialization falls within the broader concept of globalisation, yet the terms are often used synonymously. Mosco (1996) notes that political economists of communication tend to view spatialization and the global growth of media firms in terms of corporate concentration and ownership. He adds that a central theme in political economy is that the state supports transnational business.

I argue that to understand the concept of media globalisation, scholars must examine its microanalytic aspects, or, as stated earlier, Mosco's 'ideas of agency,' as well as its macroanalytic aspects. However, Mosco's own 'ideas of agency' need clarification, for he really means 'ideas of power,' a critical interpretation of Giddens' theory. Mosco argues that structuration theory places too much emphasis on human agency (Thompson, 1989), while political economists tend to focus on power and a critical approach to social

⁶⁶Marx (1973) writes that capitalism and its relations "annihilate space with time" (p. 539) or transcend spatial barriers. Lash and Urry (1994) describe spatialization as a "reduction in 'size' of international society through 'time-space compression' of various flows, which greatly enhances people's interconnectedness *and* their consciousness of this interconnectedness" (p. 281).

analysis. He correctly notes that Giddens does not offer a clear sense of what he means by 'social rules' or the structure in which agents operate. He also notes that Giddens' interest in creating a 'transhistorical' theory (Giddens, 1981) is at odds with political economists' historical specificity. Mosco is comfortable with Giddens' duality of structure as long as it gives greater weight to power. But while Mosco is sure that applying Giddens' duality of structure, and therefore the concept of agency, "deepens the substantive and methodological approach to power in political economy" (1996, p. 214), he is not clear about how *power* is synonymous with *agency*. As stated earlier, Mosco notes that political economists tend to view corporate power in terms of spatialization — as capital's expansion through 'the means of transportation and communication' and its ability to 'shrink time.' The possibility of *individuals* as social actors influencing the globalisation of media does not apply at this level of abstraction.

I argue that political economist of communication *should* focus more on agency, on individuals as social actors, rather than on critical theorists' preoccupation with abstract notions of power and hegemony. Agency tends to be examined in terms of the personifications of globalisation — a few high-profile media/information moguls, their global corporations and their global exploits: Rupert Murdoch and his media empire (cf. Leapman, 1984; Shawcross, 1992), Bill Gates and his software empire (cf. Marshall, 1994; Wallace, 1997) and so on. However, most interpretations of globalisation emphasise its abstract, macro aspects. For example, several scholars describe globalisation as a compression of time and space (Innis, 1950 [1972]; McLuhan, 1964); Robertson and Lechner, 1985; Giddens, 1990; Harvey, 1990; Robertson, 1992; Lash and Urry, 1987, 1994) or as the structuration of the world

(Robertson, 1993). Others see the concept as a process of cultural homogenisation or cultural loss (Katz, 1979; Lee, 1980; Hamelink, 1983; Tomlinson, 1991; Featherstone, 1993). Still others see globalisation as a result of the growth of transnational corporations and the spread of one or more dominant cultures (Schiller, 1969 [1992], 1989; Smythe, 1981, 1984), with analyses of specific industries such as Hollywood and its link to Madison Avenue (Wasko, 1997), global news wholesalers (Boyd-Barrett, 1997), and global television news services (Paterson, 1997). However, Perraton et al (1997) argue that conceptions of globalisation are inadequate and their analysis of empirical evidence is misleading.

Ferguson (1992) sees a gap between globalisation theory and evidence: "Globalization conflates the normative and descriptive, and consequently carries ideological as well as temporal, spatial, historical and geopolitical implications" (p. 73). She argues that globalisation has taken on a life of its own, that assumptions, or what she calls 'myths,' substitute for hard evidence. Similarly, Albrow (1996) argues that the connotation of globalisation as having an inherent direction or a 'process' stems from its use as an 'isation' word. He adds: "The lack of both a determinate end-point to globalization and the impossibility of arriving at a complete enumeration of its impact has a consequence which is equally important for analysis" (1996, p. 91). Robertson (1993) cautions that globalisation as a research topic could become an "intellectual 'playzone' — a site for the expression of residual social-theoretical interests, interpretive indulgence, or the display of world ideological preferences" (p. 16).

The emphasis of globalisation literature on the macro also has a research consequence: conclusions tend to be sweeping generalisations because the concepts used for analysis — compression of time and space or cultural homogenisation — are also generalisations. Just as research results are influenced by the guiding hand of a chosen approach — whether it be critical, administrative or a combination — so research results are influenced by the level of abstraction of research concepts. An excellent example of the influence of theoretical approach and concept abstraction on research results can be seen in Schiller's (1969 [1992], 1989) assertion that in global economic affairs, U.S. media corporations have more authority than most governments in the world, and no longer rely on the U.S. government for support in removing trade barriers. Schiller has avoided Mosco's extremes of viewing the state as either an 'independent arbiter of pressures' or a 'dependent arm of capital.' But he has also avoided the specificities of the relationship between the U.S. government and film industry. In essence, Schiller avoids an analysis of agency in the success or failure of Hollywood in foreign markets. For example, within Hollywood, who sets the industry's foreign lobbying agenda? Film lobbyists or studio lawyers? Have Hollywood executives and U.S. government officials gone their separate ways, or do they collaborate on certain issues? If they collaborate, how would one characterise their working relationship? Do Hollywood and government negotiators adopt similar negotiating styles in international negotiations? Indeed, do Hollywood and government officials have similar goals in foreign markets? These questions and others constitute Mosco's microanalysis of the political dimension of corporate power, despite his lack of clarity on the concepts of power and agency. By balancing the micro with the macro, and by revisiting themes in the approach from underdeveloped angles, particularly the role of the state in

the media industry, scholars of political economy can begin to sift through the assumptions of globalisation, challenge them at the 'constitutive, interactive' level, and emerge with a clearer sense of the concept and its implications. In the next chapter I present an analysis of the media-cultural imperialism thesis and develop a series of propositions with which to interrogate my Uruguay Round case study.

CHAPTER 2
PART I
THE MEDIA-CULTURAL IMPERIALISM THESIS

In the previous chapter I discussed the problem of an incongruity between theory and empirical in the political economy approach to communication. Mosco (1996) suggests that scholars revisit themes in the approach from underdeveloped angles, particularly the political aspects of corporate power. By taking a second look at one of the central themes in the approach, the relationship of government or the state to the media industry, scholars will begin to realise that there is an undue reliance on rhetoric, Marxist or otherwise, to gloss over inconsistencies and gaps in reasoning. It is not clear why media scholars have tolerated this situation considering the importance of the media as a research topic. Perhaps the intellectual heritage of the political economy of communication has drawn methodological boundaries for scholars. Perhaps scholars have gravitated toward the more radical zones of these boundaries. Or perhaps the problem lies with the level of abstraction of research concepts. Scholars of political economy of communication should convene to discuss these matters. Nevertheless, the solution is clear. Inconsistencies must be exposed and gaps must be filled. In this chapter I examine Schiller's media-cultural imperialism thesis and develop a set of propositions.

Thesis of An 'Unconventional Scholar'

Schiller was not the first scholar to conduct work on imperialism and communications. Carey (1989) argues that Harold Innis (1950 [1972], 1951) pioneered the modern study of media imperialism. Innis' *Empire and*

Communication and The Bias of Communication examine the growth of communications from the late 1700s to the 1900s. Innis defines empire as “efficiency of communication” (1950 [1972], p. 9), which, he argues, flourishes “under conditions in which civilization reflects the influence of more than one medium and in which the bias of one medium toward decentralization is offset by the bias of another medium toward centralization” (p. 7). Innis defines the ‘bias’ of a medium as its influence on a given civilisation’s cultural development. For example, he argues that the ‘bias’ of paper and literacy emphasised the monopoly of knowledge, while the bias of broadcasting, with its wide accessibility, broke the monopoly. The growth of empire occurs when the introduction of a new medium removes the bias of the existing medium.⁶⁷ Carey (1989) describes the cycle as a “continuous process of decentralization and recentralization that moved forward in a dialectical way as small hinterland communities attempted to outrun metropolitan influence, only to be absorbed back into it later” (p. 152).

Unlike Schiller, Innis pursued his research in an interdisciplinary manner. Innis was a geographer, historian, economist and political scientist (Carey, 1989). Carey (1989) also notes that Innis followed his own model of scholarly investigation that relied on empirical evidence from the actual record of the time under study, on his belief that no universal theory could account for the protean relations between imperial states, and on his own critical approach to research, which emphasised a critique “in light of

⁶⁷Unlike the approach to globalisation that stresses space/time compression, Innis’ approach to space and time emphasises the development of civilisation as a cycle of advancements in communications and their ‘bias’ towards either political or religious organisation.

humane and civilized values" (p. 150). Carey describes Innis as being more subtle than most contemporary scholars of media imperialism: "He knew something of the tensions, contradictions, and accommodations that existed between trading and communications partners" (1989, p. 151). The Uruguay Round offers a glimpse at the 'tensions, contradictions, and accommodations' between the United States and Europe, and among Members of the European Union. But can Schiller's thesis account for such detail? Evidence gathered for this dissertation suggests it cannot.

Becker, Hedebrø and Paldan's (1986) tribute to Schiller describes him as an "unconventional scholar" noted for his "insistance (sic) on discussing and analyzing the use of power" (p. viii). The authors add that "it is his insistence on asking questions one 'should not' that makes his work so important for the communications sciences" (ibid). Schiller's preoccupation with corporate and governmental power as it relates to media and culture locates him within the political economy approach to communication. His radical views advocating the reshaping or reinventing of institutions to meet the needs of society (Smythe and Van Dinh, 1983) stem from his critical approach to research. Schiller adheres to a Marxist interpretation of communications, which Smythe (1974) [1994] defines as "the mass media in the monopoly capitalist context" setting "the agenda which best serves the interests of the capitalist system" (p. 253).⁶⁸ However, Becker et al (1986) note that Schiller's

⁶⁸Smythe (1974 [1994]) adds that "in principle this agenda is dominated by the process of selling commodities and producing audiences (out of people) to be used by capitalist industry to enhance its profitability and political security. This is the face of the capitalist mass media which is presented to ex-colonial countries, to socialist countries, and to the developed market areas of Europe" (ibid).

work does not enjoy universal appeal — that it has “often been of greater importance outside the United States than at home” (p. viii). Scholars from developing countries consider Schiller’s work important because of his defence of cultural identity, national sovereignty, equal access to the mass media and other principles of NWICO. Perhaps another reason for the endurance of Schiller’s work is that its popularity among scholars advocating the principles of NWICO is directly correlated with their perceived lack of progress on many of these issues.

Indeed, Schiller has his critics, not least, as Becker et al (1986) point out, the American scientific establishment, who consider him an ‘outcast’ because he tends to conduct research into areas he ‘should not.’ Schiller’s first media-cultural imperialism thesis linked the spread of U.S. cultural values via U.S. advertising in the Third World to the growth of the U.S. electronics industry controlled by the U.S. armed forces. He argued that between 1945 and 1965 the Pentagon needed a strong U.S. electronics industry to maintain an edge in warfare, and that the growth of the U.S. electronics industry meant the growth of one of its corporate constituents, information broadcasting, which spread U.S. values throughout the Third World. Becker et al describe Schiller’s penchant for “bringing to light important relationships and novel correlations” (p. viii). But the authors do not discuss the hazy nature of Schiller’s reasoning and his leap of faith between U.S. foreign policy in Korea and Southeast Asia and the concern among development researchers over the Third World’s economic and technological dependence on developed nations.

According to Stevenson (1988), "dependency theory viewed the world as a single system and found 'imperial centers,' notably the United States, which controlled the flow of goods, services, and capital between themselves and nations on the periphery of the system" (p. 6). Indeed, as Schiller argued, U.S. advertising agencies were found to dominate Latin America's broadcasting system, even to the point of influencing programme selection (Wells, 1972). Schiller's ideas stimulated research on global information, television programming and technology flows, which found a 'one-way' flow from the developed to the developing world (Varis, 1973, 1985; Nordenstreng and Varis, 1974; Lealand, 1984). But his link between the U.S. military's control of U.S. government communications and Third World dependency is difficult to substantiate. This is typical of Schiller's work, for often a kernel of truth lies hidden in his rhetoric. Schiller often does not substantiate his claims, choosing instead to gloss over weak aspects of his 'novel correlations' with quotes from articles in major U.S. newspapers or with gross generalisations, often bordering on hyperbole. Schiller's first media-cultural imperialism thesis formulated in the late 1960s more likely can be explained as a crude attempt to combine his protest of the Vietnam War with his equal distaste of American cultural influence in Latin America.

Ithiel de Sola Pool provides an antithesis to what Garnham (1984) calls Schiller's politically pessimistic and economically and technologically deterministic ideas. Pool (1977) takes an optimistic view of cultural exchange and argues that cultural influence is a cyclical and enriching process.⁶⁹ Pool

⁶⁹Smith (1992) comments: "Cultures are not patchwork parodies of selected motifs, nor are they unrelated motifs thrown together for some visual effect. Cultures are expressive wholes, spatially particularised and historically embedded" (p. 12).

argues that all cultures adopt foreign elements from other cultures. According to diffusion theory (cf. Deutsch, 1956), foreign elements are modified to fit the ways of the adopting culture, requiring, in the short-term of the cycle, direct dependence on the link with the dominant culture, followed by what Pool calls a "patriation of the new activity and a relative growth of domestic interactions" (p. 142).⁷⁰ Pool's cultural diffusion thesis is consistent with his overall views on media technology and freedom of speech discussed in *Technologies of Freedom* published in 1983. In *Freedom*, Pool examines the cyclical challenge of preserving freedom and individuality through new media technologies within a constantly adapting and controlling U.S. public regulatory system. Pool's optimism stems from his unflagging belief in the First Amendment as a counterforce to government regulation, a media 'checks and balances' system that differs from Schiller's conspiratorial view of government and media working together to dominate the world.⁷¹

⁷⁰An example of cultural diffusion can be found in British television production, as programmes, once distinguished by the cachet of a particular director or writer, have shifted to a more anonymous series-method of production associated with U.S. television (Collins, 1986). Collins (1986) comments that this shift "is customarily deplored as a particularly insidious form of cultural imperialism" (p. 71). However, Collins argues that Britain's adoption of U.S. series production techniques can be viewed historically in a positive light, similar to Britain's 'patriation' of the "electrical engineering manufacturing techniques of Halske and Siemens, Pascalian mathematics or the astronomical theories of Copernicus and Galileo" (p. 71).

⁷¹However, Pool's (1983) argument suffers somewhat because he assumes that the rest of the world holds the U.S. Constitution and its ideals in high esteem, and that the 'safeguards' of freedom in the United States exist in other countries to counter technological innovation. Though perhaps unintentional, Pool's beliefs ironically impose an American-centric view on the world and might be construed as a form of cultural imperialism.

Sklair (1993) offers his own thesis located between cultural imperialism and dependency theory. Sklair's "culture-ideology of consumerism thesis" (1993, p. 34) states that instead of Western or Japanese culture as the dominating force, it is the "culture and ideology of consumerism that dominates the poorer communities as it does most of the world" (ibid). Sklair argues that "as long as Third or what was Second World communication planners do **not** challenge the culture of consumerism then their activities will be tolerated by the dominant economic, political and cultural elites"(ibid).⁷² As with Pool, Sklair notes that his consumerism thesis accounts for the "ways in which most 'traditional' cultural forms and practices have changed over time and continue to do so" (ibid).

Another critic of Schiller's first thesis is Lee (1980), who argues that a nation's *internal* strategies dictate the extent to which *external* pressures penetrate its sovereignty. Lee compares Canadian and Taiwanese measures against foreign media imports and their influence and concludes that a nation's commercial media system can thrive without dependence on foreign imports and cultural damage if market regulation is complemented by ongoing efforts to fortify cultural identity. Lee's focus on a receiving country's countermeasures to external influences is consistent with Boyd-Barrett's (1977) approach to media-cultural imperialism, which incorporates the sending and receiving countries' rationales in the influence process and

⁷²Sklair (1993) does not predict the destruction of indigenous culture, but that "some local forms will be destroyed, but others can and will survive and prosper as long as they serve the interest of capitalism" (p. 34). However, he notes that local forms will "inevitably be transformed, particularly in the direction of commercialisation" (ibid).

applies to both developed and developing countries. Boyd-Barrett argues that a sending country exports its influence “as a deliberate commercial or political strategy, or simply disseminates this influence unintentionally or without deliberation in a more general process of political, social or economic influence” (p. 119).⁷³ He adds that the receiving country “either adopts this influence as a commercial or political strategy, or simply absorbs this influence unreflectively as a result of contact” (ibid).

Boyd-Barrett formulates his version of imperialism not in terms of Schiller’s *one-way* influence of a dominant culture, but as the lack of *reciprocal* influence between countries’ media systems — when “the ownership, structure, distribution or content of the media in any one country are singly or together subject to substantial external pressures from the media interests of any other country or countries without proportionate reciprocation of influence by the country so affected” (p. 117).⁷⁴ Yet reciprocity must also be examined in terms of the proportionality of the overall cultural and economic effects of one country’s influence on another, in addition to a narrower focus on the degree of mutual influence on the media systems in question. Boyd-Barrett’s focus on the sending and receiving countries’

⁷³The unintentional aspect of Boyd-Barrett’s rationale relates to Tomlinson’s (1991) definition of globalisation. Tomlinson (1991) characterises globalisation as “the spread of modernity,” a process “not of cultural imposition, but of cultural loss” (p. 173). Unlike media-cultural imperialism, the spread of modernity has an unintentional aspect to it. Tomlinson writes that “the idea of imperialism contains, at least, the notion of a purposeful project: the *intended* spread of a social system from one centre of power across the globe” (1991, p. 175).

⁷⁴Here is Cohen’s (1973) definition of imperialism based on an asymmetrical influence of power applied to the media-cultural imperialism thesis.

communications policy, particularly the receiving country's rationale, is important because Schiller views receiving countries as victims of one-way flows from the industrialised world.⁷⁵ Fejes (1981) calls for an examination of forces at local and national level that assist and react against media imperialism forces. Chapman (1987) asserts that the communications policy within the importing country determines the susceptibility of that country to dominant suppliers.⁷⁶ Sepstrup (1990) argues that "the ideological and economic motives of the exporting country may be important determinants of transnationalization, but it is also necessary to study economic and cultural (and perhaps ideological) reasons of the importing country for a fuller understanding of transnationalization" (p. 86).

Schiller's Revised Thesis and Propositions

In the late 1980s, Schiller began to revise his thesis to align with his emerging structuralist views and his perception of the power of U.S. media corporations. Schiller's revision is thematically consistent with his first version in that he retains his criticism of global capitalism. But his view of the relationship between U.S. media corporations and the U.S. government has changed — the authority of the former in global economic affairs, he argues, now outweighs that of the latter. Another consistent aspect to

⁷⁵However, it is not entirely clear whether Boyd-Barrett sees the media system (entertainment conglomerates) or the sending country as the primary influence on other countries and their media systems. Moreover, unlike Schiller, Boyd-Barrett doesn't describe how the sending country and its media system work together to influence others.

⁷⁶Mattelart (1976) offers a Marxist perspective on this point: "Cultural imperialism cannot be summed up as the volume of imported products or cultural commodities. The U.S.A. produces the models, but the national bourgeoisies may perfectly well nationalize these models" (p. 161).

Schiller's revision is the inconsistency evident in his argument. Schiller (1969 [1992], 1989) believes the decline of public service broadcasting and the privatisation of national telecommunications systems in Western Europe are a direct result of pressure imposed by the U.S. Business Roundtable of Industrialists and supported by the U.S. government. Moreover, Schiller sees a connection between pressure from the U.S. Business Roundtable and an increase in the influence of U.S. cultural values on Western European cultures. Once again Schiller presents a 'novel correlation' that requires the reader to bridge gaps in his reasoning.

U.S. Media Corporations and U.S. Foreign Trade Agenda

Based on Schiller's central argument, two propositions can be developed. The first of these propositions is that U.S. media corporations dictate the U.S. government's foreign trade agenda. Schiller (1969 [1992]) believes U.S. media corporations have a 'hammerlock' on the U.S. domestic political system (p. 3). As with his first thesis, a kernel of truth lies in his argument. Schwab (1994) comments that the 1980s "saw the emergence of some previously less active constituencies with a stake in an open trading system. These included service sector exporters and intellectual property (IPR) holders seeking expanded disciplines in global trading rules..." (p. 55).⁷⁷ Feketekuty (1988) traces the inclusion of the services sector in the GATT to the Trade Act of 1974 (PL

⁷⁷Schwab adds: "In the early 1980s, these interests helped persuade the Reagan administration to place services high on its agenda for new global trade talks. For the most part, however, these firms remained far less influential than their industrial counterparts with respect to Congress. Part of this was attributable to the perception that service sector jobs were lower paying than their manufacturing counterparts; part was simply due to the great diversity of trade-related interests represented within the sector" (1994, p. 56).

93–618, 93rd Congress, 88 STAT 1978–2076), in which Congress authorises U.S. negotiators preparing for the Tokyo Round of the GATT (1973–79) to work toward eliminating barriers to trade in services. According to Feketekuty, Tokyo Round participants failed to reach a consensus on including services but did set a precedent for future negotiations. In 1988, Congress passed the Omnibus Trade and Competitiveness Act (PL 100–418, 100th Congress, 102 STAT 1107–1574), thereby writing into law provisions on objectives for future services negotiations.⁷⁸

On intellectual property protection, Reinbothe and Howard (1991) argue that a perceived need by developed countries for a multilateral trade agreement on intellectual property stemmed from the World Intellectual Property Organization's (WIPO)⁷⁹ inability to enforce the regulatory regime of its conventions, a chronic north-south confrontation among WIPO members over an academic versus a pragmatic approach to intellectual property, and WIPO negotiations hindered by its own group coordination and voting procedures (p. 157). Besides serving as a precedent-setting forum for services

⁷⁸According to the 1988 Act: (A) The principal negotiating objectives of the United States regarding trade in services are—(i) to reduce or to eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and (ii) to develop internationally agreed rules, including dispute settlement procedures [that] are consistent with the commercial policies of the United States.... (102 STAT 1123).

⁷⁹Reinbothe and Howard (1991) call WIPO the 'specialised' agency of the UN, administering the main international intellectual property conventions, the two most important being the 1886 Berne Convention and its subsequent revisions and renewals, and the 1883 Paris Convention for the Protection of Industrial Property and its revisions. The others are the Universal Copyright Convention, the 1961 Rome Convention, the 1971 Phonograms Convention, the WIPO Convention and the 1974 Satellites Convention.

negotiations, the Tokyo Round became the first GATT negotiations to address intellectual property in the context of NTBs (Getlan, 1995).⁸⁰ Weiss (1990) notes that the U.S. international trade deficit spurred U.S. trade policy-makers to focus on ways of narrowing the deficit through intellectual property protection.⁸¹

However, Schiller (1989) does not mention that more than one Business Roundtable exists and that U.S. media corporations are not the only corporations urging Western European governments to deregulate broadcasting and telecommunications.⁸² For example, in February 1995 the Business Roundtable of Industrialists met in Brussels at a G-7 Ministerial conference⁸³ to call for government action on building the Global

⁸⁰In 1993, U.S. core copyright industries contributed an estimated \$238.6 billion to the U.S. economy or 3.74 percent of GDP, up from \$226.5 billion in 1992 (in real 1993 dollars) or about 3.66 percent of GDP (Siwek and Furchtgott-Roth, 1995, p. 5). According to the consulting firm Economists, Inc., "the core copyright industries contribute more to the U.S. economy than any single manufacturing sector including aircraft and aircraft parts, primary metals, fabricated metals, electronic equipment, industrial machinery, food and kindred products and chemicals and allied products." (ibid)

⁸¹Weiss (1990) adds: "Pressure for a tighter regime on IPRs was based on the twin perception that the erosion of the competitive position of U.S. technology leadership in certain sectors, in particular pharmaceuticals, chemicals, computer software and semiconductors, is due to copying in foreign countries and to the unfair practices of certain countries, including inadequate protection of intellectual property" (p. 49).

⁸²Dicken (1992) writes that "although United States TNCs no longer dominate the world economy as much as they did in the 1950s and early 1960s they remain, as a group, the largest single element in the world's TNC population" (p. 67). However, Dicken notes that West German and Japanese transnational investment has grown most rapidly overall.

⁸³The G-7 countries are Canada, France, Germany, Italy and Japan, the United Kingdom and the United States.

Information Society (Report from the Business Roundtable of Industrialists, Brussels, 24–26 February 1995; hereinafter Roundtable Report).⁸⁴ A majority of the 37 companies at the conference were European-based; indeed, the European Roundtable of Industrialists convened and attended the Brussels conference.⁸⁵ The G-7 Trade Ministers agreed to the core principles of the Roundtable, which include removing barriers to trade in telecommunications, information technology and content (Roundtable Report, p. 10), and striving to “accelerate and create conditions for the full liberalisation of telecommunications infrastructures and services in all countries as soon as possible” (p. 11). In June 1995, at the G-7 Summit in Halifax, Nova Scotia, heads of state approved of the results of the Brussels conference and encouraged a series of pilot projects to promote innovation and the spread of new technologies (Roundtable Report, p. 33).⁸⁶ Another

⁸⁴According to the White Paper on Growth, Competitiveness and Employment (Commission of the European Communities, 1993), the Information Society is defined as a society “in which the services provided by information and communications technologies (ICTS) underpin human activities.” (p. 105). The Roundtable Report lists the following set of principles of the Information Society: “promoting dynamic competition, encouraging private investment, defining an adaptable regulatory framework, providing open access to networks, and recognising the necessity of world-wide co-operation with particular attention to less developed countries” (p. 9).

⁸⁵The European Roundtable of Industrialists includes the BBC, Bertelsmann, British Telecom, Canal Plus, Daimler Benz, Deutsche Telekom, Ericsson, France Telecom, ICL, Le Group Videotron, Matra Hachette, Nokia, Olivetti, Pearson, Pirelli, RAI, Siemens, Societe Generale de Belgique, Teleglobe and Telefonica de Espana. The remaining members of the Business Roundtable of Industrialists in Brussels include AT&T, Apple Computer, Bell Canada International, Mitsubishi Electric, NACSIS, NEC, Nippon Steel, NTT, Nynex, Sega Enterprises, Silicon Graphics, STET, Texas Instruments, the Walt Disney Co., Time Warner and Tokyo Marine (Roundtable Report, p. 16).

⁸⁶However, at the Brussels conference, directors of Canal Plus, France Telecom, Matra Hachette and Telefonica cautioned government officials over

goal of the Roundtable, a WTO agreement on market access for basic telecommunications, was reached in February 1997 after negotiations were extended beyond the Uruguay Round. Furthermore, in November 1995, business leaders representing all industry sectors from the United States and Europe convened in Sevilla, Spain, to discuss the development of a trans-Atlantic marketplace. The Trans-Atlantic Business Dialogue urged political leaders to review "excessive regulation" and "differences between EU and U.S. regulatory systems" (Trans-Atlantic Business Dialogue, 11 November 1995, p. 2). Despite Schiller's preoccupation with pressure from U.S. media corporations and the U.S. government on EU governments, the reality is that pressure towards dismantling global trade barriers also comes from corporations based within the EU.

Like Schiller, Mattelart (1979) defines media-cultural imperialism as the spread of capitalism — the "ideological offensive of the ruling classes" (p. 2). However, unlike Schiller, Mattelart examines the activities of European multinationals in the electronics industry, such as Philips and Siemens. Also, Mattelart, Delcourt and Mattelart (1984) offer a different perspective on Schiller's thesis. According to Garnham (1984), Mattelart et al (1984) agree with Schiller's view of the declining role of the state amid the increased

removing trade barriers related to content without first devising new solutions to protect cultural and linguistic diversity (Roundtable Report, p. 20). Moreover, reservations about the cultural implications of the objectives of the Brussels conference were expressed by President Jacques Chirac. In a letter to the Chairman of the G-7 Roundtable, President Chirac comments: "May I add that the Information Society cannot be considered to be a progress for mankind if as a result it manages to impose a dominant language or a standardised culture. Therefore France will endeavour to retain the diversity of languages and culture which is the source of human enrichment" (Roundtable Report, p. 36).

power of multinational corporations.⁸⁷ However, Garnham argues that the French Socialists' desire to develop an export system for French television programmes could place France in the untenable position of adopting the U.S. model of media-cultural imperialism, particularly if the strategy focuses on creating a 'Latin Audiovisual space.'⁸⁸ However, Garnham notes that for the authors, the U.S. model of international TV production is not so much a cancerous growth but an *example* to be employed cautiously 'towards progressive directions'.

But several scholars argue that focusing on the size and influence of U.S. media corporations and their perceived threat to national cultures misses the point. Collins, Garnham and Locksley, (1988) challenge the imperialism paradigm by studying the concept of comparative advantage, which simply means if one country specialises in movie-making, while another specialises in growing and processing coffee beans, each country should continue to do what it does best. The authors describe the global trade in programming as a "complex ensemble of political, cultural and economic forces" (1988, p. 57) and view the contrary aims of broadcasters and politicians as an ideological tug-of-war. On one hand, broadcasters aim *for* increased audience share to fuel economies of scale, benefit from the low marginal cost of production, and compete with new channels; on the other hand, political and cultural forces

⁸⁷However, Mattelart and Mattelart (1992) comment: "In many cases, the analyses of the strategies of these corporations seem more to reflect the paranoia of the observer, inspired by a conspiracy theory, than the reality of power" (p. 124).

⁸⁸Mattelart's interpretation of media-cultural imperialism exemplifies Carey's (1989) description of Innis' more subtle understanding of the 'tensions, contradictions, and accommodations' between countries than that of his contemporaries.

take aim *at* increased audience share in the name of preserving national language and culture.⁸⁹ Yoon and Feigenbaum (1997) similarly argue that the imperialism paradigm and the concept of globalisation as they apply to mass media are inappropriate. The authors argue that national cultures can best be preserved through private sector strategies that encourage transnational alliances with U.S. media corporations. Instead of viewing U.S. entertainment know-how as a threat (as Schiller does) the authors cite examples of French and Korean media entrepreneurs seeking to benchmark with Hollywood studios to learn marketing and management skills and the secrets to attracting mass audiences.⁹⁰

⁸⁹Similarly, Burgelman and Pauwels (1992) describe this tug-of-war — a result of the industrialisation of the EU's audiovisual sector — as a fight between on one hand the economic forces of transnational integration joined with supranational political decision-making, and on the other hand, growing regionalism and nationalism in Western European countries. Drijvers (1992) views the tug-of-war in terms of an economic paradigm based on uniformity and a cultural paradigm based on diversity. According to the author, multinational media conglomerates view the EU as a market in which uniformity means maximum economies of scale and therefore decision-making at the supranational level offers the most power to enforce directives. At the same time, the author views the EU as a forum for diverse ideas in which respect for indigenous culture is paramount and therefore local/regional decision-making takes precedence. Drijvers adds: "The economic aspects of media policy demand a uniform and large-scale approach promoting mergers and concentration, while the realization of cultural aspirations requires respect for diversity, best guaranteed...through substantial autonomy and support for small-scale media initiatives" (p. 197).

⁹⁰However, Yoon and Feigenbaum (1997), like Schiller, do not present social psychological evidence to support their claims. Yoon and Feigenbaum argue that transnational alliances "need not pose a threat to national culture." Perhaps not, but highlighting the economic benefits of an alliance between a Korean media company and DreamWorks SKG does not necessarily mean Korean cultural identity has been preserved in the process.

Furthermore, the extent to which U.S. corporations influence Western European cultures is unclear and difficult to research. Schiller (1989) sees a correlation between the deregulation of broadcasting and telecommunications and cultural decline in Western Europe. Typical of Schiller's rhetoric, he makes a giant leap in reasoning without citing evidence from a single social-psychological or anthropological study.⁹¹ Schiller suffers from what Tomlinson (1991) calls 'hermeneutic naivety': "Either [effects] are simply assumed and allowed to function in the discourse as a self-evident concomitant of the sheer presence of alien cultural goods, or else they are inferred using fairly crude interpretative assumptions" (p. 34). Schiller (1989) cites quotes and statistics from U.S. newspapers and current affairs magazines that suggest to him a strong correlation between an increase in commercialisation and channel proliferation in Western Europe and U.S. cultural influence. True, the number of commercial television services in Europe has dramatically increased in the last decade,⁹² but Strover (1995)

⁹¹Liebes and Katz (1990) examine whether the TV show *Dallas* is universally understood and find differences in modes of retelling an episode and collective-meaning making. The authors argue that the unit of analysis of media-cultural imperialism should be the audience itself. According to the authors, a programme is imperialistic if "(1) that there is a message incorporated in the program that is designed to profit American interests overseas, (2) that the message is decoded by the receiver in the way it was encoded by the sender, and (3) that it is accepted uncritically by the viewers and allowed to seep into their culture." (1990, p. 4). Audience research adds a vital social-psychological perspective to the media-cultural imperialism thesis, the contributors to which tend to be media policy analysts. Sepstrup (1990) laments that the discussion of global flows tends to be political in nature, preventing scholars from examining the issue at a scientific level.

⁹²Hodgson (1992) comments: "Ten years ago, there were only four commercial television services in the whole of Europe; now there are 58" (p. vii). Mougeotte (1994) notes: "1991 marked the turning point, when private television ratings exceeded 50% of average viewing audiences in Europe. Since then, private television has continued to grow by approximately 1

notes that despite fears that an increased demand in programming would lead to cheap American programming, "in fact the financing and creation of media content within Europe has escalated" (p. 4). Schiller also ignores research that suggests audiences prefer domestic productions over their foreign counterparts (c.f. Godard, 1993; Lealand, 1984; Sepstrup, 1990; Tracey, 1985; Cantor and Cantor, 1986; Rogers and Antola, 1985). Strover (1995) adds that "American imports, once a mainstay of prime time within several European countries, have been somewhat displaced by locally produced fare" (p. 4). Although uncertainty prevails as to how much non-European programming will be needed to fill the schedules of Europe's digital terrestrial and satellite broadcasters, research on audience preferences cited above suggests that padding schedules with U.S. sitcoms and movies would not be a wise decision.

Schiller also ignores success stories such as Europe's music industry, choosing instead to highlight the dominance of the U.S. film and television industries in Western Europe. Indeed, since 1968, the average box office take of European films has gone from 60 percent to 20 percent, while U.S. films have captured 80 percent of the market (see Figure 3).⁹³ However, according

percentage point per annum and the division of viewers between State and private television is now 55% to 45%" (p. 24).

⁹³In a report on the status of Europe's film industry prepared by the Think Tank of European media experts for DG-X, U.S. government support for the Hollywood studios is cited as one reason for the decline in Europe's film industry, but other reasons are cited as well, including the structure of the industry: "The audiovisual policy in Europe was, and still is, structured on a national and regional basis.... Europe has abandoned the markets and the demands of the European transnational audiences which the non-European industry has been able to occupy almost without competition from the European industry" (Vasconcelos et al, 1994, p. 18).

to Philippe Kern, director of European affairs for Polygram, out of the five global phonogram corporations (Polygram, EMI, Bertelsmann, Sony and Time Warner), three are European. Still, Schiller is not alone in his oversight. Kern notes that the European music industry casts a large shadow over its film industry, though Eurocrats tend to focus on the film and television industries as victims of U.S. domination: "Politicians forget about the fact that Europe is strong on the music side, and there is no reason to be specifically protective if you consider the entertainment industry as a whole in Europe (interview with author, 29 November 1995).⁹⁴

Figure 3

Average Box office Take of European Films

<u>Films</u>	<u>1968</u>	<u>1980</u>	<u>1990</u>
European	60%	50%	20%
US	35%	45%	80%

Source: Vasconcelos, A. et al (1994) Think Tank Report to DG-X, pp. 17-18.

⁹⁴When confronted with the success of Brazil's television industry, Schiller (1991) retorts that the industry incorporates U.S. formats and know-how and therefore still displays signs of domination. However, Mattelart and Mattelart (1990) question the strength of the U.S. model in relation to the success and influence of the Brazilian broadcasting industry throughout Latin America. The authors argue that historically the global strength of the U.S. television industry 'overdetermined' the perception of all other television industries: "In the wake of this domination, it was long thought that anyone seeking to make profits in the television industry had to reproduce the American model.... No longer hegemonic, U.S. television nevertheless remains dominant" (p. 3). Furthermore, Straubhaar (1991) notes that even the notion of dependency itself has been questioned in light of the growing intra-Latin American export of 'telenovelas' (a form of soap opera). The author argues that Brazil in particular exemplifies a shift away from the simple dependency approach toward what the author calls an 'assymetrical interdependency.' Straubhaar adds: "Although the United States still dominates world media sales and flows, national and regional cultural industries are consolidating a relatively more independent position in the world television market" (p. 56).

Relations Between U.S. Media Corporations and U.S. Government

Schiller (1969 [1992]) believes U.S. media corporations are no longer dependent on the U.S. government in removing global trade barriers. Schiller asserts that "the commanding role that these corporations play in global economic affairs elevates them, with few exceptions, above the authority of most governments in the world" (1969 [1992]) p. 7). Schiller (1989) writes: "The essential point is that an entire broadcast, informational, and cultural system, privately owned and managed, often helped by government policy but mainly dependent on transnational advertising on behalf of corporate sponsors (or corporate users in the case of electronic data flows), is being set in place" (pp. 128–129). However, Schiller provides few details on the help the U.S. government 'often' provides U.S. media corporations in foreign markets, and even fewer details on how U.S. media corporations remove trade barriers on their own.

Historically, Hollywood has enjoyed support from the U.S. government particularly in bilateral trade agreements with European countries. For example, the U.S. State Department intervened on behalf of Hollywood in the 1946 Blum-Byrnes Agreement between the United States and France, which, according to Guback (1969), stipulated no import quotas, but imposed a screen quota which reserved four weeks during each quarter year for the exhibition of French films or about 31 percent of screen time. Guback notes that this agreement resulted in a decline in French production so severe that the agreement had to be modified, bringing back the import and screen quotas. In 1947, Britain imposed a 75 percent ad valorem tax, the 'Dalton duty,' on film imports as a "redistributive measure intended to prevent foreign film

companies from retaining all the earnings of their films" (1992, p. 217). Jarvie (1992) notes that the U.S. State Department worked on behalf of Hollywood in Britain to remove the duty placed on film imports, to negotiate for British concessions in the 1948 Films Act, and to include films in the GATT negotiations in Geneva. Guback (1969) notes that the United States signed similar bilateral agreements with Britain, France and Italy through to the early 1960s, though protectionist measures eased as U.S. production declined.

The U.S. government has also negotiated on Hollywood's behalf in multilateral talks. During the negotiations for the Havana Charter to the ITO in the late 1940s, several European countries, including Britain, France and the Netherlands, viewed films as cultural items separate from other commodities, and declared that films should be excluded from the agreement (Jarvie, 1992). According to Jarvie (1992), the State Department astutely handled the delicate negotiations by conceding the cultural argument to the Europeans to bring the debate to a close with minimal concessions made. The 1948 GATT incorporates Article XIX of the Havana Charter in Article IV on 'exposed cinematograph films,' which allow signatories to establish screen quotas with certain restrictions (Filipek, 1992). In the early 1960s, the U.S. led a debate among European countries on whether new language should be added to the GATT to address restrictions by several countries on television programmes (ibid). However, not until the Uruguay Round did this debate attract world attention.

According to Cathy Field, associate general counsel for U.S. IPR negotiators, the U.S. government still intervenes on behalf of the film industry on a bilateral and multilateral basis (interview with author, 11 June

1997).⁹⁵ Indeed, Ms. Field commented that the U.S. film industry prefers to negotiate directly with governments and only turns to the U.S. government when it cannot get what it wants alone. However, in major trade negotiations such as the CUFTA, NAFTA and GATT, the U.S. film industry (indeed all U.S. industries) must rely on the U.S. government to negotiate on its behalf. Furthermore, according to Bonnie Richardson, the MPAA's vice president for trade and federal affairs in Washington, DC, and a former negotiator at the USTR, besides negotiating on behalf of the U.S. film industry, the U.S. government also exchanges information on foreign markets with the MPA (interview with author, 23 February 1996). However, that the U.S. government exchanges information with, and negotiates on behalf of, the U.S. film industry does not mean this relationship is always productive and close.⁹⁶

⁹⁵The U.S. government and film industry also have a relationship in the U.S. domestic market that is outside the scope of this dissertation. Here the relationship is one-sided, with film industry lobbyists tending to dictate the outcome of domestic policy issues. If Schiller's (1969 [1992]) assertion that U.S. media corporations have a 'hammerlock' on the U.S. domestic political system is limited only to the domestic market, then it has some merit. Rep. Marty Russo describes the MPAA as one of the "top five" lobbying groups (3 August 1989, part 6, p. 1). For example, the *Wall Street Journal* reported that film lobbyists successfully quashed a tax provision proposed by Rep. Dan Rostenkowski, then-chairman of the House Ways and Means Committee, through its connections in the Democratic Party (*Wall Street Journal*, 24 February 1992, p. B7). The *Journal* noted: "The provision would have overturned a 21-year-old treasury ruling that was intentionally generous to the politically plugged-in movie industry even when it was devised back in the Nixon administration" (ibid). It is interesting to note that the Walt Disney Co. and Richard Bates, its lobbyist, are cited as the primary forces behind the removal of the tax provision.

⁹⁶Rosenberg (1982) and Jarvie (1992) trace the beginning of the U.S. government/film industry relationship overseas back to the 1920s, first with the U.S. Dept. of Commerce's Specialties Division of the Bureau of Foreign and Domestic Commerce (BF&DC), later known as the Motion Picture Division, and then with the State Department as the U.S. government

French Influence on Uruguay Round Audiovisual Negotiations

Schiller (1996) believes the French government dictated the outcome of the Uruguay Round audiovisual sector talks. Schiller notes that of all Western European countries, France has been the most resistant to U.S. cultural influence; he cites as an example the “inability of United States negotiators to prevail over French objections in the December 1993 GATT....” (1996, p. 121). Schiller is not alone in his perception of the French government’s influence particularly on the audiovisual services negotiations. Waregne (1994), Dehousse and Havelange (1994) and Joachimowicz and Berenboom (1994) argue that the French Ministers and trade delegates successfully executed a diplomatic and public opinion campaign to prevent U.S. negotiators from gaining concessions from the EU on audiovisual services and IPRs related to copyright.

France tends to be protective not only of its own culture and cultural industries but also of the EU’s supranational audiovisual policy. Yet very little is known about how France influences Europe’s national and

institutionalised the gathering of economic intelligence on the treatment of U.S. films in the domestic and international markets. An early test of the U.S. government/film industry relationship came with the trade war between the U.S. and Britain, Hollywood’s largest foreign market during the period 1920–1959, over Great Britain’s Cinematograph Films Act of 1927 and subsequent renewals in 1938 and 1948. The 1927 Act placed incremental quotas on British films and on the percentage of films released by distributors within a ten-year period. According to Jarvie (1992) relations between the Motion Picture Producers and Distributors of America (MPPDA) and the State Department were close enough during the late 1930s that Ambassador Joseph Kennedy, aware that Britain had been monitoring U.S. cable traffic, suggested that Will Hays, the MPPDA’s director, send his telegrams using the State Department’s confidential code.

supranational policies toward foreign programming and films — a curious void in scholarship considering the animosity between the U.S. film industry and the French government. Of all the Member States, France has been the vanguard of market intervention and cultural protection in European audiovisual policy. Forbes (1987) writes: “In the Fifth Republic, cultural policy has continued to have a significant international and geopolitical dimension.... France was bidding to become the cultural leader of the continent and attempting to establish a cultural order as a counterweight to an economic order” (pp. 143–144). Porter (1991) traces the Berne Convention back to 1885, when French and German authors and publishers associations attempted to establish a union to protect their works (p. 2). Seabury (1929) and Thompson (1985) describe France’s organisation of the 1926 and 1928 League of Nation’s International Film Congresses, in which the status of Europe’s audiovisual sector was debated and the Film Europe’ movement promoted. Over sixty years later, Paris was the host city for the European Audiovisual Conference to discuss once again the status of Europe’s audiovisual sector and to launch Audiovisual Eureka, a programme to stimulate Europe’s film and television industries similar to the Technology Eureka programme designed to boost research and development into new technologies. According to Miyet (1990), French President Francois Mitterrand first introduced the idea of Audiovisual Eureka at a June 1988 meeting of the Council of the EU in Hanover.

However, Schiller does not account for the fact that EU Member States have different levels of receptivity towards America’s free-trade principles. As Boyd-Barrett’s (1977) interpretation of media imperialism suggests, the policies of receiving countries must be examined to determine the extend of

reciprocal influence. Schiller's revised thesis still has as its implied normative value the autonomous country, but instead of a dominant country impinging on a weaker country's sovereignty, Schiller views the sovereignty of all countries (including America's) at risk from U.S. media corporations. However, scholars differ on the extent to which individual countries have lost their influence in world affairs. For example, Strange (1996) argues that non-state authorities, such as mafias and the Big Six accounting firms, control states: "Where states were once the masters of markets, now it's the markets which, on many critical issues, are the masters over the governments of states" (p. 4). But Carnoy (1993) argues that the welfare of transnational corporations is tied to countries, and that national policies still determine how a country attracts foreign corporations, invests in local training and R&D, and protects corporations from foreign competition in its home market.

Another aspect to this debate is the role of supranational institutions — such as the Council of the EU, the United Nations (UN), the European Broadcasting Union (EBU) and the GATT-WTO — each collectively responsible for aspects of the social and economic welfare of individual countries. According to Maghroori (1982), supranational institutions have begun to take precedence over their constituent countries primarily because technological developments, such as satellite television or nuclear weapons, have weakened the role of individual countries as protectors.⁹⁷ However, in the EU, the Council's collective responsibility does not preclude direct

⁹⁷Lash and Urry (1994) argue that media globalisation, the development of transnational practices and flows, has rendered national governments' control of cross-border flows of information and entertainment ineffective, and increased both the need of states to collaborate internationally in areas of trade and finance and regional governance.

involvement by individual countries, and often, as with the development of the Television Directive, Member States will disagree on the appropriate level of intervention.⁹⁸ According to Collins (1993), the Directive's quota restrictions resulted from "political bargaining between the culturalists/interventionists and the single-market supporters...." (p. 374). Here Carey's (1989) 'tensions, contradictions, and accommodations' among EU trading partners emerge.

Having developed a set of propositions with which to interrogate the Uruguay Round audiovisual negotiations, the overarching question still remains: Does Schiller's (1969 [1992], 1989) media-cultural imperialism thesis stand as a model of mass communication research or just another example of Morgenthau and Thompson's (1985) comment that "today 'imperialism' and 'imperialistic' are indiscriminately applied to any foreign policy, regardless of its actual character, to which the user happens to be opposed" (p. 58)? Schiller's central argument is that U.S. media corporations dominate Western European cultures and media systems. If Schiller's thesis is correct then the Hollywood lobby should have forced U.S. negotiators to secure a bilateral audiovisual services deal and an IPRs deal on copyright satisfactory even to the hawkish element of the lobby. Moreover, if Schiller, Dehousse and Havelange, Joachimowicz and Berenboom and Waregne are correct in their post-Round assessments, then the French government should have played a

⁹⁸According to Jonathan Scheele, who was chief services negotiator for the Commission from 1990 to the end of 1992, the issue of competency has implications in the practice of trade negotiations between the European Union and third countries: "If you've got an issue that involves both the Community and the Member States, then you have to be careful not to run up against a major problem in one Member State, which would prevent it from ratifying the agreement" (interview with author, 17 April 1997).

decisive role in blocking efforts by U.S. negotiators to satisfy the Hollywood lobby. Based on empirical evidence gathered for this dissertation, a new perspective is needed on the relationship between the U.S. film industry and the U.S. government in international multi-sector negotiations, and on the outcome of the Uruguay Round audiovisual sector talks.

To test Schiller's propositions on the role of the state in the media industry, I heed Mosco's advice to balance microanalysis with macroanalysis. Juxtaposing aspects of Schiller's thesis with empirical evidence from the Uruguay Round will begin to address the incongruity between theory and data in political economy of communication. To begin to correct the mismatch between methodology and subject matter in the approach, I incorporate theory and methods from international relations to flesh out the 'tensions, contractions, and accommodations' between Hollywood and the U.S. government. In Part II of this chapter I examine the debate in international relations over units of analysis and discuss how it relates to Mosco's micro-macro approach.

PART II
MOSCO'S MICRO-MACRO APPROACH AND
PUTNAM'S TWO-LEVEL ANALYSIS:
INTERDISCIPLINARY CONCEPTS

Mosco (1996) argues that scholarship on the political economy of communication does not balance a macroanalysis of 'structures' with a microanalysis incorporating Giddens' (1984) notion of agency. Mosco also acknowledges that political economists of communication do not have the research tools for such an analysis. However, scholars in international relations have developed methods based on the micro-macro approach, although a debate continues on which side of the approach to emphasise: domestic or international determinants of state behaviour (Moravcsik, 1993). In Part II I show how Schiller's thesis on the role of the state in the media industry relates to theories of state behaviour in international relations. To flesh out the 'tensions, contradictions, and accommodations' during the Uruguay Round between Hollywood and the U.S. government, among Member States of the European Union, and between the United States and European Union, I turn to scholarship on trade theory and trade negotiations, particularly the work of Robert Putnam.

Determinants of State Behaviour: Domestic, International or a Combination?

For Schiller's original media-cultural imperialism thesis, the unit of analysis was the state and its power to influence other states. Schiller argued that the state-driven 'military-industrial complex' nurtured the U.S. broadcasting and advertising industries and functioned as an engine that drove the flow of U.S. cultural values throughout the Third World. Here I

broaden my analysis within the field of media studies to accommodate my case study on the Uruguay Round audiovisual talks by introducing the *state-centred* approach to international relations (Keohane, 1984; Krasner, 1976; Lake, 1988), defined by Moravcsik (1993) as an approach that locates “the sources of foreign policy behavior within the administrative and decision-making apparatus of the executive branch of the state” (p. 6). IPE researchers have their own version of a state-centred perspective, which Frieden and Lake (1995) call the *domestic statist perspective*: the “goals and actions of the government within the national political system, for which foreign trade can represent ways to help them stay in power” (p. 9).

According to Maghroori (1982), the state-centred approach views the study of world politics as the study of interstate relations. This approach emphasises military security as an important rationale for state actions taken in a world without interdependence (note Schiller’s emphasis on the Pentagon and its ties to the U.S. electronics industry). The author adds that the state-centred approach has its roots in the ‘realist’ approach to international relations prevalent during the inter-war period. Realists viewed the pursuit of national power and, through the forging of alliances, the imbalance of power among alliances as driving forces.⁹⁹ On the opposite side of the state-centrists lie the *globalists* who see the declining role of the state within an interdependent world in which international organisations, i.e. the GATT-WTO and EBU, begin to take precedence over the power of

⁹⁹Keohane (1986) defines classic realism as follows: first, the state is the most important factor in world politics; second, states act unitarily and rationally in calculating action; and third, states act to accumulate power.

individual states, primarily, as mentioned earlier, because technological developments have weakened the state's role as a protector (ibid).

Schiller's revised thesis shifts his unit of analysis from a state-centred process to a *society-centred* process (Ikenberry et al, 1988) that Moravcsik (1993) defines as being influenced by "domestic societal groups through legislatures, interest groups, elections, and public opinion" (p. 6). IPE researchers have their own version of a society-centred perspective within the domestic sphere, which Frieden and Lake (1995) call the *domestic societal perspective*: "pressures [are] brought to bear on policy by socioeconomic groups, some desirous of trade liberalisation and others interested in protection from imports" (p. 9). Both the state-centred and society-centred perspectives fall within the category of *domestic* determinants of international outcomes. According to Schiller's society-centred perspective, lobbyists representing U.S. media corporations dictate foreign trade policy to the U.S. government. U.S. negotiators, in turn, force European governments to deregulate their national audiovisual sectors and to reduce trade barriers. In the U.S. audiovisual sector, these groups include the Hollywood lobby in the Uruguay Round and, more broadly, the International Intellectual Property Alliance (IIPA).¹⁰⁰ However, domestic determinants only represent part of the dynamics of a multi-sector trade negotiation. Putnam (1988 [1993]) offers a significant quote from Robert Strauss, who served as STR¹⁰¹ from 1977

¹⁰⁰Members of the IIPA include the Association of American Publishers, American Film Marketing Association, Business Software Alliance, Computer and Business Equipment Manufacturers Association, Information Technology Association of America, Motion Picture Association of America, National Music Publishers Association and Recording Industry Association of America.

¹⁰¹Congress created the Office of the Special Trade Representative (STR) in

to 1979 during the GATT-Tokyo Round: "I spent as much time negotiating with domestic constituents (both industry and labor) and members of the U.S. Congress as I did negotiating with our foreign trading partners" (Strauss, 1987, p. vii).

In Chapter 1 I noted Moravcsik's (1993) observation that a majority of international relations theorists recommend giving priority to international explanations. However, Putnam (1988 [1993]) argues that such a one-sided approach fails to capture the 'interaction' of domestic and international factors. Recall that the state-centred and domestic-statist approaches see power emanating from government decision-makers, while the society-centred or domestic-societal approaches see power in the hands of domestic social groups, including corporate lobbyists, and their influence on legislators. However, second structuralists argue that *both* units of analysis are important in determining the actions of states (Palan, 1992). Moravcsik (1993) writes: "Thus the question facing international relations theorists today is not *whether* to combine domestic and international explanations into a theory of 'double-edged' diplomacy, but *how* best to do so." (p. 9).

the Trade Expansion Act of 1962; the STR was initially responsible for negotiating all trade agreements under the Tariff Act of 1930 and the Trade Expansion Act of 1962. Congress elevated the Office to a Cabinet-level agency within the Executive Office of the President in the Trade Act of 1974. In 1980, the Office became known as the United States Trade Representative (USTR) and was given a wider trade policy-making role, which included responsibility as America's chief trade negotiator with the rank of Ambassador. Three individuals served as chief U.S. negotiator during the Uruguay Round: Clayton Yeutter (1985 to 1989), Carla A. Hills (1989 to Jan. 1993) and Michael Kantor (Jan. 1993 to 1996).

Robert Putnam (1988 [1993]) examines a given negotiation from the eyes of chief negotiators who must simultaneously satisfy domestic constituents while negotiating an international agreement — what he calls ‘double-edged diplomacy.’ Putnam characterises international negotiations — whether they be on trade, security, human rights, etc. — as an interactive process involving two levels: the bargaining between negotiators (level I) and the separate discussions each delegation has with constituents in its domestic market on the ratification of the agreement (level II). Putnam’s level II discussions with domestic constituents refer to domestic determinants of foreign trade policy addressed earlier. At this point it would be instructive to outline the fundamental legislative and political characteristics of U.S. domestic and EU supranational trade policymaking. What follows is by no means an exhaustive treatise on the topic, but an overview to provide a context for the dynamics of the Uruguay Round.

U.S. Domestic Trade Politics

What is meant by U.S. domestic trade politics? Feketekuty (1988) writes: “Trade officials have to be sensitive to the impact of trade policy measures on both the economic interests of different industries and the achievement of policy goals in other areas of domestic and foreign policy” (p. 150). This means that prior to and during the Uruguay Round, U.S. negotiators in the Office of the USTR had to worry about satisfying the interests of two important domestic players: Congress and its corporate constituents. Delagran (1992) describes Congress’ power to influence trade negotiations:

The need for congressional approval of a negotiated trade agreement gives the Congress significant leverage with the executive on particular issues of interest. It also gives U.S. negotiators a generally stronger hand in resisting

concessions to trading partners that may be of concern to the Congress, and in extracting benefits from trading partners to ensure congressional acceptance of a final package (pp. 16–17).

The Clinton Administration had to win congressional approval of the outcome of the Uruguay Round negotiations in December 1993. During the final moments of the Uruguay Round, a U.S. official phrased it this way: “Do we have more than 218 [House members] and more than 51 [Senators]? That’s the name of the game” (L.A. Times, 1993, D1, 4). Moreover, Schwab’s (1994) description of the executive branch’s battle to secure enough votes in Congress for the passage of the 1988 Omnibus Trade and Competitiveness Act could equally apply to the Clinton Administration’s hurdles to assure the ratification of the Round’s implementation agreement in December 1994: “Executive branch negotiators would still need to satisfy enough constituencies (with improved access abroad or trade remedy measures at home) and/or avoid the wrath of enough import-sensitive interests (by limiting reductions in U.S. barriers) to prevent a critical mass of interests from coalescing to defeat the entire bill” (p. 42).

Besides being cognisant of congressional interests during the Round, U.S. negotiators also had to work within the Sector Advisory Committee (SAC) system, allowing industry groups representing corporate America a voice in the negotiations.¹⁰² Moreover, U.S. negotiators had to be aware of

¹⁰²The SAC system resulted from the Trade Act of 1974. Also known as the Industry Consultations Programme, the SAC consists of three levels of committees. Principal among the 38 committees are the President’s Advisory Committee on Trade Policy and Negotiations (ACTPN), to which the President appoints 45 members for two-year terms; seven policy advisory committees, including the Services Policy Advisory Committee (SPAC) and the Industry Policy Advisory Committee (IPAC), whose members are

commitments made by the executive branch to Congress and, indirectly, to certain powerful elements of Corporate America *even before* the start of the Uruguay Round, in return for congressional concessions in battles over legislation, including 'fast-track' authority to enter into non-tariff trade agreements. According to Santos (1995), "trade bills subjected to the normal legislative process are classic magnets for special interest amendments" (p. 75). Without the Trade Act of 1974's 'fast-track' authority, which limits debate and precludes amendments, trade agreements would have to be renegotiated: "American trading partners would be reluctant to strike trade deals with U.S. negotiators, recognizing that such deals would almost certainly unravel at the hands of Congress" (ibid). However, Santos notes that the quid pro quo for 'fast-track' authority is that the executive branch must consult with the trade subcommittees of the House Ways and Means Committee and Senate Finance Committee. "[Their] pre-eminent taxing and spending role gives these committees enormous clout within Congress in writing trade laws and setting trade policy" (1995, p. 74). Furthermore, Congress has the power to grant 'fast-track' authority for a limited period of time. Hence, the executive

appointed solely by the USTR or together with other Cabinet officers; and 30 technical, sectoral, and functional advisory committees, including the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13), whose members are jointly appointed by the USTR and the Secretaries of Commerce and Agriculture (1994 Trade Policy Agenda and 1993 Annual Report of the President, pp. 114–115). Winham (1980) notes that by soliciting the advice of corporate America, the USTR "gave the SACs a stake in the evolving MTN agreements, and made compliance in the ultimate result more probable" (p. 388). However, the Trade Act of 1974 instituted a bureaucratic buffer between the SAC and the USTR to "'screen out' extreme demands and balance interests among diverse constituency groups" (1980, p. 389). The buffer consists of USTR specialists assigned to various sectors with an understanding of the SACs' key issues. Based on research for this dissertation, Hollywood ended up a loser in the 'screening out' and 'balancing' process.

branch must apply for further extensions, thereby making it even more accountable to Congress. Delagran (1992) writes: "These 'pre-approval' procedures enabled the Ways and Means and Finance committees to extract concessions from the president as a condition for letting negotiations proceed" (p. 17).

Robert Strauss describes these 'pre-approval' procedures as 'pre-cooking' a bill (p. 383). In her legislative history of the 1988 Trade Act, Schwab (1994) notes that "without the enactment of new authority for the president to engage in trade negotiations, the administration-endorsed launch of the GATT Uruguay Round initiative in September 1986 was doomed to failure" (p. 81). Even the European Commission's chief negotiator for the Uruguay Round, Ambassador Hugo Paemen, knew the importance of fast-track authorisation. "Without the fast track, the U.S. government is not a valid negotiating partner. But to obtain the fast track, it may be compelled by Congress to press for terms which are so tough that the negotiation ceases to be of any interest to the other country" (Paemen and Bensch, 1995, pp. 192–193).

EU Supranational Trade Politics

The EU has its own 'domestic' trade politics.¹⁰³ While USTR officials must take into account the objectives of Corporate America and Congress,

¹⁰³For the purposes of this study, EU 'domestic' trade politics refers to the interplay between EU Member States and EU supranational institutions such as the Commission and Council. Technically, Putnam's two-level analysis should be a three-level analysis to account for the influence of domestic trade politics within individual Member States. However, I will refer to important trade politics within key EU Member States when appropriate.

European trade officials serve the interests of the Member States,¹⁰⁴ each with its own domestic politics associated with ratifying a given trade treaty. Trade officials in DG-I, the Commission's directorate responsible for external economic relations and commercial policy, serve as negotiators for the Member States pursuant to Article 113 of the Treaty of Rome (OJ C 224, 31 August 1992, p. 44).¹⁰⁵ While the U.S. Constitution enumerates the trade-related powers of the executive branch and Congress,¹⁰⁶ the Treaty of Rome determines the 'competency' or jurisdiction of the Commission and Member States in matters of trade.¹⁰⁷ Articles 113 and 228 of the Treaty of Rome give

¹⁰⁴According to Frans Andriessen, Europe's chief political negotiator from 1988 to January 1993, the main difference between the USTR and Commission negotiators is that the former must confront industrial representatives directly, while the latter must confront ministers in the Council of the EU, who, in turn, face industry representatives. Mr. Andriessen commented that he felt under more pressure from ministers in the Council than from European lobbyists (interview with author, 13 January 1997).

¹⁰⁵Article 113(3) reads: "Where agreements with one or more States or international organizations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it" (ibid).

¹⁰⁶Gorlin (1990) writes: "The Constitution clearly gives Congress the authority, in Article I, section 8, 'to regulate Commerce with foreign Nations.' The relationship between this congressional authority and the president's general executive power, under Article II, section 1, and the Constitution's charge that he 'take care that the Laws be faithfully executed' (Article II, section 3) has been well established in the 200-year history of the Republic" (p. 54).

¹⁰⁷Article 228 of the Treaty reads: "Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organizations, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations...." (OJ C 224, 31 August 1992, p. 77). Article 228(2) adds: "Subject

ultimate power to the Council of the EU, the EU's main decision-making institution composed of ministers from each Member State, to approve agreements on behalf of Member States.

Earlier I noted that domestic determinants only represent part of the dynamics of a multi-sector trade negotiation. Another reason to include international determinants is the fact that the Council of the EU, in Waltz's (1986) words, acts as a "constraining and disposing force on the interacting units within it" (p. 60). Karl Falkenberg, chief services negotiator for the European Commission from early 1993 to the conclusion of the Round, makes a significant point that during the Uruguay Round EU Member States designated a clear decision-making role to the General Affairs Council, members of which consist of foreign affairs ministers from EU Member States. Other Councils, such as a Cultural Affairs Council consisting of cultural affairs ministers, or an Agriculture Council, consisting of agriculture ministers, could only offer opinions to the General Affairs Council (interview with author, 18 April 1997). Even the results of a Council of Ministers meeting, attended by European heads of state, could only be interpreted as suggestions or opinions on issues related to the trade negotiations.

Pursuant to Article 113, committees of ambassadors and other civil servants representing the Member States — collectively known as the '113 Committee' — operate within the Council to form trade policy with the Commission. Committees are divided by dossiers: there is a 113 Committee

to the powers vested in the Commission in this field, the agreements shall be concluded by the Council...." (ibid).

responsible for textiles, one for steel, etc.¹⁰⁸ According to Mr. Trevor Heaton, former head of the Trade Policy Unit of the Council's General Secretariat during the Round (effectively the coordinator of the 113 Committee), the 113 Committee has two functions: first, as a consultative committee to give guidance to the Commission in its conduct of the Community's trade relations with third countries; and second — when the Commission comes forward with a proposal for negotiating authority to negotiate agreements, whether in the multilateral area such as the WTO, or a civil aviation agreement with the United States — as a classic working party of the Council in that it is the first level of examination of a Commission proposal. The second level of examination in a trade negotiation is the Committee of Permanent Representatives (COREPER), consisting of the ambassadors of EU Member States who prepare on a weekly basis in Brussels the work of the Council (interview with author, 11 April 1997).¹⁰⁹

Mr. Falkenberg notes that during the Round all negotiations were conducted by the Commission, in consultation with the various 113 Committees and under Foreign Affairs Council guidelines. This, in essence,

¹⁰⁸The 113 Committees' role is similar to that of the U.S. SAC system in that both have legal mandates to advise government decision-makers on trade policy matters.

¹⁰⁹According to Mr. Heaton, the 113 Committee meets at two levels: the Full Members level and the Deputies level. The Full Members level, consisting of a group of senior civil servants in capitals of Member States, directors-general of trade questions who deal with general questions across a broad sweep of Community trade policy, meet once a month. The Deputies level meets every other Friday (except in the month when the Full Members meet) to discuss technical questions and make recommendations based on requests for a WTO dispute panel or problems in exporting EU products. Questions of a political nature are moved upward to the Full Members level (interview with author, 11 April 1997).

is the structure under which the EU negotiates in trade negotiations. According to Mr. Heaton, at the beginning of the Uruguay Round, the 113 Committee formed an ad hoc committee to deal with all services negotiations.¹¹⁰ This meant that DG-I negotiated on behalf of the Member States on dossiers such as maritime transport, audiovisual and financial services, but had to have the backing of the Member States for all offers in the services from the 113 Services Committee and the General Affairs Council. Mr. Heaton noted that "the Commission was in constant contact with the 113 Services Committee on audiovisual issues, so that any move it made had to be cleared first by the Committee, particularly with the French members, for whom audiovisual was, and is, a very sensitive issue" (interview with author, 11 April 1997). This led to conflict between the French delegation and others in the 113 Services Committee and at the ambassadorial level in COREPER.¹¹¹

¹¹⁰Mr. Heaton noted that the 113 Services Committee was very active during the Round, meeting in both Brussels and Geneva at short notice, depending on the circumstances. "A lot of the 113 Services people would go down to Geneva and we would have 113 Services meetings, or coordination of the 113 Services Committee on the spot, so that the Commission could come back as the Geneva negotiations evolved on a day-to-day basis, or even an hour-to-hour basis, and say, 'look, this is the way it's going; we feel it should go this way; do you agree?'" (interview with author, 11 April 1997).

¹¹¹Mr. Scheele added that rows would often break involving France over the issue of competency. He remembers one occasion when he cancelled a negotiating session with the United States on audiovisual issues because the French were 'playing rough.' "I was essentially playing hardball with the French. We were conducting some of our internal arguments in public" (interview with author, 17 April 1997). Mr. Heaton commented: "The French were extremely suspicious that Leon Brittan, seen in Paris sometimes as a kind of 'TransAtlanticist,' would sell the French line down the river. The French were constantly coming back to the 113 Services Committee and saying, 'What do you mean by this?'" (interview with author, 11 April 1997).

By embracing the interdisciplinary nature of media studies, scholars of the political economy of communication can begin to synchronise their 'matters of emphasis' and 'decisions about relative explicitness,' thereby correcting the mismatch between methodology and research topics, discussed in Chapter 1, that often occurs when political economists examine important media policy issues. In the next chapter I discuss how I employ Putnam's two-level analysis to interrogate the Uruguay Round audiovisual talks with Schiller's propositions in Chapters 4 to 7.

CHAPTER 3

METHODS: TRADE NEGOTIATIONS AND THE SENSITIVITY FACTOR

There is a paucity of scholarship on conducting research on sensitive topics. Indeed, textbooks on research methods rarely broach the subject (Brewer, 1990). A sensitive topic affects almost every stage of the research process, from data generation to publication (Brewer, 1990; Sieber and Stanley, 1988), and can lead to data distortion and self-censorship (Barnes, 1979). Sensitive research can affect not only the researcher — i.e. on a personal level including the researcher's own security (Plummer, 1983; Brewer, 1990; Lee and Renzetti, 1990) — but also the participants in the study (Sieber and Stanley, 1988) and the population represented by the sample under investigation (Lee and Renzetti, 1990). Lee and Renzetti (1990) quote Sieber and Stanley's (1988) definition of socially sensitive research as "studies in which there are potential consequences or implications, either directly for the participants in the research or for the class of individuals represented by the research" (p. 49). Lee and Renzetti note that the sensitivity of research "seemingly inheres less in the topic itself and more in the relationship between that topic and the social context within which the research is conducted" (1990, p. 512). The authors offer several categories of sensitive research, the most appropriate one for the study of trade negotiations being research that "impinges on the vested interests of powerful persons or the exercise of coercion or domination" (ibid).

Despite the sensitive nature of the Uruguay Round audiovisual negotiations, most of the major actors involved in the talks were willing to participate in this study; however, many chose to do so under a strict

condition of anonymity. Hence, unlike Jarvie's approach, this dissertation truly relies on the *actors themselves* to tell the story as they saw it, with data from trade publications, studies on Hollywood and Europe's film industries, congressional testimony, European and U.S. position papers, unpublished papers and published books and articles on the audiovisual sector talks serving as background material. Rare documents that were obtained from the USTR, such as President Clinton's phone notes for calls to European leaders and Ambassador Kantor's follow-up letter sent to Chancellor Kohl, add a vital documentary element to the analysis of the events leading toward the conclusion of the Uruguay Round.

Scholars differ on the issue of disguising respondents (Lee, 1993). Barnes (1979) notes that disguise techniques, particularly pseudonyms, have long been used in social research. He argues that disguises "merely diminish rather than distort the data" (1979, p. 139). However, Lee (1993) points out that scholars who are against using disguises tend to be concerned about the ability of others to critically assess and even replicate studies. He adds that when researchers enter the write-up phase, they must "walk a tightrope; careful neither to conceal too much, nor to disclose too little" (1993, p. 206). Participants in this study were primarily concerned with their own *privacy*, defined as the control of boundaries between themselves and others (Sieber and Stanley, 1988; Boruch and Cecil, 1979), rather than the *confidentiality* of data, defined as the control and access to data (ibid). Those who wished to remain anonymous dictated the level of anonymity they required: Some were comfortable with being generically referred to as 'trade officials,' while others asked that they simply be called 'a source.'

It is unusual to include anonymous quotes in a doctoral dissertation, as most historians, policy analysts and legal scholars tend to rely on primary documents and attributed quotes as the fodder of their work. However, official documents on trade negotiations never tell the whole story — simply the official one. Personal documents of key participants in the negotiations are extremely difficult to obtain. It is common practice for researchers to conduct interviews with key officials to add the ‘unofficial’ — that is authoritative but unattributable — element to the story. Furthermore, the anonymous aspect of the quotes in no way signifies that the information gathered is inaccurate or fabricated. Hence, besides strengthening ties between media studies and international relations, the methodology for this dissertation also establishes stronger ties between investigative journalism and academic research. The relationship between supervisor and Ph.D. student in many ways reflects that of editor and reporter. To guarantee against possible accusations of fabricated data, and to enhance the auditability of this study, I provided a copy of the transcripts from interviews conducted for this dissertation to my supervisor and upgrade committee. I also provided a list of all respondents and their phone numbers to each examiner on a basis of confidentiality.

Information Sources

I conducted thirty-five face-to-face and telephone interviews over a three-year period (1994–1997) with U.S. and European government officials who either participated in the audiovisual sector talks or knew officials who did so, and with Hollywood and European executives who either advised their respective governments during the negotiations or knew executives who served as advisors. Four sources were interviewed twice. The European

government officials and executives interviewed speak English as a second language and come from a variety of European countries. I took great care not to gather information solely from North American sources. Some European sources provided English translations of unpublished papers presented on the audiovisual sector talks. United International Pictures (UIP) — the U.S. distribution company for MGM, Paramount and MCA/Universal — provided translations of French newspaper articles offering an important perspective on the French campaign against the United States in the audiovisual sector.

I sent introductory letters requesting an interview to most of the participants. In some cases, a letter was unnecessary because a participant would suggest that I telephone an individual and say that I had been referred. In the letters I described the nature of my research and my status as a doctoral candidate at The LSE. I also offered a condition of anonymity as a safeguard of privacy, and outlined the kinds of questions I wished to ask. Responses to my letters and calls usually came within two weeks and arrangements for interviews were then made. However, interviews at the ambassadorial level took several months to arrange. None of the participants requested what Lee (1993) calls 'conditional access' or access granted on the condition that restrictions be imposed on methodology, that a portion of writing be vetted prior to access, or that the final report be examined, modified or even censored. However, a few participants made it patently clear that if I breached my agreement on anonymity, I would be prosecuted.¹¹²

¹¹²At least one source requested anonymity, but then allowed certain comments to be directly quoted, or after a year sent follow-up e-mail messages without stipulating that the material sent should be kept anonymous. As any journalist will tell you, conditions of anonymity do not apply to subsequent

I conducted unstructured interviews consisting of open-ended questions to cast as wide a net as possible, thereby gaining an understanding of the issues, the players and the give-and-take of the negotiations.¹¹³ In a sense, most of the interviews could be categorised as 'exploratory' or designed to develop ideas and research hypotheses (Oppenheim, 1992). I conducted a majority of the interviews by telephone because of the cost of travel to the States and the Continent and, more importantly, because of the frequent cancellations and reschedulings that most policy researchers must inevitably deal with. de Leeuw and van der Zouwen (1988) examine the quality of data gathered from telephone and face-to-face interviews and note that "only small differences were found between telephone and face-to-face interviews" (p. 296). The authors also note that "these differences have become smaller over time" (ibid).¹¹⁴

interviews or correspondences unless the interviewee or writer specifically requests that the information given should not be attributed.

¹¹³Fontana and Frey (1994) note that unstructured interviews are "used in an attempt to understand the complex behavior of members of society without imposing any a priori categorization that may limit the field of inquiry" (p. 366). Sudman and Bradburn (1982) note that open-ended questioning "allows and encourages respondents to give their opinions fully and with as much nuance as they are capable of. It also allows respondents to make distinctions that are not usually possible with the precoded formats and to express themselves in language that is comfortable for them and congenial to their views" (p. 150).

¹¹⁴ However, telephone and face-to-face interview methods are not interchangeable. Market research agencies prefer to send interviewers to the homes of prospective respondents when surveys require asking highly sensitive, personal questions on such topics as personal hygiene and sexuality.

Once patterns could be discerned to responses, I began to form composite statements on a given topic and to test the statements by conducting follow-up interviews and seeking new respondents.¹¹⁵ One must be cautious about the information one takes from sources who are participants in ongoing negotiations, for the truth can sometimes be whatever the participant makes of it. But by crafting composite statements and testing them with respondents on both sides of the Atlantic, I began to reach a comfort level on my understanding of the audiovisual sector talks. Remarkably, both sides were in agreement on the mistakes the other side had made during the Round. While each source placed a different amount of emphasis on the importance of certain actions and outcomes — a natural result of each person's differing vantage point and responsibilities during the Round — patterns nevertheless emerged from the interviews.¹¹⁶

¹¹⁵Investigative journalists, particularly Bob Woodward and Carl Bernstein, know all too well that sources on sensitive issues tend not to divulge information unless they believe the interviewer already knows about the information. By informing my respondents that I was about to read them statements based on responses taken from other participants in the negotiations, and then asking them to comment on these statements, I shifted the relationship between interviewer and interviewee to one of student and instructor. This technique often reduced the tension that tended to pervade the first 10 to 15 minutes of interviews.

¹¹⁶According to Scott (1990) evidence of an event should be assessed according to four criteria: authenticity (is the evidence genuine?), credibility (is the evidence free from error and distortion?), representativeness (is the evidence typical?) and meaning (is the evidence clear and comprehensible?). After dozens of interviews about the same topic, a researcher begins to discern patterns and to discount 'eccentric' information by 'recycling' it among key sources. This method boosts the levels of the four criteria when dealing with a sensitive topic, and can often lead to a serendipitous moment in which the eccentric information is either discounted or clarified by others and new information is learned.

Putnam's Double-Edged Diplomacy: The Interactive Approach

Putnam (1988 [1993]) views international negotiations — whether they be on trade, security, human rights, etc. — as an interactive process he calls 'double-edged diplomacy' involving two levels: the bargaining between negotiators (level I) and the separate discussions each delegation has with constituents in its domestic market on the ratification of the agreement (level II).¹¹⁷ To each negotiator, domestic and international moves are interrelated; hence, the double-edged nature of the process. Putnam describes his 'two-level' game as follows:

At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. (1988 [1993], p. 434).

The object of the game for the chief negotiators is to find the 'win set' or the package that will receive a majority of support from their constituents. Putnam comments that occasionally, "clever players will spot a move on one board that will trigger realignments on other boards, enabling them to achieve otherwise unattainable objectives" (Putnam, 1988, p. 437).¹¹⁸ Myhre

¹¹⁷Putnam notes that "this sequential decomposition into a negotiation phase and a ratification phase is useful for purposes of exposition, although it is not descriptively accurate. In practice, expectational effects will be quite important. There are likely to be prior consultations and bargaining at Level II to hammer out an initial position for the Level I negotiations. Conversely, the need for Level II ratification is certain to affect the Level I bargaining" (1988 [1993], p. 438).

¹¹⁸ Putnam's game analogy is similar to the poker analogy the distinguished scholar at The LSE used to describe trade negotiations.

(1983) notes that many theories of negotiation are too abstract to apply to empirical cases: "An empirical example is probably best analysed by use of an empirically derived theoretical model. In the field of negotiations, there are very few of these...." (p. 13). Besides its accordance with Mosco's micro-macro approach and the second structuralist movement, what makes Putnam's approach so ironically conducive to use in a multi-issue negotiation is that it has not yet been elevated to the realm of theory, which means at this time there are no analytic solutions complicating the two-level framework.¹¹⁹ As a result, the simplicity of the two-level approach allows the researcher to capture the complexity of a multi-issue negotiation, complete with its domestic and international elements, without deconstructing the negotiations into a series of moves and countermoves and an assessment of their predictability. Put another way, Putnam's theory adapts itself to the negotiation under study, rather than the opposite.

Applying Putnam's technique requires separating the elements of the negotiations (issues, players, positions, etc.) into domestic determinants of the outcome of the audiovisual negotiations, which refer to a chief negotiator's discussions with domestic constituents (level II), and international

¹¹⁹Putnam notes that metaphors are not theories but the *start* of theories, and that a "formal analysis of any game requires well-defined rules, choices, payoffs, players, and information.... Deriving analytic solutions for two-level games will be a difficult challenge" (1988 [1993], p. 437). Moravcsik (1993) notes that even the more extensive application of Putnam's metaphor to eleven case studies (Evans, Jacobson and Putnam, 1993) served only as a series of 'plausibility probes' to add to the development of the double-edged diplomacy approach. In this dissertation I engage in a plausibility probe and lay the foundation for applying Putnam's approach to the study of future audiovisual sector talks in multi-issue negotiations.

determinants, which refer to the chief negotiator's bargaining with the chief negotiator from another country (level I). I operationalise level II 'discussions' as both *actual* communication between negotiator and domestic constituent, as well as the *political influence* of the domestic constituent on the government represented by the negotiator. Political influence as it relates to the U.S. government is defined as political fund-raising activity and overall clout in Congress and the executive branch. Political influence as it relates to an EU Member State is defined as political clout in the Commission and Council of the EU. The terms 'chief negotiator' in a level I analysis is broadened to include negotiators working on the chief negotiator's behalf.¹²⁰ I use Putnam's approach to test Schiller's three propositions and Jarvie's two themes in historical U.S. government/film industry relations throughout my analysis. It should be noted that each proposition by itself is too limited to bring to light the key details of the audiovisual sector talks. However, as my analysis moves from Schiller's first proposition to his second and third, I approach the talks from different angles and, in the process, add greater detail as I progress.

¹²⁰In multi-sector talks, each country assigns teams of negotiators who report to the chief negotiator and who have a particular expertise to handle one or more dossiers. Don Phillips, chief U.S. negotiator on aeronautics issues during the Round, commented: "As we came into the final stage, as with every other issue, there was a way of proceeding which basically involved Ambassador Kantor and Sir Leon Brittan meeting with one or two other key aids and reviewing all of the issues and trying to move them together.... Sometimes what they would do is bring in two or three of the key negotiators on each side responsible for everything, then they'd bring in one or two people who worked on a particular issue and shuttle them out after that was discussed. But in other cases, they just worked on an issue themselves" (interview with author, 9 April 1997).

Proposition 1: U.S. Media Corporations Dictate the U.S. Government's Foreign Trade Agenda

In Chapter 4 I apply a level II analysis to examine how U.S. domestic trade politics hampered efforts by U.S. negotiators to reach a bilateral accord in the audiovisual sector talks because of linkages forged by EU Member States between progress in those talks and progress in talks on agriculture, maritime transport services, geographic indications related to wines and anti-dumping.

I then apply a level I analysis to look at the U.S. government's choice at the end of the Round of either risking the entire Round by fighting for the Hollywood lobby's interests, or opting to let the audiovisual sector talks continue after the Round's conclusion and securing gains made in other sectors.

Proposition 2: U.S. Media Corporations Are No Longer Dependent on the U.S. Government in Removing Global Trade Barriers

In Chapter 5 I apply a level II analysis to examine the U.S. government/film industry relationship during the CUFTA, the development of the Television Directive and the NAFTA, and how the U.S. film industry's defeats in these trade agreements and legislation lead to the Hollywood lobby's high expectations of the U.S. government for the Uruguay Round. I then examine the relationship between the U.S. government and film industry in the Uruguay Round, focusing on the influence of the Hollywood hawks on the USTR's positions on audiovisual services and IPRs related to copyright.

In Chapter 6 I apply a level I analysis to examine efforts by the hawkish element of the Hollywood lobby to circumvent the authority of U.S. negotiators by bargaining directly with the French delegation. I examine the perception of the Hollywood lobby that the U.S. government in the final moments of the Round had abandoned it to secure gains in other sectors, and compare this perception with actual U.S. government efforts to satisfy the lobby and with mistakes made by the hawks that in the end prevented a bilateral accord on audiovisual services and IPRs related to copyright.

Proposition 3: U.S. Negotiators Could Not Overcome French Opposition in the Uruguay Round Audiovisual Sector Talks

In Chapter 7, Part I, I first apply a level II analysis of the trade politics during the Round involving the European Commission, Council of the EU and individual Member States that led to the EU's positions on audiovisual services and IPRs related to copyright. I examine the French diplomatic and public opinion campaign to secure the cultural exception. I also examine the European Commission's campaign to secure the cultural specificity. In Part II I apply a level I analysis to the battle over Sir Leon Brittan's negotiating mandate.

Limitations on Research

This dissertation will not present an exact sequence and substance of all sector negotiations during the Round; it focuses on the negotiations on audiovisual services and IPRs related to copyright and those sectors that were linked to the talks by the EU and the United States. Sectors linked to the audiovisual sector talks were selected based on information from interviews with participants involved in or close to the negotiations. Furthermore, each

of the 'linked' sectors could be the subject of a dissertation and will not be analysed in the same depth as the audiovisual sector talks. However, even the analysis of the audiovisual sector talks, while based on new information that sheds light on the topic, will not cover every meeting and every negotiation involving the EU and America simply because the exact number of such meetings will remain unknown until one day all memos, letters, negotiating instruments, etc., are released to the public. What will be covered are the key events in the audiovisual sector talks and their chronology.

CHAPTER 4
— LEVEL II ANALYSIS —
COMMUNICATION AS A COMMODITY IN
THE URUGUAY ROUND

One of the central goals of the North American tradition of political economy of communication is to understand the relationship of government or the state to the media industry (Mosco, 1996). Mosco (1996) argues that political economists tend to focus on the technological and economic aspects of corporate power, while underplaying the political aspects. If the political aspects are addressed, thematically the state is seen as supporting transnational business. Furthermore, Mosco suggests that the commodification of communication is a productive 'entry point' into rethinking political economy. Mosco defines commodification as "the process of transforming use values into exchange values, and the manifold ways this process is extended into the social field of communication products, of audiences, and of labor..." (1996, p. 139). He observes that political economists of communication tend to "foreground corporate and state structures and institutions" (1996, p. 145) in the analysis of commodification. When the commodity itself is examined, Mosco notes that political economy focuses on media content and audiences (i.e. Smythe, 1977; Meehan, 1984; Schiller, 1989; Garnham, 1990). I argue that by examining the political aspects of the commodification of communication, a new perspective emerges on the 'support' the U.S. government thematically offers U.S. media corporations.

Mosco comments that "communication is taken to be a special and particularly powerful commodity because, in addition to its ability to produce

surplus value (thereby behaving like all other commodities), it contains symbols and images whose meaning helps to shape consciousness" (1996, p. 147).¹²¹ However, media scholars need to take a closer look at how the state views the communication commodity. Despite the 'particularly powerful' nature of the commodity, the U.S. government treats it *like all other commodities* in trade negotiations involving many industry sectors. Schiller (1969 [1992]) believes U.S. media corporations dictate the U.S. government's foreign trade agenda. He steadfastly believes the communication commodity is of paramount importance to the U.S. government. If Schiller is correct, then the U.S. government should have satisfied the Hollywood lobby at the expense of other U.S. industries during the Uruguay Round, such as agriculture and maritime transport services.¹²² However, empirical evidence suggests that U.S. negotiators in the Uruguay Round considered the Hollywood lobby's interests a priority, but considered the interests of other U.S. industries a higher priority.

Hollywood's Political Influence in Geneva: The EU Linkage Factor

U.S. domestic trade politics hampered efforts by U.S. negotiators to reach a bilateral accord in the audiovisual sector talks because of linkages forged by EU Member States between progress in negotiations on audiovisual services and IPRs related to copyright and progress on issues *other* than audiovisual and copyright. For example, U.S. domestic politics involving Congress and

¹²¹Braman (1990) writes: "The suggestion that international information flows can and should be treated in exactly the same way as trade in tables and chairs offends many as the ultimate stage in a commoditization process that has been resisted all along the way...." (pp. 371-72).

¹²²Maritime transport services include international shipping per se, auxiliary services such as handling, storage and warehousing; and port facilities.

the U.S. maritime transport services industry forced U.S. negotiators to protect the domestic maritime transport sector from liberalisation, which, in turn, hindered efforts to satisfy the Hollywood lobby because EU Member States to varying degrees had forged linkages early in the Round between progress in the audiovisual sector talks and progress in the maritime transport talks.¹²³ According to the U.S. Advisory Committee on Trade Policy and Negotiations (ACTPN), "during the negotiations, the U.S. Government repeatedly stated that its objective was to exclude maritime services from any substantive agreement" (1994, p. 56). Schwab (1994) writes that the battle over a Senate rules change in the late 1980s to eliminate fast-track procedures and over fast-track extensions in 1991 and 1993 "carried with them their own price tags" (p. 224). In a footnote Schwab comments: "Such efforts by the maritime industry, and threats by the textile lobby, had the effect of persuading the administration to take the former industry off the negotiating table in the Uruguay Round and to moderate its negotiating stance with respect to the latter" (1994, p. 224).

¹²³According to Mr. Arnaud Bordes, a services specialist for DG-1, the EU pushed for a three-pillar approach to liberalisation in the maritime sector, thereby ensuring commitments would translate into effective, transparent behaviour, without having non-tariff trade barriers nullifying progress (interview with author, 22 March 1996). According to Mr. Bordes, on Pillar One (international maritime transport) the EU wanted EU shipping companies to be able to set up their own subsidiaries in foreign markets, particularly the US market. On Pillar Two (auxiliary services) the EU wanted its shipping companies to be able to invest in foreign markets to vertically integrate the intermodal services of its 'liner' shipping, which is scheduled container shipping, to better control the quality of products shipped abroad. On Pillar Three (access to and use of port facilities) the EU did not want to open foreign markets to supply its own services, such as pilotage, berthing, and refuelling; here the EU wanted a guarantee that as a consumer of these services, it would not be discriminated against. The EU believes that their vessels take more time to find a berth, clear customs, etc., in foreign, particularly U.S., ports, while national vessels are processed swiftly.

Karl Falkenberg confirmed that “maritime was explicitly linked to audiovisual.”¹²⁴ He articulated the argument adopted by EU Member States with strong maritime interests such as Greece and Denmark and encouraged by France: “We said, where is the logic, where is the coherence in saying Europe has to open audiovisual services to allow Hollywood to flood the market, but the U.S. are not willing to open their maritime market?”¹²⁵ From the U.S. perspective, the French government encouraged this linkage as a tactical move, despite having its own interests to protect in maritime services.¹²⁶ Perhaps the French government observed U.S. maritime politics and concluded the USTR would not be able to make concessions in the

¹²⁴Waregne (1994) notes that during a 113 Committee meeting, one unspecified country proposed to offer the audiovisual sector for the maritime transport services sector. Waregne writes: “Cette tendance a la globalisation des dossiers se retrouve dans les autres domaines du cycle de l’Uruguay” (1994, p. 25). [“This tendency of the globalisation of the dossiers can be found again in other sectors of the Uruguay Round.”]

¹²⁵Of particular concern to the EU was Section 27 of the Merchant Marine Act of 1920, also known as the Jones Act, which states in part: “That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by...this Act....” (Chapter 250, 66th Congress, p. 999).

¹²⁶Mr. Scheele commented: “The French were a bit defensive about their strategic cargoes, which they wanted to take a reservation on. The French believed that all strategic cargoes like petroleum and gas were supposed to be carried under French flag. The Commission said this was illegal under Community law so why should the Community put it into a reservation. Moreover, such a move would go against Europe’s interest in liberalising the sector. In fact, the French wanted to hang onto their bulk cargo and were always a bit reluctant to really play the liberal maritime card.”

sector.¹²⁷ To give themselves a more defensible position in audiovisual, they encouraged the link with maritime transport services.¹²⁸

A second obstacle to satisfying the Hollywood lobby was agricultural reform. One of the U.S. government's objectives for the Uruguay Round was to curb agricultural subsidies and to cover rules for trade in agriculture under the GATT regime.¹²⁹ Paarlberg (1997) notes that "high priority was consistently given to agriculture in the Uruguay Round, despite the troubles this caused for other sectors" (p. 3). According to Destler (1995), the central problem of the Uruguay Round was the agricultural sector: "This was the major area of economic activity least constrained by GATT rules, and the United States stood to gain (for many products) if markets were opened and subsidies reduced" (p. 134). Paemen and Bensch (1995) note that even in the

¹²⁷The Advisory Committee on Trade Policy and Negotiations (1994) notes that the American maritime industry "sought the explicit exclusion of maritime matters (port or auxiliary services or ocean shipping) from any GATS. During the negotiations, the US Government repeatedly stated that its objective was to exclude maritime services from any substantive agreement" (p. 56).

¹²⁸The European Commission's (1995b) guide on the Uruguay Round services agreement notes that although the liner trade — ocean transport of intermediate and finished goods — only consists of 20 percent of global trade, international competition for its control is stronger than bulk trade — the transport of oil, liquid gas, coal, ores, chemicals, etc. — which constitutes the remaining 80 percent of world trade. The European Commission adds that liner trade involves containers and state-owned port facilities and services. Only a handful of privately owned ports are open to general trade.

¹²⁹According to the Industry Policy Advisory Committee (IPAC), U.S. negotiating objectives in the agricultural sector were "to eliminate over 10 years all export subsidies, all tariff and non-tariff barriers, and all domestic subsidies, and to institute uniform and non-discriminatory food health regulations" (1994, p. iv). However, IPAC notes that not all of these objectives were achieved.

early 1980s the U.S. had been engaging in 'pre-negotiation negotiations' with ministers of GATT contracting countries in an attempt to start a new GATT round, and that these negotiations centred on the agricultural sector and French opposition to agricultural reform.

According to Frans Andriessen, EU trade commissioner and chief political negotiator from 1988 to January 1993, when the United States and EU signed the Blair House agreement¹³⁰ in November 1992, Member States with strong interests in agriculture directed their frustration over the agreement by backing the French government against the United States on audiovisual issues (interview with author, 13 January 1997). Trevor Heaton, head of the trade policy unit of the Council's General Secretariat during the Round, observed: "The French felt that if they were not going to get a good deal on agriculture, they were quite willing to block, even from a Community point of view, the whole Round. From 1992 to 1993 the whole Round was on hold because of the agriculture question" (interview with author, 11 April 1997).¹³¹

¹³⁰Paarlberg (1997) writes: "Not until November 1992, almost two years after the failed 1990 Brussels ministerial, did the U.S. and the EU finally reach a sufficient agreement on agricultural reforms (the 'Blair House' agreement) to allow the rest of the Uruguay Round to escape paralysis and move forward. And even at this point, French objections over the agricultural question (a charge that the EU Commission had exceeded its negotiating authority) were enough to force another full year of delay. Not until the terms of the original Blair House agreement were substantially weakened, in December 1993, was a final agricultural agreement reached, allowing the rest of the Uruguay Round to be brought, at last, to completion" (pp. 30-31).

¹³¹Epstein's (1997) insightful analysis of the French government's departure from its traditional dirigiste model in the Round's agriculture negotiations suggests that the problems associated with the agriculture sector had a great deal to do with the French domestic scene. Epstein argues that the French government during the 1991-1992 timeframe took a protectionist stance on agriculture issues out of political necessity because of the Socialists' lack of popularity in the polls and because of concerns over the threat of violence by

Mr. Andriessen commented that at the time of the Blair House agreement (November 1992), “there were several countries backing France, but not saying it too openly: Italy, Spain, Ireland, Belgium, Portugal, all the Mediterranean countries because Blair House was not favourable to the Mediterranean agricultural industries” (interview with author, 13 January 1997). It is interesting to note that David Hollister, Mr. Heaton’s deputy during the Round, recalls a clear line between Member States in the 113 Services Committee that had originally supported the Television Directive (France, Spain, Italy, Portugal) — what Mr. Heaton calls ‘Club Med’ — and those that took a more liberal view towards the audiovisual sector (Britain, Germany, Denmark, Holland). Although he was succeeded by Sir Leon Brittan in January 1993, Mr. Andriessen continued to observe the agriculture talks and noted a significant correlation between EU Member States that had been unhappy with the Blair House agreement and those that had supported French objections (to varying degrees) to covering the audiovisual sector under GATT-WTO rules and disciplines.

French farmers. In fact, Epstein notes that “the government’s choices were constrained, if not dictated, by the political impossibility of agreeing to a compromise. At the same time, the government was subjected to a series of *domestic* and *international* pressures, which resulted in a clash between protectionist views and the advantages of a free market, and placed limitations on the government’s ability and desire to shape trade policy as it had for the previous four decades” (italics added for emphasis) (1997, p. 94). Epstein adds that the new Balladur government’s ability to break free from these constraints was weakened by a limited room to manoeuvre on economic policy. Perhaps unwittingly, Epstein confirms Putnam’s two-level approach to negotiations.

A third obstacle to satisfying the Hollywood lobby was the U.S. position in the TRIPs talks on geographic indications related to wines.¹³² According to Ms. Field, U.S. negotiators examined the possibility of proscribing the domestic use of certain common indications important to wine-producing EU Member States as a way of evening the trade balance in relation to U.S. exports of films, sound recordings and software to the EU and perhaps gaining some concessions from Commission negotiators on Member States' audiovisual levies.¹³³ According to Dr. Jacques Gorlin, a lobbyist specialising in intellectual property issues for Time Warner, IBM and several pharmaceutical companies, Mr. Peter Karl, the Commission's lead negotiator for IPRs issues, at one point in the IPRs negotiations offered to make concessions on the issue of national treatment of levies on blank tapes in

¹³²Article 22(1) of the TRIPs states: "Geographical indications are, for the purpose of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin" (GATT, 1994b, p. 375). Article 24 requires Members to enter into negotiations to increase protection of indications related to wines and spirits, as this issue — particularly important to the United States, France, Germany and Italy — was not resolved during the Round. This issue has a thirty-year history involving several bilateral agreements between the United States and Europe. For example, the USTR's 1993 annual report on worldwide trade barriers notes that in return for U.S. recognition of three French distilled spirits (Cognac, Armagnac and Calvados), France recognises Bourbon (found in USTR, 1994, p. 79).

¹³³According to Ms. Field, U.S. Alcohol, Tobacco and Firearms (ATF) regulations include an unprotected list of 16 wines and spirits (champagne, chablis, etc.) that are considered 'semi-generic.' Semi-generic means it is obvious to the consumer that a bottle of California champagne does not originate from France. Ms. Field noted that the EU was not questioning the level of protection granted to protected wines and spirits under the ATF, which is a division of the U.S. Treasury. However, the EU wanted several of the semi-generics, particularly champagne, moved into the protected category (interview with author, 11 June 1997).

return for concessions on the use of appellations associated with wines.¹³⁴ Dr. Gorlin noted that although France was not the only wine-making country pushing for U.S. protection of the list of semi-generic names, France took the lead on this issue (interview with author, 28 March 1997). Ironically, France had forged a linkage between two sectors it felt highly protective of: viticulture and audiovisual. France's approach to the audiovisual sector talks will be examined in greater detail in Chapter 7. However, Ms. Field notes that the California wine-producing industry was opposed to such a move because of the investment required to rename and remarket its products and therefore the attempted tradeoff never materialised.¹³⁵

¹³⁴Dr. Gorlin commented: "The Europeans said to us, if you want us to give in on some of our cultural issues, you've got to recognise and give us something on an issue that is critical to us, which is appellations of origin. Europe said that we want to be able to come into the U.S. and stop you from using some of our appellations for U.S. produced wine, like champagne, and they got nowhere on this. So what happened was that the French didn't get much on geographical indications and that was one reason why they weren't going to budge on national treatment of subsidies" (interview with author, 28 March 1997).

¹³⁵Ms. Field noted that other wine-producing countries, such as Canada, Australia, Chile and Argentina were also opposed to EU efforts to increase protection of their wines and spirits as well. She commented that the EU was only able to secure language in the TRIPs that requires WTO Members to "provide the legal means for interested parties" to prevent the use of a geographical indication identifying wines and spirits for wines and spirits "not originating in the place indicated by the geographical indication in question" (Article 23(1), GATT, 1994b, p. 376). This requires future negotiations in the Council of the EU "concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system" (Article 23(4), *ibid*) (interview with author, 11 June 1997).

A fourth obstacle was the U.S. government's objective not to radically change U.S. domestic anti-dumping¹³⁶ legislation in the Round. The Advisory Committee on Trade Policy and Negotiations (1994) notes that anti-dumping law "has become the primary U.S. law that domestic industries invoke to protect themselves from unfairly traded imports" (1994, p. 86). The committee lists among U.S. objectives for the Round to "maintain the functional and methodological effectiveness of the U.S. anti-dumping law by resisting changes to the anti-dumping code which might require the weakening U.S. law (sic)" (1994, p. 87). According to a reliable source, who spoke on condition of complete anonymity, the feeling among U.S. negotiators was that Congress would not enact the Round's implementation legislation if it had to change domestic anti-dumping laws. "Ultimately, Europe's willingness to agree to some of the U.S. measures on anti-dumping might have been part of the equation that was considered in Washington to say, 'Ok, this is an acceptable deal even though we don't satisfy Hollywood.'" (interview with author, 16 April 1997). The U.S. and EU forged an anti-dumping agreement two days before the end of the Round.¹³⁷

The U.S. Government's Dilemma: Satisfy Hollywood or Save the Round?

(Level I Analysis)

A fifth obstacle to a U.S./EU audiovisual accord appeared in the final hours of the Round, when U.S. and Commission negotiators engaged in what

¹³⁶Dumping is a term applied to an unfair trading practice in which goods are sold abroad below cost or below the domestic price of the goods.

¹³⁷According to the *Financial Times*, "anti-dumping laws affected no more than 0.5 per cent of US imports between 1980 and 1993, and in most years the level was far lower. Only about 44 per cent of the cases filed resulted in the imposition of anti-dumping duties" (6 May 1998, p. 4).

Ambassador Hugo Paemen, head of the Commission's negotiating team, called 'horse-trading' involving four unresolved sectors: maritime transport services, financial services,¹³⁸ aeronautics¹³⁹ and audiovisual services (interview with author, 25 April 1997). Putnam (1988 [1993]) notes that the chief negotiator must make tradeoffs across different issues in a multi-issue negotiation, or each constituency will 'fix' the international negotiation position, making the package non-ratifiable. On traders in a multilateral negotiation Hoekman (1989) comments: "a great deal of care is taken to establish an agenda that includes some topics or issues of interest for each of the parties that are willing to trade" (p. 695). Hoekman adds that linkages

¹³⁸Key (1996) notes that the United States and EU both wanted commitments to the liberalisation of the financial services sector, particularly from emerging market countries, but that they differed on the approach. Key comments: "The European Union's priority was putting in place a multilateral agreement under the newly created WTO with binding commitments subject to dispute settlement, even if some of the commitments to liberalization were weak. The United States was unwilling to allow emerging market countries to become so-called free riders" (1996, p. 178). Key defines a free rider as follows: "A country that does not offer strong commitments to open its own financial services market can become a free rider; that is, without opening its own market, its financial firms benefit from the openness to which other countries have committed" (ibid).

¹³⁹One of the key issues in the aeronautics negotiations involved multilateralising a bilateral agreement between the United States and EU on government support for the civil aircraft industry. According to Don Phillips, chief U.S. negotiator on aeronautics issues, the bilateral agreement, reached in July 1992, limited the amount of subsidies the U.S. government and EU countries could provide to Boeing and Airbus respectively. Mr. Phillips noted that during the Uruguay Round a primary sticking point on the bilateral agreement was the EU's assertion that the United States had been circumventing the agreement by providing indirect support to the U.S. aircraft industry through R&D programmes of NASA and the Department of Defense.

across issues tend to occur at the end of a multilateral trade negotiation and tradeoffs tend to be made under time constraints by senior political officials.¹⁴⁰

Ambassador Paemen described the 'horse trading' as "trying to squeeze each other and trying to get as much out of it as we could on our side." He added that "at different moments, one side brought in this issue, the other side brought in that issue, and we were playing games in order to try to get the best package" (interview with author, 25 April 1997). It is difficult to determine exactly how the horse-trading affected negotiations on audiovisual services and IPRs issues because, as Hoekman (1989) argues, decisions on tradeoffs at the end of a multilateral negotiation tend to be taken without a great deal of analysis. However, the horse-trading, along with the other four obstacles discussed above, seems to have affected the audiovisual sector talks by delaying Commission negotiators from making an offer until within hours of the Round's 15 December 1993 deadline, leaving U.S. negotiators with a choice of either salvaging gains in other key sectors and concluding the Round without satisfying the Hollywood lobby; or fighting for a better offer on behalf of the Hollywood lobby and risking the entire Round. The USTR chose the former. The first theme developed from Jarvie's (1992) work — that in international trade negotiations involving many industry sectors, the

¹⁴⁰Hoekman (1989) writes: "Historically, GATT Contracting Parties have tended to constrain themselves to trade-offs within issue-areas, owing to their practice of establishing separate negotiating 'groups' for each issue. As a result, any attempts to link *across* issues have generally been made only at the end of a negotiation, since it is only then that positions on issues are completely mapped out and the need for linkage becomes clear. However, trade-offs at this point tend to be made at a high political level, under substantial time pressure, and with little (if any) analytic input. In addition, linkage at this point tends to focus more on achieving a balance of gains and concessions (reciprocity) than on increasing potential joint gains" (p. 696).

U.S. government tends to place the interests of other U.S. industrial lobbies ahead of the those of the Hollywood lobby — appears to be substantiated by the actions of the U.S. government at the conclusion of the Round.

According to a senior Hollywood executive, Jack Valenti realised that the U.S. motion picture industry was relatively insignificant. “We’re really only based in one or two states¹⁴¹ and we don’t generate that many votes in Congress, at least compared to the maritime industry” (interview with author, 29 November 1995).¹⁴² Indeed, the executive believes the U.S.

¹⁴¹In July 1989, Mr. Valenti announced that the MPAA would move from its headquarters in New York City to Los Angeles (*Los Angeles Times*, 23 July 1992, p. F1). “We are confronting a realistic fact of life,” said Mr. Valenti. “The entire movie industry is now located in Los Angeles” (ibid). However, the number of films shot in the state of New York has risen steadily since 1995. According to the New York State Governor’s Office for Motion Picture and Television Development, the number of films shot in the state increased 53 percent between 1995 and 1997. In 1997, 277 films were shot, up from 229 in 1995 and 258 in 1996 (State of New York, 1998, p. 1). Moreover, in June and July 1998, plans to build two high-tech film and TV production studios in New York City were announced: a \$120 million complex in Manhattan (Hudson River Studios, 1998), and a \$160 million complex in Brooklyn (New York Studios, 1998). New York City currently has 300,000 square feet of usable soundstages; the two new complexes will add roughly 1.1 million square feet. However, Hollywood has 3.6 million square feet of soundstages (New York Studios, 1998, p. 1).

¹⁴²According to Makinson and Goldstein (1992), the U.S. maritime transport industry contributed \$5.1 million to federal election campaigns in 1992, \$2 million of which came from shipping companies and \$3.1 million came from sea transport unions (p. 83). At the same time, the authors estimate that the U.S. media and entertainment industry contributed \$8 million to federal election campaigns (1992, p. 50). However, the top 25 U.S. ports are located in 16 states and Puerto Rico (U.S. Industry and Trade Outlook ‘98 1998, p. 43.9). While core copyright industries contributed \$226.5 billion in 1992 (in real 1993 dollars) to the U.S. economy (Siwek and Furchtgott-Roth, 1995, p. 9), in the same year the maritime transport industry contributed \$10.4 billion (in real 1992 dollars) (U.S. Industry and Trade Outlook ‘98, 1998, p. 43.2). Moreover, the leadership of the Senate Finance Committee of the 103rd Congress hailed from states containing one of the top 25 U.S. ports. Daniel Patrick Moynihan,

government faced a similar dilemma in the Canadian-U.S. Free Trade Agreement and North American Free Trade Agreement, which led to high expectations among Hollywood executives for the Uruguay Round. The executive commented: "We got thrown over on the Canadian Free Trade Agreement, where the U.S. government thought we weren't big enough to sink the agreement; then we got thrown over on NAFTA, and now the GATT."¹⁴³ Bonnie Richardson commented: "How did the CUFTA and NAFTA build expectations in Hollywood for the Uruguay Round? Having been tossed overboard at the last minute in both the CUFTA and the NAFTA negotiations, the filmed entertainment community was CERTAIN the U.S. government would not mistreat it again (e-mail message, 29 January 1997). Perhaps U.S. media corporations are not as important to the U.S. government as Schiller argues.¹⁴⁴

a Democrat from New York, chaired the Committee, while Bob Packwood, the ranking Republican, came from Oregon. On the House Ways and Means Committee, a majority of the Democrats and half of the Republicans hailed from states with one or more of the top 25 ports.

¹⁴³This intriguing claim should be pursued further by an enterprising media scholar. Although evidence supporting the executive's claim is difficult to find, this does not mean the claim has no validity. Indeed, Feketekuty (1988) notes that the maritime transport sector in the CUFTA was excluded from the final agreement because of determined opposition by the U.S. shipping industry to keep the Jones Act in force. He comments: "After resisting Canadian pressures, U.S. negotiators proposed a compromise, exempting Canada from future extensions of the Jones Act to new areas. Even that proved more than the industry could accept, and it succeeded in mobilizing congressional opposition, forcing the administration to withdraw its compromise proposal" (1988, p. 187). On the NAFTA, Wilkinson (1993) notes that U.S. maritime interests were able to ensure that Great Lakes and ocean shipping were excluded from liberalisation.

¹⁴⁴Ironically, the U.S. agriculture industry understands Hollywood's frustration over the Round. The Advisory Committee on Trade Policy and Negotiations (1994) notes: "For the first time, agriculture was not dropped from the [GATT] negotiations at the last minute to get better deals in other

CHAPTER 5

—LEVEL II ANALYSIS—

BUILD UP TO THE URUGUAY ROUND:

CUFTA, NAFTA AND THE TELEVISION DIRECTIVE

Mosco suggests that political economists take a 'microanalytic' approach to the study of power in the communication industry, focusing on individuals as social actors, to balance macroanalytic tendencies toward examining business and government structures. He grounds his micro-macro approach in Giddens' (1984) theory of structuration and the microanalytic concept of 'agency.' By examining what he calls the "social relations of communications practices" (1996, p. 216), Mosco argues that "out of the tensions and clashes within various structuration processes, the media come to be organized in their full mainstream, oppositional, and alternative forms" (ibid). He notes that even when political economists take a microanalytic approach to the communication industry, "these decisions tend to be normalized as the objective assessments of the bottom line, which is, in effect, a measure of a balance of macro-pressures" (1996, p. 214). Mosco adds that "objective assessments are also glosses on a set of micro-power struggles that can grow out of the narrow interests of specific executives or board members" (ibid). To understand the relationship between the Hollywood lobby and the U.S. government during the Uruguay Round, one must focus on the consequences of a micro power struggle among Hollywood lobbyists to balance the macro-pressures facing the USTR, which were discussed in the previous chapter. Indeed, 'out of the tensions and clashes' between the areas" (1994, p. 43).

Hollywood lobby and the U.S. government, the U.S. agenda for and approach to the audiovisual sector talks 'came to be organized.'

Bilateral and Multilateral Trade Negotiations

Despite Valenti's (1968) characterisation of the MPA as the 'little State Department,'¹⁴⁵ the association still needs U.S. government intervention on a bilateral and multilateral basis. A reliable source, who requested complete anonymity, notes that it is much easier for the U.S. government to develop a good relationship with individual Member States when the issues being negotiated are national issues, rather than EU-wide issues such as the quota provisions of the Television Directive (interview with author, 19 January 1996). Guback (1969) makes a strikingly similar point about Hollywood lobbyists: "Although the American companies may be influential when individual European countries generate policy for their own film industries, their influence on a supra-national level is not as great and they can only assume the role of powerful, interested observers" (p. 97). The U.S. government also exchanges information on foreign markets with the MPA. Bonnie Richardson, the MPAA's vice president for trade and federal affairs in Washington, DC, commented on the Uruguay Round: "At a working level, the U.S. government regularly conferred on worldwide barriers and on market access. And at a higher level, consultations were regular between Mickey Kantor and Jack Valenti" (interview with author, 23 February 1996).

¹⁴⁵Valenti (1968) writes: "If we describe our operations as a 'little State Department,' that is exactly what it is. Each day, somewhere in the world, negotiations, discussions, talks are going on in behalf (sic) of the industry. To my knowledge, the motion picture industry is the only U.S. enterprise that negotiates on its own with foreign governments (p. 22).

But did these consultations mean the relationship between the U.S. film industry and government was productive and close?

Schiller (1969 [1992]) argues that U.S. media corporations are no longer dependent on the U.S. government in removing global trade barriers. If Schiller is correct, then the Hollywood lobby alone should have negotiated a bilateral accord on audiovisual services and IPRs related to copyright in the Uruguay Round that satisfied its interests. However, in negotiations for trade agreements such as the CUFTA, NAFTA and GATT, *all* U.S. industries rely on the U.S. government to negotiate a deal for them. Schiller must understand the nuances of U.S./EU trade negotiations before making blanket statements. First, there are trade negotiations, which can involve one or more industry sectors, at a *national* or *bilateral* level. At this level, the U.S. film industry can (1) act as the 'little State Department' and operate on its own, (2) solicit help from the U.S. government, or (3) allow the U.S. government to 'self-initiate' action against a country. Second, there are negotiations toward major international trade agreements involving many industry sectors on a *multilateral* or *supranational* level, in which government personnel are the official negotiators and, as Guback (1969) points out, Hollywood executives 'can only assume the role of powerful, interested observers.'¹⁴⁶ When the U.S. government negotiates on a *supranational* level toward trade agreements with the EU involving *many* industry sectors, the U.S. film industry has to rely on its political influence weighed against the influence of more powerful U.S. industries, such as

¹⁴⁶However, during the final moments of the Uruguay Round, the more aggressive members of the Hollywood lobby negotiated *directly* with the French delegation!

agriculture and maritime transport services. When this happens, the U.S. film industry tends not to get what it wants. However, what is not clear is whether the U.S. government is not doing enough to remove barriers to Hollywood products, or, because the U.S. government serves as the voice of the Hollywood lobby — and that voice tends to be loud and threatening — whether obstacles to agreements are erected *by the lobby itself*.

Empirical evidence suggests that particularly aggressive members of the Hollywood lobby entered the Round with an 'all or nothing' attitude. This attitude hampered efforts by U.S. negotiators to strike a deal on audiovisual services and IPRs related to copyright with the EU. In this chapter I highlight some of the key aspects of the government/film industry relationship to reveal that it is often counterproductive and fraught with misunderstanding — a far cry from the theme in political economy that the state is seen as 'supporting' transnational media corporations (Mosco, 1996).

Hollywood's High Expectations for the Uruguay Round

To understand the U.S. government/film industry relationship during the Uruguay Round, several U.S. officials and Hollywood executives suggested that I look back at the relationship during the CUFTA and NAFTA and the development of the Television Directive in Europe.

On 1 January 1989, three months before the Council of Ministers reached a common position on the Television Directive, the CUFTA took effect. During the negotiations, Canadian Prime Minister Brian Mulroney vowed to protect Canada's cultural industries from trade liberalisation. According to a senior U.S. trade official who negotiated on audiovisual issues during the

CUFTA's talks, the Canadians made it clear from the start that the cultural exclusion was non-negotiable, a contentious manoeuvre that the official believes helped push the treaty through Canada's political system (interview with author, 2 February 1996).¹⁴⁷ According to the official, Mr. Valenti still remembers the phone call from Mr. Howard Baker, at the time chairman of the U.S. Economic Cabinet Council under the Bush Administration, who told him that the U.S. government could not persuade the Canadians to include their cultural industries in the agreement.¹⁴⁸

Bhagwati's (1989) analysis of the rationale of U.S. exporters for opening foreign markets in the 1980s has particular relevance to Mr. Valenti's

¹⁴⁷Article 2005 of the CUFTA exempts most cultural industries from the treaty's provisions (CUFTA, 1988, p. 396), while Article 2012 defines cultural industries as an enterprise engaged in any of the following activities:

- the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing,
- the production, distribution, sale or exhibition of film or video recordings,
- the production, distribution, sale or exhibition of audio or video music recordings,
- the publication, distribution or sale of music in print or machine readable form, or
- radio communication in which the transmissions are intended for direct reception by the general public, and all radio, television and cable television broadcasting undertakings and all satellite programming and broadcast network services (CUFTA, 1988, p. 295).

¹⁴⁸However, the CUFTA includes a provision for cable retransmission rights which benefits Hollywood. Prior to the CUFTA, Canadian cable and satellite broadcasters could simultaneously retransmit copyright work to individual homes without infringing copyright because the work was not considered a 'public performance' or 'radio communication' of the work under Canadian law. The CUFTA prohibits this practice, forcing Canadian cable systems to pay royalties for retransmission, U.S. copyright holders being the primary beneficiaries.

argument against Canada's protectionism. Bhagwati writes: "If [companies] sell in other markets, as most do, they can also ease the pressure of competition on themselves by asking for, not higher import barriers *against* others, but lower import barriers *by* others" (italics added for emphasis) (1989, p. 452). He notes that this strategy is an alternative to the 'old-fashioned' demand for import protection, which spreads protectionism in other countries. This strategy also has the advantage of fitting within an 'unfair competition framework,' the rationale for which is that if your country's protection is greater than ours, then your system is unfair (ibid). An example of this kind of rhetoric can be found in Valenti's (1988) arguments against Canada's planned restrictions on foreign distributors: "We want no protection from, tariffs on, or barriers to Canadian movies or any other country's creative works. There are no restrictions of any kind to the free movement of foreign creative material in the United States" (p. 21).

When details of the draft NAFTA between the U.S., Canada and Mexico were released in early September 1992, the Canadians had once again refused to negotiate on their cultural industries by preserving the CUFTA's cultural exclusion. From the MPA's perspective, the NAFTA's draft language issued a 'soiling precedent' for the Uruguay Round negotiations (Burshstein, 1993). Mr. Emery Simon, a former deputy U.S. Trade Representative, comments that the cultural exclusion in the CUFTA served as a precedent for the NAFTA for two reasons. First, several Canadian ministers felt they had pledged to the Canadian people not to negotiate on cultural industries and therefore found themselves 'boxed-in' by the CUFTA. Second, and more apropos to the Uruguay Round negotiations on IPRs related to copyright, Simon argues that the "the Quebecois did not want to pay money to the

United States for private copying levies. So they wanted to maintain the possibility of having a discriminatory private copying system...." (Panel Discussion on GATT and NAFTA, 1993, p. 287).¹⁴⁹ During the Uruguay Round's IPRs negotiations on copyright, U.S. negotiators argued that EU Member States were applying levies on blank tapes in a discriminatory manner, as most of the films on European screens and in European video shops are U.S.-made, yet U.S. rightsholders (producers) do not get their share of the royalties under European law.¹⁵⁰ Indeed, Ambassador Bernard Miyet, France's 'roving' ambassador on audiovisual issues during the Round¹⁵¹,

¹⁴⁹However, while the draft language acted as a 'soiling precedent' for the Uruguay Round, it could not apply to future signatories to the NAFTA, as the exclusion only applies to Canada (Burshtein, 1993). Also, Cadsby and Woodside (1993) note that the NAFTA was more than just an expansion of the CUFTA because it introduced protection of IPRs. Bikoff and Wilson (1994) explain that Article 1703(1) of the NAFTA requires member countries to abide by the principle of national treatment — to extend to signatories "treatment that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights" (p. 29). However, the cultural exclusion exempts Canada from having to apply the national treatment principle to issues related to cultural industries. The authors add that "Canada is permitted to discriminate against US cultural industries by denying national treatment or by failing to extend the NAFTA minimum level of IPR protection" (1994, p. 30).

¹⁵⁰According to a Commission official close to the audiovisual sector talks during the Uruguay Round, the United States is correct in its assertions that these levies are discriminatory. Indeed, the official noted that France, Spain and Portugal make 'indiscreet' deals with each other to cover up the extent of their levy activity (interview with author, 28 November 1995).

¹⁵¹The French borrowed a lobbying technique from the United States when it hired Ambassador Miyet in August 1993 to push for the cultural exception, though the extent to which the French were aware of this is unclear. From 1926 to 1937, the U.S. Department of Commerce employed a "roving European representative" responsible for motion pictures, George R. Canty, based in Europe to assess protectionist measures and to report to permanent field officers (Jarvie, 1992, pp. 315, 377). From 1933 to 1957, the MPPDA maintained its own permanent representative abroad, Fay Allport — "a kind

noted that he frequently referred to the cultural exclusion in the CUFTA and NAFTA to justify excluding the audiovisual sector from the GATS (interview with author, 23 April 1996).

Late Reaction to the Television Directive

Besides the precedent-setting cultural exclusions in the CUFTA and NAFTA, the U.S. film industry and government also had to contend with the EU's Television Directive, a central issue in the Uruguay Round. The development of the Directive offers a revealing case study on the U.S. film lobby in Europe and on the relationship between the lobby and government during the Round. The United States vociferously opposed the Directive, pointing to the absence of any reference to the European work's cultural content in Article VI,¹⁵² which defines a 'European programme.'¹⁵³ Indeed,

of roving ambassador from the U.S. motion picture industry...." (Jarvie, 1992, pp. 318–339).

¹⁵²Article VI defines a European programme in two ways (both must apply): by origin or work and by producer's establishment and control of the work. First, a European programme is defined as a work originating from an EU Member State, from a European third state party to the Convention on Transfrontier Television (28 I.L.M. 857 (1989) or from another European third country. Second, the work must be made by one or more producers established in one or more of the aforementioned states, and supervised and controlled by one or more producers established in one or more of the states. If the work is a co-production, the European co-producer's contribution must be 'preponderant' and the co-production must not be controlled by entities outside the states.

¹⁵³The question of the origin of audiovisual works has remained an enigma to policy-makers. Falkenberg (1994) asks the following: "Is the origin defined by the nationality for the residence of the producer, or of the financial resources required? Is it defined by the director, responsible for the artistic, cultural content? Should it be defined by the origin of the actors, the sound team or the film team?" (1994, p. 2). Falkenberg adds that "there is no generally accepted rule..." (ibid). As to the appropriateness of addressing this issue in the latter part of the Uruguay Round, Falkenberg comments: "The

only Article IV makes an indirect reference to cultural material, stating that the 'majority proportion' reserved for European works relates to a "broadcaster's international, educational, cultural and entertainment responsibilities to its viewing public...." (OJ L 298, 17 October 1989, p. 26). Article IV merely *implies* that European works are culturally oriented without specifically stipulating that the works *be* culturally oriented. This omission is seized upon by J. Michael Farren, U.S. undersecretary of commerce for international trade in 1989, who argues that the Directive is purely an economic measure created to protect Europe's industry from competition, evident from the definition of 'European works': "Virtually all of the definitional criteria relate to where production workers reside, where production monies are spent, and where production control resides — not to whether the programming concerns European subjects or culture" (House of Representatives, 1989b, p. 23).¹⁵⁴

final month of an international negotiation are [sic] however not the right time for such subtle discussion" (ibid).

¹⁵⁴Albrecht (1991) echoes this point: "Accordingly, a movie based on a European script, made with European actors and technicians in Europe would not be considered a European work if it was financed and production controlled by a non-European company. In contrast, an episode of Dallas filmed on a set outside Paris, with a US script, US actors, and other US talent, would be considered an EC production under the EC's Directive, if production was controlled by an EC company" (p. 7). The Committee on Ways and Means of the U.S. Congress also expressed its 'extreme displeasure and objections' to the Directive: "The Committee rejects arguments by the directive's supporters that the [quota] provision is necessary to protect the integrity of European culture, or to regulate objectionable content (such as violence) in TV programming, since the restriction does not apply to the cultural content of TV programs, but rather the country of origin of their production. Moreover, the measure does not apply comparable restrictions to European-made programs" (House of Representatives, 1989a, p. 4).

On barriers to film in important markets Valenti (1968) writes that “constant vigilance is the price necessary to avoid or counteract new schemes as they are hatched to replace discredited ones” (p. 24). Yet, according to several U.S. entertainment executives, the U.S. film industry did not appreciate the implications of the Television Directive until it was too late.¹⁵⁵ Several factors contributed to this failure, including the anachronistic views of television and film held by the leadership of the MPA’s London office, and the location of the MPA’s European office in London, not Brussels, far from the offices of Commissioners and members of the European Parliament, and far from the political centre of what U.S. industry en masse feared would become ‘fortress Europe.’

According to a senior Hollywood executive, during the late 1980s the MPA leadership in the London office hailed from a generation of film executives who believed film-making was more prestigious than producing television programmes and videos (interview with author, 29 November 1995), despite

¹⁵⁵From the point of view of the U.S. film and TV industry, the nucleus of the Television Directive consists of Articles IV, V and VII. Article IV requires broadcasters ‘where practicable,’ ‘by appropriate means’ and ‘progressively’ to reserve a ‘majority proportion’ of their transmission time for European works (OJ L 298, 17 October 1989, p. 26). This article excludes news, sports events, games, advertising and teletext services from the stipulation on transmission time. Article V gives a broadcaster — ‘where practicable and by appropriate means’ as well as ‘progressively’ — the choice of reserving at least 10 percent of their transmission time or their programming budget for European works created by producers independent of broadcasters (p. 27). Article VII establishes time-scales for broadcasting cinematographic works: unless otherwise agreed, the Directive mandates a two-year delay between the first showing of the work in cinemas of one of the Member States and its appearance on television, and half that time with film co-productions involving the broadcaster (p. 27). From the U.S. perspective, the restrictions transformed the Directive from a market-liberalising instrument into a non-tariff trade barrier listed in the USTR’s 1994 National Trade Estimates Report.

video sales outstripping box-office receipts.¹⁵⁶ One possible explanation requires a brief history of the film/TV relationship. According to Crandall (1975), the emergence of television in the 1950s challenged the major U.S. film studios as a competitor to film exhibitors, a customer for film distributors, and, briefly until 1972, a producer and distributor of feature films. In response, Hollywood began producing 'telefilms' for television, as well as releasing its post-1948 films to the networks.¹⁵⁷ Jowett (1976) notes: "Television had helped to destroy the old film industry, but it had also helped to create a new one" (1976, p. 434). Jowett explains that the old mass production studio system had either disappeared or converted to television production; "in its place there emerged a new philosophy of film-making which had its roots more in the boardrooms of the large New York corporations than on the sound stages of the studios" (1976, p. 434). However, this not to say that Hollywood had ceased producing 'blockbusters' or even successful low-budget films by independent producers. Jowett argues that the problem lay in Hollywood's inability to gauge its audience (1976, p. 435). He writes:

Part of the problem was a failure by the old guard in Hollywood to recognize that movie-making was no longer 'show business' — the 'business' of churning out 'shows' for a mass audience. Television had clearly taken over this function.... In the minds of their customers, the movies were now quite clearly differentiated from television, and audiences expected something more than

¹⁵⁶According to MPAA figures, in 1996 video sales reached \$16.5 billion, while box-office receipts for the same year totalled \$5.9 billion (U.S. Industry and Trade Outlook '98, 1998, p. 32.2).

¹⁵⁷Mattelart (1973) calls it a strategy shift of "film production towards the language of television" (p. 23).

the old Hollywood formulae, and even more explicit visual thrills (1976, pp. 435–36).

Furthermore, according to the senior Hollywood executive, the London office had little to worry about in terms of European audiovisual policy before the Television Directive. For example, there had been quotas on the screening of theatrical film in various European countries, but they had not been strictly enforced because theatre owners needed a steady supply of imports to remain in business. The London office did not realise that the Television Directive would create pan-European quotas, and the Europeans would try to enforce them. Valenti (1968) writes: "Film import quotas have been eliminated in most countries" (p. 24). However, the London office had apparently been receiving signals from its member companies that the Directive might curtail sales of U.S. TV programmes. While the London office seemed to be in the dark as the legislation gestated, the MPA's member companies were already under pressure from European programme buyers (Albrecht, 1991). Albrecht (1991) writes: "It was well known throughout 1989 that the Commission was seriously contemplating such action. In fact, a substantially final version of the Directive had been circulated and discussed with various [European] industry groups" (p. 10). Albrecht also notes that buyers had been well aware of the Directive's proposed provisions and had been demanding lower prices from member companies throughout 1989. However, in defence of the London office, a former U.S. trade official notes that the language of the Directive was relatively vague until the French succeeded in adding quota stipulations (interview with author, (30 November 1995).

A second difficulty facing the U.S. film industry in Europe was its proximity to the political process in Brussels. The MPA maintained an office in London but not in Brussels. In fact, none of the U.S. studios maintained offices in Brussels. However, most of the major U.S. corporations with interests in Europe did not have a Brussels address listed in their annual reports until the prospect of 'fortress Europe' persuaded them to establish one. An article in the *Harvard Business Review* sums up the concerns of U.S. industry: "Non-European companies must begin to act now, and they must act with continuing vigilance. The vision that Europeans hold for Europe is conflicted, so the form the single market will take is uncertain and the precise outlines of the future European business environment are still dim" (Magee, 1989, p. 79).¹⁵⁸ The Brussels office of the MPA opened in September 1993 — three months before the end of the Uruguay Round.

Historical Importance of Foreign Markets

The U.S. film industry has good reason to be defensive about protectionist measures in foreign markets, particularly Western Europe. Valenti (1968) comments: "Before World War II, earnings of American film companies abroad represented a small percentage of total revenues. Today foreign earnings represent about 53% of total motion picture rental income. Our industry now generates a larger proportion of its revenue overseas than any

¹⁵⁸Magee (1989) continues: "If the outcome is anywhere near as radical as some Europeans hope, the American eagle and the so-called Asian dragons are about to meet a kind of European wolf pack (ibid)." In another *Harvard Business Review* article, European businesses are described as "establishing a momentum of their own" (Friberg, 1989, p. 86), the trends of most concern being mergers and acquisitions across the Continent, acceleration of cross-border combinations, and companies "pushing aggressively to rationalize their operations and lock in the decisive advantages of continentwide operating scale" (ibid).

other large American industry" (p. 21).¹⁵⁹ Guback (1969) concurs that most American industries rank export trade low on their priority list. However, the U.S. film industry ranks it at the top: "Without the foreign market the American film industry as we know it today would collapse" (1969, p. 91). Western Europe is America's largest foreign market for film sales. From the 1940s to the 1960s, film exports accounted for about half of the majors' revenue; before World War II, exports represented a third of revenue (Guback, 1979). In their book designed to brief U.S. negotiators on various aspects of Hollywood and international regulatory organisations, Wildman and Siwek (1988) agree that "foreign sales are critical to the health of the U.S. film industry" (1988, p. 35). Finding that in some years export revenues and rentals have provided the industry with as much as half of its total income, the authors admit: "Regulations and events that affect the trade of films between the United States and other nations are therefore of vital interest to the success of the American motion picture industry" (1988, p. 35).¹⁶⁰

¹⁵⁹A *Washington Post* article quotes Mr. Valenti as saying he spends about 65 percent of his time on foreign problems (8 July 1981, p. 78).

¹⁶⁰Europe is the world's largest and fastest growing market for television programmes (MPEAA, 1993). In 1991, 77 percent of U.S. exports of TV programmes went to Europe, almost 60 percent to the EU (Commission of the European Communities, 1993, pp. 120–121). In 1991, MPEAA member company TV sales to the EU contributed to 55 percent of their total foreign earned revenue (MPEAA, 1993, p. 12). Moreover, the average production cost of a U.S. film in 1993 had increased to nearly \$30 million from \$23.5 million in 1989 (United International Pictures, 1994, p. 10). According to Jeffrey Logsdon, an industry analyst with Seidler Amdec, a typical U.S. film earns about half of its total box-office receipts overseas; that figure rises to 60 percent for some major films (*USA Today*, 14 December 1993, p. 1B). The MPA estimates that the U.S. film/TV/home video industry posted revenues of \$18 billion in 1992. In 1984, U.S. sales of audiovisual products to Europe amounted to \$330 million; in 1992, the figure was \$4 billion (Griffiths, 8 December 1993, on Reuters Business Brief).

The MPEAA (1993) summarises the fears of the U.S. film industry: first, the broadcast quota would cut deeply into the export of American television programs to the EC;¹⁶¹ and second, European countries not members of the EC would adopt broadcast quotas under the influence of the EC's example (p. 8).¹⁶² As to the effect of quotas on film and TV exports, Wildman and Siwek

¹⁶¹Of particular concern to the U.S. film industry is declining U.S. programming sales to the EU because of U.S. broadcasters' uncertainty over their future ability to resell programmes with quota restrictions in force (Albrecht, 1991). European industry groups, including programme buyers, had been well aware of the Directive's proposed provisions, one indication being European buyers' demands for lower prices from member companies throughout 1989 (ibid). The MPEAA argues that the European buyers' uncertainty led to a decrease in sales even *before* the Television Directive went into effect in 1991: sales to France, the UK and Italy declined by an estimated 51.8 percent, 10.7 percent and 7.2 percent respectively in 1989 compared with 1988 figures (Albrecht, 1991, p. 11). Compared with 1990, sales in 1991 decreased by more than 50 percent in France and Italy, over 40 percent in Spain, over 30 percent in Germany, and more than 60 percent in the UK (MPEAA, 1993, p. 8). The MPEAA estimates that to these five countries, sales by member companies dropped an average of 46 percent (ibid). For the first nine months of 1992, the trend continued, with revenue losses from missed sales to these five countries estimated at \$45 million (p. 9). However, the MPEAA notes that "these numbers are somewhat distorted by a combination of industry mega-deals and unusual market factors that occurred in 1990" (ibid).

¹⁶²Indeed, the MPEAA (1993) and Albrecht (1991) cite legislation in Eastern and Western Europe that suggests the U.S. film industry's concerns might be warranted. First, the Council of Europe's Convention on Transfrontier Broadcasting, signed in March 1989, had 20 signatories by 1992, including all of the EU Member States (MPEAA, 1993, p. 11). The Convention contains similar quota stipulations to those of the Television Directive. But according to Mr. David Webster, "the directive is much more powerful because the law of the common communities becomes part of the national law" (House of Representatives, 26 July 1989e, p. 61). Second, two articles in the Treaty on European Union signed in 1992 have particular relevance to the audiovisual sector: Article 128 on culture, and Article 130 on industry. Article 128 states: "The Community shall contribute to the flowering of the cultures of the member states, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore" (Official

(1988) describe a 'downward spiral': barriers to Hollywood's exports reduce their potential export earnings, which reduce the number of films and programmes produced and the size of budgets. Anticipated reduced revenues result in cutbacks in production and budgets, which causes a decline in audiences and further reductions in output and budgets (p. 124). Valenti (1968) adds: "No producer today, except in rare instances, can expect to recoup his costs in the domestic market alone. This is a new fact of life in our business" (p. 21).¹⁶³

According to the consultancy London Economics, the EU's policy of harmonising TV market regulations and implementing quota restrictions

Journal of the EC, 31 August 1992, p. 47). Article 130 states: "The Community and the member states shall ensure that the conditions necessary for the competitiveness of the community's industry exists (p. 49). Third, on May 2, 1992, six out of seven of the Member States of the European Free Trade Association (EFTA) signed a treaty with the EU Member States to create the European Economic Area (EEA). According to the MPEAA, the EEA Treaty incorporates the EU's Single Market programme into the EFTA, the quid pro quo being a commitment by EFTA countries to adopt the Single Market's legal framework, including the Directive (1993, pp. 10–11). Fourth, the EU's protectionism has spread to Eastern Europe as well, where Hungary, Czechoslovakia and Poland have begun to use the EU's Single Market legal framework as a model (House of Representatives, 9 June 1992a, p. 21, cited in MPEAA, 1993). However, according to David Lowe, secretary for the Federation Against Copyright Theft UK (FACT), the U.S. studios have been reluctant to enter the East European market because of video piracy problems (interview with author, 2 October 1995).

¹⁶³Nevertheless, Mr. David Webster, Senior Scholar at the Annenberg Washington Program and former Director of the British Broadcasting Corporation, notes that the United States underestimates the fears of European leaders over the amount of U.S. programming flowing into the Continent: "This is not so much a trade issue as a cultural issue — and a cultural issue, if inflamed, soon becomes a political issue (House of Representatives, 1989e, p. 65). Webster adds that "if you accept that there are going to be quotas of some kind, you have then to judge what quotas are politically possible, that is, for Europe, not for the United States" (ibid).

has three main goals: “nurturing an infant industry, protecting social and cultural values, and reducing European unemployment by substituting imported programmes with European-made programmes” (London Economics, 1994, p. 24).¹⁶⁴ London Economics argues that quotas will not help these aims.¹⁶⁵ The usual purpose of trade quotas is to stimulate domestic production in the face of cheap imports by substituting imports with domestic products. However, television programmes differ from other imports in that their ‘substitutability’ varies according to the taste of consumers, as do production costs. Also, TV quotas are directed at specific kinds of programming with ‘oeuvres’ or cultural content, not at programming on news, sports events, games.¹⁶⁶ As a consequence, applying quotas to television markets can have unforeseen consequences.¹⁶⁷

¹⁶⁴The harmonisation of EU audiovisual regulations has been a difficult task. According to an inventory produced by Mr. Aurelio de Laurentiis, Europe’s audiovisual policy consists of the following elements:

- 24 national cinema laws;
- 70 bilateral co-production agreements;
- 53 regional laws;
- 130 different cinema support funds (Community, national, regional and local funds);
- plus several thousand implementing decrees, regulations and various texts relating to the cinema which, I must admit, we have been unable to list (de Laurentiis, 1994, pp. 26–29).

¹⁶⁵It must be noted that Sony Entertainment commissioned the London Economics quota study.

¹⁶⁶However, Anderson (1992) argues that Canadian quotas on U.S. programming actually stimulates diversity because the quotas induce substitution into non-entertainment categories such as information programming.

¹⁶⁷London Economics (1994) argues that quotas hit new channels, particularly subscription services, the hardest because established channels with a substantial market share already have enough European programming to

Merians (1991) explains that if a foreign country buys only two year's worth of a hit U.S. TV series that was broadcast for three years in the U.S. domestic market, the show will be produced for one year without foreign market sales revenue. The only other option for a producer is to place the series into domestic syndication; however, to do this the producer must provide four year's worth of shows, which means the studio must gamble that the show will be kept on air long enough to begin recouping costs in syndication.¹⁶⁸ Merians adds that in the case of motion pictures, the risks are

meet the quota restrictions. New channels lack the resources and secondary rights to programmes to switch to European programmes. This, in turn, can lead to some channels going out of business, a delay in a channel's ability to accumulate the resources to produce or acquire European programming, and lost revenues for European production. New channels could also be discouraged from forming.

¹⁶⁸However, Hollywood has found a way around quota barriers in Europe through co-production agreements (Moore, 1994). Moore (1994) writes: "co-production agreements allow two or more countries to jointly produce films and television programming. Those using co-production agreements can gain tax and national production subsidies by sharing the production with a foreign partner. An intermingling of treaties, regulations and contractual arrangements may form the legal basis of co-production agreements" (p. 289). Ironically, Moore notes that one incentive for co-production agreements are the quota provisions of the Television Directive: "American producers could attempt to take advantage of the per country funding subsidies used to finance productions meeting certain quota or other requirements" (1994, p. 293). Co-production agreements allow U.S. producers to take advantage of the very same European tax and subsidy schemes they remonstrate about to the USTR and Congress. Guback (1969) writes: "The American industry's policy vis-a-vis the Common Market has not been developed as a frontal assault on trade barriers which the Community could erect. Rather, it has been aimed at bypassing possible restrictions by a flanking movement. This entails direct and indirect investment in European film production, which removes the 'American' label from a film and substitutes the nationality of the country in which the film was made. By this means, American companies can have their films, their revenues, but not the restrictions which may apply to them (pp. 97-98). However, the co-production is not a new idea. Dizard (1966) notes that U.S. film studios engaged in film co-productions during the 1940s,

even greater: "There is no way of knowing if the cost of production, now an average of \$25 million per picture, will be recouped" (1991, p. 51). As a result, studios must hire high profile directors, writers, actors, and allocate even higher budgets for marketing. However, even these remedies have faults: the high profile 'talent' has been demanding more of the gross receipts, and because many film projects fail, the successful films must carry the financial burden of the losers. Valenti (1993) comments that "out of every ten films produced by the major US studios, only two ever recoup their total investment from theatrical exhibition in the United States. And six out of every 10 movies never retrieve their total investment in all markets in the world" (p. 148).¹⁶⁹

Special 301: U.S. Government Retaliation

Prior to the enactment of the Television Directive, one senior Hollywood executive commented that Hollywood lobbyists were overly aggressive towards EU efforts to impose broadcasting quotas:

while in the early 1960s Hollywood increased its telefilm co-productions in Europe to escape high domestic labour costs, circumvent telefilm quotas, and enhance cinematography with location shots. Guback (1969) points out a similar trend toward intra-European co-productions, which began in the late 1940s and continued through the late 1960s. By the late 1960s, the co-production had outpaced traditional domestic production in Spain, France, Italy and W. Germany.

¹⁶⁹Squire (1992) notes two reasons for increased costs in producing Hollywood films in the 1980s: first, higher production costs associated with longer shooting time to give audiences the production quality they demanded and to pay for higher salaries of key stars; second, a false safety net in the form of home video, whose promise of revenues were factored into production deals despite the home video market's growth into a mature market.

When the Americans heard about the quotas, they hit the roof. The reason the Americans lost the battle was the way they fought. The U.S. delegation was not very pleasant. When you analyse from a programme supplier's perspective what the Directive would have done, you see that the 'where practicable' phrase opens doors (interview with author, 30 November 1995).

In 1991 the MPEAA, supported by the IIPA, filed a 'Special 301' petition with Ambassador Carla Hills, U.S. Trade Representative from 1989 to January 1993.¹⁷⁰ Section 301 of the Omnibus Trade and Competitiveness Act of 1988,¹⁷¹ which amends Chapter I of title III of the Trade Act of 1974, requires the U.S. Trade Representative to identify foreign countries that "deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access to United States persons that rely upon intellectual property protection" (PL 100-418, 100th Congress, 102 STAT 1179) and, if action is deemed necessary, to select from a number of possible retaliatory measures.¹⁷² In testimony before Congress, U.S. government

¹⁷⁰In May 1989 Ambassador Hills sent a 'strongly worded letter' to members of the European Parliament, Commission officials and representatives of EC Member State governments. The letter warns that "support in the Parliament and in the Council for the 'local content' provisions in this directive would amount to support for a major trade dispute with the United States" (House of Representatives, 1989c, p. 10).

¹⁷¹Section 301 is also referred to as 'Special 301' or 'Super 301.'

¹⁷²According to Bhagwati and Patrick (1990), the '301' provisions require "one-way, unrequited concessions" from other countries (p. 5). The authors trace the motivations behind '301' to the acceleration of import protectionism in the early 1980s and the Reagan administration's concerns over the trade deficit, growth of exports from Japan, the Pacific Rim and South America, and the broader consequences of 'deindustrialisation' and its effects on the U.S. economy, which has been declining as a world power. The MPEAA's member companies, as producers and distributors of films and TV programmes, satisfy the statutory definition of 'persons that rely upon intellectual property protection.' Section 301 of the Omnibus Trade and

officials amplified the U.S. film industry's concerns over the Television Directive.¹⁷³ In response to the MPEAA's petition, the U.S. Trade Representative placed the EU on its 'priority watch' List (USTR, 1991).¹⁷⁴

Earlier I distinguished between *national* or *bilateral* trade negotiations and *multilateral* or *supranational* negotiations. Valenti (1992) discusses bilateral trade negotiations between 1989 and 1992 involving the U.S. film industry

Competitiveness Act of 1988 lists the following as possible retaliatory measures: "suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country...impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country...enter into binding agreements with such foreign country that commit such foreign country to—eliminate, or phase out, the act, policy, or practice...eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or provide the United States with compensatory trade benefits...." (102 STAT 1165–1166).

¹⁷³In his opening statement, Rep. Edward J. Markey, Chairman of the Subcommittee on Telecommunications and Finance, articulates the concerns of the U.S. film industry and the U.S. government regarding the then-inchoate TV without Frontiers Directive: "Is this proposal protectionism masquerading as cultural patriotism or does it reflect important sensibilities to which America must be sensitive as Europe transforms itself in 1992? Is it a call for television without frontiers? Or television without Americans? Is it a harbinger of post-1992 fortress Europe with ominous implications for other U.S. industries? Or is it an anomaly in a vast and complicated pattern of directives that will introduce enormous opportunity for U.S. exports and international economic cooperation?" (House of Representatives, 26 July 1989d, p. 2). At the same hearing, J. Michael Farren, Undersecretary of Commerce for International Trade, described the concerns of the U.S. Department of Commerce over the EC-92 Programme; at the top of the list was the Directive, described as "most urgent" and "pure and simple protectionism" (House of Representatives, 26 July 1989b, pp. 19–20).

¹⁷⁴Section 310 of the Omnibus Trade and Competitiveness Act of 1988 requires the U.S. Trade Representative to identify priority practices, "including major barriers and trade distorting practices"(102 STAT 1176), and to submit a list of these practices to Congress (102 STAT 1177).

and U.S. government, and notes that in 1989 the MPEAA successfully petitioned the office of the USTR for help under Special 301.¹⁷⁵ During the three-year period, the MPEAA and U.S. government focused on 12 countries cited for failing to enforce or enact national copyright laws, failing to crack down on audio and video piracy, or closing their domestic markets to foreign distributors.¹⁷⁶ Valenti argues that revised '301' provisions have "kept the pressure on countries to adopt good laws and enforce them, in the face of an annual U.S. review of trade problems" (1992, Addendum, p. 3) and "shortened the time period for USTR action from one year to six months (with a possible, but maximum, 3-month extension), in recognition of the fragility of intellectual property products" (ibid).¹⁷⁷ However, an article in the *Wall Street Journal* (8 March 1994, p. 14) argues that Section 301 and its revision in 1988 have proven to be ineffective tools for opening foreign markets. The article quotes Powell (1989): "Since 1974, when Section 301 first became law, the U.S. has brought 78 cases against foreign governments. Threats of American retaliation have forced only 13 market openings — and

¹⁷⁵Feketekuty (1988) argues that while multilateral negotiations "provide an efficient framework" for trade rules and reduced trade barriers, "the rules that emerge from the process tend to leave excessive room for national interpretations," and solutions can be difficult to find "that fit the great diversity of commercial interests represented" (p. 158). Feketekuty adds that bilateral negotiations "are always a necessary complement to multilateral negotiations" (p. 159).

¹⁷⁶Of the 12 countries, Valenti (1992) lists Thailand, China, Korea, Taiwan, Saudi Arabia and Egypt (pp. 3–4).

¹⁷⁷Valenti (1992) writes that countries such as China, Saudi Arabia, Korea, Malaysia India and Indonesia have subsequently agreed to introduce measures to improve copyright protection and market access, and to prevent audio and video piracy.

those were generally trivial. And Section 301 actions have shown little improvement in subsequent years" (ibid).

According to a U.S. trade official, the rationale for the MPEAA's 301 filing was far from clear; indeed, Hollywood moguls harboured unrealistic expectations as to what a 301 filing and the U.S. government could do in response to the Directive (interview with author, 1 February 1996). The trade official commented: "The MPA expected the U.S. government to hit the EU hard by, for example, raising European white wine duties by 100 percent and stopping *fois gras* at U.S. borders." Indeed, one senior Hollywood executive noted that filing a 301 petition against the EU created the threat of EU retaliation against the United States (interview with author, 29 November 1995).¹⁷⁸ However, Feketekuty (1988) writes: "Hints of retaliation can be a very effective tool for bringing an issue to a head, particularly if the proposed retaliation action can be designed to have a maximum political impact on industries or regions of the country that might be putting political pressure on the government not to permit greater competition from foreign firms" (pp. 157–58).

As the Television Directive headed toward enactment in 1989, and as the U.S. film industry and government began to define the quota issue as a problem, coordination increased between the USTR and the MPA. In testimony before Congress, Mr. Julius Katz, then-deputy U.S. trade

¹⁷⁸ The executive commented: "Hollywood woke up and took a loud, forceful stance, a result of their habit of using Section 301 as a threat, which works better with underdeveloped countries than with developed countries. A developed partner can retaliate against you! Our economic ties are too great to Europe to use 301" (ibid).

representative, notes that during the summer of 1989, as the Council of the EU considered a draft of the Television Directive, the U.S. administration — “up to the level of the President” (House of Representatives, 1989c, p. 13) — pushed, albeit unsuccessfully, for the removal of the local content provisions.¹⁷⁹ Mr. Katz adds that “throughout this long process, the administration — working closely with the representatives of the US motion picture industry — has made known its steadfast opposition to the enactment in the EC of a protectionist and GATT-illegal local content provision in connection with the broadcast directive” (pp. 13–14). However, according to the U.S. trade official, the U.S. film industry and government decided to negotiate for an elimination of the Television Directive’s quotas rather than to continue with formal dispute procedures involving Section 301. This decision further heightened the anticipation among film industry executives of a victory in the Uruguay Round.

Besides having to contend with the ‘extra-sector’ political pressure from, for example, the U.S. maritime transport services industry, U.S. negotiators on audiovisual services and IPRs related to copyright had to defend their

¹⁷⁹Throughout the Uruguay Round U.S. negotiators believed the EU had not been negotiating in good faith on the quota issue. Mr. Thomas Duesterberg, assistant secretary for international economic policy, comments: “The US Government continues to apply pressure on the EC at bilateral meetings to have the [broadcast] quota provision of the EC television broadcast Directive removed.... Other efforts to eliminate the quota have been unsuccessful” (House of Representatives, 9 June 1992b, p. 45). Indeed, in June 1992, U.S. officials were unsure whether broadcasting would be included in the GATS negotiations (ibid). Falkenberg (1994) notes that as far back as December 1988, during the GATT Mid-Term Review Meeting in Montreal, “there still existed a marker as to the question whether or not, in the end, all sectors would be covered by the [GATS] agreement. It is true also, to assume that some had probably thought of the audiovisual sector as possibly being an exception” (p. 1).

corporate constituents, the Hollywood lobby. Based on numerous interviews with officials and executives on both sides of the Atlantic, hawkish senior executives and lawyers from Disney and MCA/Universal Studios, frustrated over defeats in the CUFTA and NAFTA and on the Television Directive, entered the Uruguay Round in an uncompromising mood and continued to set the agenda for the Hollywood lobby and U.S. negotiators. The next chapter will examine in detail the hawks' influence on the outcome of the audiovisual sector talks.

CHAPTER 6

—LEVEL I ANALYSIS—

HOLLYWOOD HAWKS: THEIR OWN WORST ENEMY

During the Uruguay Round the Hollywood hawks engaged in negotiations with the French delegation while U.S. negotiators attempted to satisfy them on an official level. Ms. Field commented:

From [the hawk's] perspective they have had a limited degree of success in working out working arrangements on levies in some countries, and ultimately, even in the absence of provisions in the TRIPs, have managed over the years to accommodate themselves or develop relationships or practices in Europe that permit them to very successfully exploit the market" (interview with author, 11 June 1997).

But the informal talks were actually a ploy by the French delegation to disrupt the formal talks. According to Ambassador Miyet, who led the French delegation's efforts to exclude the audiovisual sector from the Round, the objective was to prevent a U.S./EU compromise in the sector by 'radicalising' the U.S. position (interview author, 23 April 1996). This tactic included taking positions they knew would be rejected in order to make the job of Commission negotiators more difficult. When asked why a hawkish minority in the Hollywood lobby was allowed to dictate the U.S. positions in the GATS and TRIPs talks, Mr. Neil Terkowitz, executive vice president of international relations for the RIAA, commented: "The doves were afraid of the hawks" (interview with author, 12 June 1997). He added that the hawks had a 'tyranny of information': "None of the other studios felt it had a sufficient amount of information and sufficient political intuition about the

processes in the EU to cause a change in their policies.”¹⁸⁰ Here is evidence of the second theme developed from Jarvie’s (1992) work, that influential Hollywood moguls, who set the agenda for the lobby, expect their lobbyists and the U.S. government to approach international trade negotiations aggressively, despite the consequences.¹⁸¹

¹⁸⁰Besides a split between hawks and doves in Hollywood, a second split exists between the major film studios and the independent sector of the U.S. film industry on their approach to film distribution in foreign markets. While the major studios prefer to distribute their films through U.S.-owned distributors such as UIP, the independents prefer to distribute their films through local distributors. According to Jonas Rosenfield, President of AFMA, the independents’ method of international distribution is to license “territory-by-territory and medium-by-medium through local, national importer-distributors rather than through a US company operating a network of sales organizations in all major territories” (1993, p. 2). This method is called the system of ‘independent distribution’ developed by European filmmakers after World War II to encourage competitive export enterprises, reduce entry costs and support local enterprises (American Film Marketing Association, 1994, pp. 5–6). For example, AFMA member companies license their rights in France to Gaumont, UGC, Canal Plus, Polygram and TFI. Rosenfield adds that “the healthier and more successful the local industry, the healthier and more successful our members’ business” (1993, p. 2). The feature films of MPA member companies out-perform AFMA member films by roughly 10 to 1. In 1993, the majors’ feature film revenues reached over \$10 million, while AFMA films totalled just over \$1 million (Cicchetti et al, 1995, p. 38). Yet, in terms of job creation in the United States (mostly in California), AFMA companies more than pull their own weight. In the same year, the majors employed 551,200 workers (64 percent), while the figure for AFMA companies was 313,760 (36 percent) (Rosenfield, 1993, p. 30).

¹⁸¹Guback (1969) writes: “The MPEA embodies the interests of businessmen and diplomats (some who have actually represented our government), whose principles and methods have clashed occasionally: on the one hand, business may be demanding a swift resolution of a particular problem; on the other, diplomacy would call for negotiation and compromise. The blend of these viewpoints has not produced uniform success for the MPEA in overcoming foreign difficulties for statesmanship—it has, on occasion, given way to the approach favored by company management” (p. 92). Moreover, a *Los Angeles Times* article offers a glimpse at Mr. Valenti’s difficult job as head of the MPAA. According to the head of a major Hollywood studio (who chose to remain anonymous), “increased pushing and shoving among [Mr. Valenti’s]

Nevertheless, U.S. negotiators aggressively pursued all options to satisfy the hawkish element of the Hollywood lobby, who dictated negotiating terms to the lobby's chief spokesperson, Jack Valenti.¹⁸² The Hollywood hawks had three primary objectives in the Round. First, they wanted to secure coverage of the audiovisual services under the GATT-WTO regime. Second, they wanted to secure a standstill on the Television Directive and clarify its application to terrestrial TV and new forms of delivery technology and systems. To be fair, both hawk and dove alike were concerned with adverse changes to the Television Directive. They wanted to prevent EU Member States from increasing the quota on European programming beyond 51 percent, and wanted to clarify provisions on the way the quota is applied to free, over-the-air terrestrial broadcasts and to new technologies or other forms of transmissions.¹⁸³ The standstill commitment would provide what an

peers has posed a severe test of Valenti's endurance and political skills" (3 August 1989, part 6, p. 1). The studio head adds: "The members ought to treat Jack Valenti better.... I wouldn't want to put up with those animals. Sooner or later, Jack's going to get tired of the craziness" (ibid).

¹⁸²According to the *Los Angeles Times*, Mr. Valenti relies on a 'rule of two' to make decisions on behalf of the MPAA member companies. "Rather than depending on majority votes, and risking action on positions that a substantial minority might oppose, he has insisted that the association take no step to which any two members objected" (3 August 1989, part 6, p. 1). However, it appears that no such rule applied to the Hollywood lobby's decision-making in Geneva. Perhaps the hawks' 'tyranny of information' contributed to the lobby's apparent minority rule.

¹⁸³U.S. negotiators defined new technologies as anything beyond terrestrial television: satellite delivery systems, pay-per-view systems and near-video-on-demand. From the U.S. perspective, Articles IV and V of the Television Directive covered only terrestrial television. But a DG-X official noted that Article I covers all 'point-to-multipoint' transmissions because of the reference to an initial transmission by wire or over-the-air, including satellite, of television programmes intended for reception by the public (interview with author, 28 November 1995). Therefore any new service that broadcasts

MPAA official described as a 'comfort level' with the Television Directive.¹⁸⁴

Of great concern to the hawks was not being able to take advantage of the cost-savings associated with new delivery systems.¹⁸⁵ Third, the hawks wanted to

from a single point to many points falls under the quota stipulations of the Directive. From this reasoning, video-on-demand services would not be subject to the quota rules because VOD services would constitute 'point-to-point' transmissions. The Europeans also argued that satellite and cable services have always been included in the Directive: The 1984 document that sets out the idea of the Directive is titled, 'Green Paper on the Establishment of the Common Market for Broadcasting, Especially by Satellite and Cable' (Commission of the European Communities, 1984). Nevertheless, the Commission official questioned that had the Directive been included in the GATS, meaning had the EU made market access and national treatment commitments, would the EU have been *bound* by the *non-binding* 'where practicable' phrase in Article IV of the Directive?

¹⁸⁴The MPAA official commented: "The U.S. industry wanted to be assured continued market access — with restrictions, if necessary. We would have taken an offer that basically said things will not get any worse. Levies could have stayed; quotas could have stayed. Even with new technology we wanted a comfort level. We wanted a standstill commitment, which would have quelled the fears of entertainment executives that had built up ever since the adoption of the Directive in 1989" (interview with author, 23 February 1996).

¹⁸⁵An MPAA official placed the issue of new technologies in context: "The most important element of the new technology issue was the added industrial interests in the equation. You hurt more than just film studios when you curb entertainment flows of this nature. You hurt profits of telephone companies, cable companies, hardware and software companies and many other industries involved in the 'Information Society' in Europe and the 'Information Superhighway' in the U.S." (interview with author, 23 February 1996). Flint (1996) argues that new technologies will not only affect the film release window by allowing content providers to 'jump' the six-month minimum requirement for cinema release before going to home video sales, pay TV and finally free TV; but also will affect the cost of distribution, currently dictated by market structures that have been in place since the 1920s. According to Flint, studios will only have to reach directly a smaller audience to recoup costs, primarily because digital delivery systems obviate the need for print costs and other methods. Money will therefore go into advertising, publicity and sales costs, as well as to content providers. Flint implies that perhaps European film producers will gain from the new delivery systems by channelling more funds into marketing rather than distribution.

force EU Member States to abide by the principle of national treatment when distributing revenue from levies on the sale of recording devices or blank audio and video tapes to compensate authors, producers and performers (Kantor's letter to Chancellor Kohl, p. 2); and when distributing royalties based on contract rights¹⁸⁶ to producers, directors and performers (Talking points for the President, Entertainment Issues, approved by Ambassador Kantor, 12 Dec. 1993, p. 2; hereafter Talking Points).¹⁸⁷

¹⁸⁶In the United States, contract rights involve 'works for hire.' Under this arrangement, a film or TV programme is created by a director, who receives a contractual fee for his services, but does not receive intellectual property rights normally granted under the U.S. system to a producer. Sorkin (1993) notes: "It is necessary that authors and artists—and, indeed, all who are in any way involved in the making of a motion picture—be fairly compensated. This is achieved...through collective bargaining and individual contracts" (p. 46). However, one of the main concerns of U.S. film marketers is that large groups of neighbouring rightsholders might become obstacles to the effective launch, promotion and distribution of films.

¹⁸⁷France abides by the Berne Convention's obligations to provide national treatment to U.S. authors, but not to U.S. producers or performers. In other words, France does not recognise the 'neighbouring rights' of producers and performers associated with non-French films because the United States is not a signatory of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Dr. Gorlin described the complicated and interrelated issues of national treatment of blank tape levies and contract rights this way: "In the U.S. the producer has the copyright and all the other participants in the film are under contract and what money they get is determined by contract only. Europe said that the director, notwithstanding that he has a contract in the US worth X percent of the film's take, should get 10 percent of this blank tape levy. They wanted to disregard the contracts negotiated in individual countries. Back in 1993, we said that when you give out these blank tape levies, we want you to treat us the same way you treat your own people, but we don't want you to create new rights in the allocation. We want to be able to say that if I own the copyright to this movie, then I should get the five percent royalty and I will then turn around and distribute it based on the contracts I have. We wanted the Europeans to respect the contracts in allocations" (interview with author, 28 March 1997).

Historical precedent exists for Hollywood's concerns over Europe's use of funds generated by Hollywood films for European productions. Jarvie queries: "On what theory of international trade was a government entitled to treat the export earnings of the industry of another nation as funds somehow misappropriated or diverted, and hence ripe to be sequestered and used to build up their own competing industry? (1992, p. 360). Jarvie notes that Will Hays seemed pressured by his superiors, who were being criticised by their stockholders for not receiving production costs of U.S. films in Britain because of the 1927 British Films Act (1992, p. 358). The concern among U.S. diplomats and Hollywood executives alike was whether the British were attempting to build up their own film industry at the expense of U.S. production (1992, p. 359). After negotiations spearheaded by Ambassador Kennedy, Britain agreed to allow a certain percentage of revenues removed from the country and substituted a "monetary obligation for the quota obligation" (1992, p. 353).

However, a proprietary document, a Commission legal opinion, somehow obtained and published in *Inside U.S. Trade* two months before the conclusion of the Round, notes that Commission lawyers had no intention of recommending to the 113 Committee that the EU regulate new technologies because such programme transmission services "are not audiovisual services, but telecommunication services applied to the audiovisual industry" (15 October 1993, p. 19).¹⁸⁸ The document states:

¹⁸⁸U.S. and EU sources confirm that both sides engaged in espionage to gain an edge on the audiovisual and IPRs negotiations. A Hollywood executive admitted that the Central Intelligence Agency regularly spies for Hollywood. "It's a fact of life in this business," the executive said. "But so does the French

Whatever commitments might be negotiated with regard to audiovisual services, they will not affect the ability to regulate existing and future technologies and audiovisual programmes transmission techniques, since these are outside the scope of audiovisual industries, and there is additionally no intention to take bindings on the regulation of future technology developments in the audiovisual sector (ibid).

The document explains that new technologies fall under the jurisdiction of the telecommunications annex to the GATS, which provides for a “right of access to and use of public telecommunications transport network and services” (ibid) and “stipulates that its provisions *are not applicable to measures affecting the cable or broadcast distribution of radio or television programming*” (italics added for emphasis) (ibid).¹⁸⁹

secret service for the French industry” (interview with author, 29 November 1995). The *Los Angeles Times* reported that five Americans, four of them CIA officers, were caught in Paris spying on the French government (11 October 1995, p. A1). According to James Risen: “In the French operation, the CIA was, in effect, spying for Hollywood. At least part of the mission was to determine the strength of the French bargaining position in television and telecommunications trade negotiations” (ibid). Pascal Rogard, general secretary of the French film industry lobby, confirmed that the French intelligence service was gathering information for the audiovisual sector talks (interview with author, 15 April 1996).

¹⁸⁹As for satellite, cable and other future ‘signals,’ the hawks were particularly concerned that the EU would require that each channel, such as the Comedy Channel or Nickelodeon, carry 51 percent of European content (*New York Times*, 15 December, 1993, p. 6). Here the hawks were willing to concede that the EU reserve 50-70 percent of *all* channels, but not on an individual channel basis (ibid).

White House Intervention

President Clinton intervened on behalf of the Hollywood lobby before the Round's deadline by making phone calls to EU leaders to urge them to accept U.S. demands in the audiovisual talks (Talking Points, p. 1).¹⁹⁰ On 12 December 1993, President Clinton phoned French Prime Minister Balladur, German Chancellor Kohl and Britain's Prime Minister Major to urge their foreign affairs ministers to accept Hollywood's counter-offer, based on the Commission's final offer on audiovisual services and IPRs related to copyright, in the 13 December General Affairs Council meeting. (Talking Points, p. 2). Mr. Clinton engaged in a display of brinkmanship that linked progress in the audiovisual sector talks to the success of the entire Round.¹⁹¹ A day later Ambassador Kantor sent a follow-up letter to Chancellor Kohl

¹⁹⁰Besides Hollywood's fundraising capabilities, another reason why the Clinton Administration had a vested interest in removing trade barriers to the development of new transmission technologies was that they involved not only the U.S. film industry but the U.S. telecommunications industry as well, including telephone, cable, hardware and software companies. This issue directly affects one of President Clinton's pet projects, the Information Superhighway. McMurdo and Simpson (1994) note that information policy has been high on the White House agenda as a way of 're-inventing' government. Before Mr. Clinton was elected in 1992, little discussion between the two sides took place on interactive services or on-demand services because the idea of the information superhighway had not yet been promoted by the Clinton Administration. However, after the information superhighway became a priority of the Administration (Gore, 1994), new technologies became an issue in the Uruguay Round.

¹⁹¹The opening two points of President Clinton's phone script read: "It is vitally important to the U.S. and the EC that we harvest the results of seven years of negotiations: the Uruguay Round will benefit Europe, the United States and the rest of the World. The U.S. and the EC must provide leadership in the closing three days of negotiations. We are prevented from doing so, because of the impasse on 'entertainment issues' (including audiovisual services and national treatment for copyrights)" (Talking Points, p. 1).

reiterating President Clinton's request (Kantor letter, 13 December 1993). According to a U.S. official, the letter was sent to Chancellor Kohl to neutralise any attempt by French President Mitterrand in the Council of Ministers meeting to sway a majority of Member States towards excluding the audiovisual sector in the General Affairs Council meeting (interview with author, 10 May 1996).¹⁹² From the Hollywood lobby's perspective, the impasse, referred to by President Clinton and Ambassador Kantor as the 'entertainment issue,' resulted from months of U.S. frustration over Europe's perceived unwillingness to table a satisfactory offer. A U.S. official commented: "We gave draft after draft and they still didn't give in." An MPAA official commented: "What we really wanted was an offer. We never got one" (interview with author, 23 February 1996). According to a senior U.S. trade official, "At the time the audiovisual sector was viewed as an important constituency. It was in our interest to satisfy the motion picture industry" (interview with author, 2 February 1996).

However, the Commission's final offer on audiovisual services and IPRs related to copyright fell short of the Hollywood hawks' demands. Audiovisual services would be placed under the GATT-WTO regime, the Television Directive's quota requirements would not be increased for 'existing technology,' the Commission would consult with the United States if plans were made to extend the Directive's limitations to new technologies, and the Commission would negotiate on the issue of national treatment and levy systems (Brittan, 1994, p. 6). When the General Affairs Council rejected

¹⁹²According to an editorial in the *Financial Times*, the Franco-German relationship can be traced back to the Elysee treaty of 1963 between Adenauer and de Gaulle (6 May 1998, p. 19).

U.S. demands for more audiovisual concessions than the Commission and its constituent Member States wished to offer, the hawkish element of the Hollywood lobby set in motion a series of events that sealed their own fate. Mr. Falkenberg commented: "We would have included audiovisual services in our schedule of commitments until the 13th of December, when Mickey Kantor told us that what was in our schedule was not good enough and that he would withdraw U.S. commitments on audiovisual and take MFN exemptions" (interview with author, 18 April 1997). As a result, the Commission decided it would not make commitments on audiovisual services to market access and national treatment and would take several MFN exemptions. However, at the last minute the Hollywood lobby decided to make commitments and did not take MFN exemptions. Falkenberg added: "This then led to the absurd situation where the Community had no offer and two fairly broad MFN exemptions, and that really made France's day."¹⁹³

According to Ambassador Paemen, who travelled to California over a year after the Round to meet with high-level Hollywood executives, the reason for Hollywood's apparent indecision on market access commitments resulted from a phone call from President Clinton to Lew Wasserman, head of Universal Studios.¹⁹⁴ President Clinton had called Mr. Wasserman to brief

¹⁹³The two 'fairly broad' exemptions from Article II (MFN) are as follows: the first measure pertains to "redressive duties which may be imposed in order to respond to unfair pricing practices, by certain third countries' distributors of audiovisual works," which applies to all WTO members; and the second measure pertains to "measures taken to prevent, correct or counterbalance adverse, unfair or unreasonable conditions or actions affecting EC audiovisual services, products or service providers, in response to corresponding or comparable actions taken by other Members," which also applies to all WTO members (GATS, 1994a, p. 1).

¹⁹⁴According to the *Los Angeles Times*, Mr. Wasserman 'cultivated' Mr.

him on the status of the audiovisual talks and to solicit his opinion. When Mr. Wasserman hung up the phone, he believed he had told Mr. Clinton to reject the EU's final offer, not to make commitments in the sector and *to block the entire Round*.¹⁹⁵ However, after consulting with Mr. Clinton, Ambassador Kantor announced that an overall U.S./EU accord had been reached in sectors such as agriculture and services and on issues such as tariff reduction, but no U.S. commitments would be scheduled in the audiovisual sector. Later, upon realising that Mr. Clinton had not blocked the Uruguay Round, the Hollywood lobby instructed Ambassador Kantor to schedule full commitments but too late for the Commission to respond.¹⁹⁶ Thus at the end of the Uruguay Round the U.S. government chose to let the Hollywood lobby seal its own fate rather than to derail the entire Round. When the Hollywood hawks misjudged their influence on the President Clinton, they

Valenti in the mid-1960s when Mr. Valenti was a presidential aid to Lyndon Johnson (3 August 1989, part 6, p. 1). Mr. Wasserman was also primarily responsible for Mr. Valenti's appointment as head of the MPAA (ibid).

¹⁹⁵According to a senior Hollywood executive, Mr. Wasserman's decision not to make commitments in the GATS was based on advice from the legal departments of Universal Studios and Walt Disney (interview with author, 2 October 1995).

¹⁹⁶The USTR press release on the U.S. and EU multi-sector accord reached prior to the conclusion of the Uruguay Round reads as follows: "Because of the inadequacy of the EC's proposals, and their unwillingness to accept ours, we decided that we would withdraw our offer on audiovisual services, and take an MFN exemption" (USTR, 1993). According to John Siegmund, trade specialist with the U.S. Department of Commerce, U.S. government officials continued to believe the United States had pulled its offer several days after the Round concluded: "For several days, I and others here believed, based on the [USTR new release], that the United States had indeed withdrawn its audiovisual offer. After Christmas, I learned that the United States had instead maintained its offer" (Siegmund letter, 15 December 1995).

handed the audiovisual protectionists in the EU, led by the French government, a victory.¹⁹⁷

After the Round, Hollywood executives believed the U.S. government had abandoned them in order to salvage the entire Round. An MPAA official argued that the U.S. government had not taken the Hollywood lobby seriously enough to declare a crisis at the G-7 Summit in Tokyo in July 1993 (interview with author, 23 February 1996). Besides a lack of urgency, the official asserted that U.S. negotiators lacked a coherent strategy to gain concessions from the EU. Furthermore, the Hollywood hawks participated in informal negotiations with the French delegation because they felt U.S. negotiators were not pushing the EU hard enough for concessions. However, the official also admits that the aggressive lobbying and negotiating style of the hawkish element of the Hollywood lobby hindered efforts to reach an agreement.

To understand the Hollywood lobby's perspective on the Round's audiovisual sector talks in the final months, one must focus on the word 'offer.' To the hawkish elements of the Hollywood lobby, an unsatisfactory offer was *no offer at all*. A Hollywood executive commented: "In the Uruguay Round audiovisual talks we pushed the Europeans too God-damned far. There was no give-and-take" (interview with author, 29

¹⁹⁷The official U.S. account of the audiovisual sector talk's outcome differs substantially from the unofficial account. According to SPAC, "U.S. offers and flexibility were met by intransigence on the part of most of our trading partners, particularly the EC. The EC and others apparently never had any intention of seriously negotiating liberalization of trade in services for audio visual works" (1994, p. 10).

November 1995). However, the Hollywood lobby's tough negotiating stance was not the only reason for the audiovisual sector's denouement, for the U.S. government, the voice of the Hollywood lobby in the talks, must also share responsibility for the defeat. As the MPAA official put it, "Both the U.S. government *and* the industry failed to understand and to manage the emotional aspect of this issue." The MPAA official argues that the 'entertainment issue' should have been forced at an earlier stage, that there was a "lack of urgency on part of U.S. negotiators until too late" (interview with author, 23 February 1996). [See Appendix A for Hollywood's post-Round efforts to influence fast-track approval of the Round's implementation legislation.]

In defence of U.S. negotiators, a U.S. trade official asserts that efforts, albeit abortive, were made to link the revision of the Blair House agreement in agriculture to progress in the audiovisual sector talks — that during the summer of 1993 letters to this effect were exchanged between Ambassador Kantor and Sir Leon Brittan. But as the Blair House revision became a reality in the first week of December 1993, the linkage never materialised.¹⁹⁸ Moreover, the USTR attempted to link a 'satisfactory' offer on audiovisual

¹⁹⁸SPAC concurs with the MPAA official and suspects that the USTR's negotiating plan "delayed too long the exploitation of whatever cross-sector leverages might have been identified and applied at earlier stages of the 7-year negotiation" (1994, p. 12). Furthermore, the U.S. trade official noted that the United States linked the agricultural negotiations, particularly during the summer of 1993, to talks in the audiovisual sector. During that summer, the Blair House Accord, reached in November of 1992, began to unravel. However, instead of putting pressure on Sir Leon to make an offer on audiovisual, U.S. negotiators allowed him to stall while the agricultural negotiations made substantial progress in September 1993 (interview with author, 1 February 1996).

services to the USTR's willingness to compromise on the civil aircraft component of the aeronautics talks. However, this linkage also appears to have been unsuccessful. Mr. Phillips said: "As we came down to the final moments, it became clear that Europe's offer on audiovisual was not going to be as good as we wanted. When that became clear, our willingness to try to work out problems in aircraft diminished...." (interview with author, 9 April 1997).

As the Round drew to a close, the objective for Ambassador Kantor was to examine the agreements made in all of the sectors, along with the ones still outstanding, and to assess this information according to U.S. goals for the Round (interview with author, 1 February 1996). When the 15 December deadline was reached, the U.S. maritime industry had succeeded in thwarting any attempts to liberalise the sector, U.S. anti-dumping laws had not been radically changed and agricultural trade had been brought under GATT-WTO discipline. Although the audiovisual sector had not been excluded from the Round, negotiations on such issues as market access and the Television Directive and national treatment of IPRs related to copyright would continue after the Round.¹⁹⁹

¹⁹⁹It must be noted that the music industry representatives in the Hollywood lobby have a more positive view of the TRIPs, the Uruguay Round's agreement on intellectual property, than their film and television counterparts. Mr. Turkewitz noted that for the music industry, the TRIPs was a "dramatic breakthrough in creating an international discipline for the protection of sound recordings." He commented: "Our goal was to look into the future — to create the rules for the 21st Century. But the motion picture industry was very much interested in getting entitlement to levies." However, he added that both the U.S. music industry and film industry lament the lack of national treatment provisions in the area of copyright in the agreement (interview with author, 12 June 1997).

CHAPTER 7

PART I

— LEVEL II ANALYSIS —

FRANCE'S ROLE IN THE URUGUAY ROUND AUDIOVISUAL TALKS: DICTATOR OR GADFLY?

Schiller (1996) believes the French government dictated the outcome of the Uruguay Round's audiovisual sector talks.²⁰⁰ Schiller notes the "inability of United States negotiators to prevail over French objections in the December 1993 GATT...." (1996, p. 121). Other scholars (cf. Waregne, 1994; Dehousse and Havelange, 1994; Joachimowicz and Berenboom, 1994) also believe the French government held the upper hand in the talks. Indeed, evidence suggests that France continued its tradition of protectionism towards Europe's, as well as its own, audiovisual sector (cf. Forbes, 1987; Miyet, 1990; Porter, 1991; Seabury, 1929; Thompson, 1985) by mounting a diplomatic and public opinion campaign beginning in August 1993 to pressure Commission negotiators for a 'cultural exception' under Article XIV of the GATS.²⁰¹ This campaign was also directed at the TRIPs negotiations on

²⁰⁰Technically this proposition shifts the unit of analysis back to a state-centred perspective, but it still keeps Schiller's views within the domestic determinants category.

²⁰¹Dehousse and Havelange (1994) rightly point out that technically European negotiators never proposed a bona fide 'exclusion' of the audiovisual sector from the GATS for fear of its consequences to other sectors. However, the authors note that the term 'exclusion' is often used to illustrate the effects of an 'exception' placed under Article XIV on general exceptions and XIVbis on security exceptions. Article XIV(a) provides for the exemption of any measures to the GATS discipline deemed necessary "to protect public morals or to maintain public order" (GATT, 1994b, p. 339); Article XIV(b) provides for the protection of "human, animal or plant life or health" (ibid); and Article XIV(c) provides, *inter alia*, for the "prevention of deceptive and fraudulent practices" and the protection of privacy and safety (ibid). Article XIV(bis),

national treatment of levy and subsidy systems. France also encouraged linkages between the audiovisual sector talks and maritime transport services and geographic indications related to wines. The aggressive negotiating stance of the Hollywood hawks, adopted by U.S. negotiators, fuelled the French campaign by justifying French claims that U.S. negotiators and the Hollywood lobby did not respect EU cultural concerns.²⁰²

At the end of the Round, the French campaign appeared successful in that the EU listed several exemptions to the MFN principle in the GATS and did not grant the United States national treatment of audiovisual levies in the TRIPs, although the audiovisual sector was covered under GATT-WTO rules and disciplines.²⁰³ However, the fact that France got most of what it wanted

inter alia, provides for security exceptions related to military matters and fissionable and fusionable materials (p. 340). However, Article XIV also states that such exceptions must not be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services” (GATT, 1994b, p. 339).

²⁰²A senior Hollywood executive commented: “We continued to turn people against us. We even turned European film producers, who normally work with us and depend on our money, against us” (interview with author, 30 November 1995).

²⁰³A common misperception at the end of the Round was that France had succeeded in ‘excluding’ the audiovisual sector from the GATT-WTO agreement. However, the ‘cultural exception’ means that the audiovisual sector is covered, along with all other services sectors, by the GATT-WTO regime, which, inter alia, requires further negotiations within five years of the date of entry into force of the WTO Agreement pursuant to Article XIX(1) on progressive liberalisation (GATT, 1994b, p. 343), and Members must meet the transparency requirements of Article III(1), which states in part that “Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement” (p. 329). In essence, the ‘exception’ pertains to the EU having made no specific commitments to market liberalisation in the GATS on audiovisual services

does not mean the French government dictated the outcome of the audiovisual sector talks.²⁰⁴ In this chapter I use Putnam's (1988 [1993]) two-level analysis to challenge this notion and to argue that France was more of a gadfly than a dictator during the talks. While highly effective in terms of arousing nationalistic sentiment and providing the media with interesting news on the Round, the French delegation's campaign to dictate the talks was in fact unsuccessful. At the same time, the Commission's own campaign to make commitments on audiovisual services succeeded up until the final hours of the Round, when the hawkish element of the Hollywood lobby deemed the EU's final offer unsatisfactory and set off a chain reaction that prevented a U.S./EU bilateral agreement on audiovisual services and IPRs related to copyright. To balance the micro power struggle within the Hollywood lobby discussed in the previous chapter, I examine a macro power struggle among EU Member States that pitted France, backed by Belgium and Portugal, against the more liberal EU Member States in the 113 Services Committee to control Sir Leon Brittan's negotiating mandate and, therefore, the course of the audiovisual sector talks.

French Audiovisual Policy: Strictest in the EU

Collins (1992) argues that France has a national 'foreign policy' for television that has influenced Europe's policy agenda. France has set a domestic example of market development and intervention in the name of cultural sovereignty — an example it expects other Member States to

and national treatment of copyright in the TRIPs.

²⁰⁴Ambassador Paemen notes that the French government really won a partial victory because the French government wanted no coverage whatsoever of cultural issues.

emulate.²⁰⁵ Cultural protection and control over communications in France can be traced back to 1539 and the Villiers-Cotterets edict requiring the use of the French language, a measure less designed to protect language and more designed to enable the French state to spy on its subjects (*Financial Times*, 5 February 1996, p. 7). Findahl (1989) traces French concerns over culture back to 1637 and the founding of the Academie Francaise, arbiter of the French language. In 1975 the French Parliament passed the Bas-Lauriol Act prohibiting gratuitous use of anglicisms (p. 138). Thody's (1995) study of 'le franglais'²⁰⁶ and historical efforts by the French government to legislate

²⁰⁵Contrast the French experience with the Television Directive with a constitutional challenge to the Directive in Germany, which takes a more liberal approach to audiovisual issues. On 22 March 1995, the German Federal Constitutional Court ruled on a dispute between the Free State of Bavaria, joined by eight other Lander (roughly equivalent to U.S. states) and the German Federation over the Television Directive (German Federal Constitutional Court, 22 March 1995, p. 57). According to the European Audiovisual Observatory, the question first brought before the Court in 1989 was whether the Federal Government's endorsement of the Directive had infringed the Landers' constitutional jurisdiction over broadcasting (IRIS Legal Observations, 1995, p. 7). The Court ruled that the Federal Government's endorsement of the Directive could not be questioned under German constitutional law, but that the way in which the Federal Government endorsed the Directive overstepped its legal right to speak on behalf of the Lander without prior consultation. According to Marie-Therese Huppertz, liaison officer for Bertelsmann, the Lander believed they alone had the right to decide whether to apply the Directive's provisions (Interview with author, 12 April 1996). The Lander argued that broadcasting is a form of culture and that as a result, the Federal Government had gone against their interests by negotiating with the EU without taking their views into account. The Court decided that while the EU had competence to develop directives, the Lander have exclusive jurisdiction over implementing them, and that the Federal government had gone against the Landers' interests by negotiating with the EU without first creating unanimity at home.

²⁰⁶Thody writes: "'franglais' words are anglicisms and americanisms which are still visibly recognisable as such, terms which are as clearly foreign in origin as 'joie de vivre' or 'folie des grandeurs' are in English" (1995, p. 1).

against the use of such words points out that “it is only in relation to the audio-visual media that English or American words occur with any frequency in French in an artistic or cultural context” (p. 31).²⁰⁷

France maintains the highest quotas on television programming in the world; Sri Lanka and Canada are the only other countries with quotas higher than 51 percent (MPEAA et al, 1994, p. 5).²⁰⁸ The Conseil Supérieur de L’Audiovisuel, France’s preeminent audiovisual regulatory agency, has

²⁰⁷Thody (1995) argues that “the law is not the most appropriate instrument for dealing with the matter, and that languages have their own means of solving their problems without state intervention. It may also be that it is as dangerous to meddle with the mechanisms whereby a language develops as it is to interfere with the process of genetic inheritance” (p. 20). However, Thody also comments: “Native speakers of French who are sensitive to the beauties of their language may well be right to feel a certain hostility towards words which often epitomise the least attractive aspects of American and English society, and to be less than enthusiastic about the world of pop music, drug-taking and sexual deviance which is so frequently evoked by ‘franglais’ terms” (1995, p. 19).

²⁰⁸Article III of the Directive states: “Member states can require broadcasters under their jurisdiction to adhere to even stricter rules in areas covered by the directive” (OJ L 298, 17 October 1989, p. 26). On July 1, 1992, the EU Commission granted permission to France to enact its own quota legislation after challenging several 1990 decrees that did not conform to the Directive (Fontanille, 1992, pp. 28–30). The 1990 decrees introduced a prime-time quota for French and European works following a 60/50 ratio of European works and French works respectively, and a production tax for French and European productions (ibid). The French Broadcasting Act of 1992’s interpretation of Article IV goes beyond the ‘majority portion’ stipulation: French TV broadcasters are required to transmit at least 40 percent of French-language programming during both 24-hour day and prime-time slots and an additional 20 percent must be of European origin (ibid). The 1992 Act also gave more authority to the Conseil Supérieur de L’Audiovisuel (CSA), France’s primary audiovisual regulatory body, to determine conditions for applying quotas during prime-time. According to the 1994 National Trade Estimates Report, the CSA defines ‘prime-time’ for each network on a yearly basis (USTR, 1994). It is the prime-time slot that most concerns the U.S. entertainment industry.

imposed hefty fines on French cable operators for not enforcing the Directive.²⁰⁹ Thody (1995) examines efforts by Jacques Toubon, former French minister for culture under the Conservative government of Edouard Balladur, to protect the French language with legislation. In April 1994, a French law was passed that restricts the use of foreign words in public communication. However, the French Constitutional Council, which assesses proposed legislation, limited the restrictions to public sector organisations, advertising and broadcast media, with fines levied for violating the 'loi Toubon' (Thody, 1995; *Financial Times*, 1 August 1994, p. 2F). The French government has even passed legislation to apply quotas on non-French-language songs to French radio stations.²¹⁰ France also has an

²⁰⁹In 1989, the CSA announced that broadcasters would be fined \$10,000 for each hour they aired in violation of the quotas. The CSA imposed retroactive penalties on stations for airing too much foreign programming (USTR, 1994). According to the MPEAA (1993), the CSA imposed a fine of \$6 million on TF1, a major French private channel, for exceeding French quota restrictions by 13 hours (MPEAA, 1993, p. 9). A further example of arm-twisting can be found in a CSA news release to French cable operators. The CSA states that it has been approached by several editors of foreign programmes wishing to conclude the agreements for distribution on the French cable service of television services broadcast by satellite from EU member states, some of which had not yet incorporated the Television Directive into their national legislation. The CSA adds that because of a 30 September 1986 French law, the Council cannot sanction the distribution agreements until the satellite services in the EU member states abide by the Directive. "The Council would advise French cable network operators to guard against broadcasting services which have not concluded agreements with the CSA, since such action will incur penalties" (CSA News Release, 7 September 1993, Communiqué No. 242).

²¹⁰On 1 January 1996, a French law known as the Pelchat Amendment, took effect requiring almost all of France's roughly 1,700 public and private radio stations to play a minimum of 40 percent of French songs during prime-time, half of which must be either new French tunes or French tunes "interpreted by new French or Francophone singers" (USTR, 1994, p. 75 and *Financial Times*, 5 February 1996, p. 7). The definition of a French song is "variety music' written or interpreted by French or Francophone writers and artists"

extensive array of levy and subsidy systems for its audiovisual sector.²¹¹ When compared to other levy systems for private copying throughout Eastern and Western Europe, France's system generates revenues in a ratio of roughly 10:1; Germany's system generates a close second (Stichting de Thuiskopie, 1997, p. 7).²¹² In 1990, France allocated more money (ECU 268 million or circa \$243 million at exchange rate of ECU 1.1 per dollar [July 1998]) to its national programming than the EU did for the whole of its five year programme to promote the development of the European audiovisual industry (MEDIA I) (ECU 250 million or circa \$227 million) (Commission of the European Communities, 1994b, p. 28).

(USTR, 1994, p. 75). The USTR (1994) estimates that the music quotas will reduce the 'play time' of American music by 30 percent (ibid).

²¹¹The French audiovisual sector benefits from a range of direct and indirect aid schemes updated by the Cinema Plan of February 1989 (Dibie, 1993, p. 45). Schemes for aiding film production include automatic production subsidies derived from film box-office receipts, and selective subsidies allocated with "cultural and artistic rather than economic objectives" by 'specialist' committees, including the Commission des Avances sur Recettes, which provides 'advances on receipts' in the form of interest-free loans (Dibie, 1993, p. 44). Additional committees allocate subsidies for script-writing, film development, original music and international co-production. There are also aid schemes for film distribution, exhibition, technical industries and foreign export. In 1993 France amended its state subsidy programme to include video sales and rentals and to add an additional FFr 25 million a year (circa \$4 million at exchange rate of 6 francs per dollar [July 1998]) for the French film industry (European Union Press Release, 30 June 1993).

²¹²From 1991 to 1995, France's levy system on private copying alone generated an average of FFr732 million (circa \$122 million at exchange rate of six francs per dollar [July 1998]), while Germany's system generated an average of DM136 million (circa \$80 million at exchange rate of 1.7 DMs per dollar [July 1998]) (Stichting de Thuiskopie, 1997, p. 7). It is interesting to note that while Germany is considered a free-trader as far as the Television Directive is concerned, it still has one of the more lucrative levy systems in Europe.

However, several scholars have taken a more cynical view of France's preoccupation with protecting its audiovisual sector. On French audiovisual policy during the 1980s, Dyson and Humphreys (1988) write that the Socialists

sought regulatory protection for the French 'cultural industries' from excessive foreign competition and...protection for French culture itself. They presented cultural arguments for import quotas and other regulations in order to safeguard broadcasting standards and to ensure that the new media led to a 'controlled deregulation' and not to 'broadcasting anarchy' (p. 115).

Thompson (1985) notes that historically "the French government was little inclined to support the film industry in general; there were constant complaints through the 20s of high ticket-taxes and government indifference" (p. 126). According to the *Washington Post*, during the 1980s the Socialist government poured \$15 billion into the arts — an unprecedented sum for any state support (16 June 1995, p. B1). However, the *Post* argues that the ultimate aim was not to boost the arts but to win elections. The Socialists have increased subsidies to filmmakers, curbed the growth of the French video industry and fought a 'veritable crusade' against U.S. cultural imperialism in return for support from the elite caste of French directors known as 'auteur directors,' who have helped to 'rejuvenate and glamorise' the Socialist Party.²¹³ In his examination of the French government-film industry relationship from the early part of this century, Tacchella (1995) argues that not until 1993 and the battle for the 'cultural exception' in the

²¹³Messerlin (1997) comments on the link between the audiovisual sector and politics in France: "French subsidies granted between 1978 and 1994 reached strong peaks in 1978, 1981, 1986 and 1988, which were all years characterised by major elections. It would be interesting to check whether the same phenomenon exists in other EC countries" (p. 9).

Uruguay Round had French filmmakers and politicians joined forces to promote the French film industry.

UIP Scapegoat

The French delegation's public opinion campaign to secure the cultural exception began in earnest in September 1993 with a series of speeches by French officials at film festivals throughout Europe. The focal point of the campaign was the success of the 'blockbuster' U.S. film *Jurassic Park* and the film's distribution company, United International Pictures (UIP).²¹⁴ In July 1993, just six months before the 15 December deadline for the conclusion of the Uruguay Round, UIP's European antitrust exemption expired.²¹⁵ UIP

²¹⁴United International Pictures was formed under Netherlands law in 1981 by Paramount Pictures Corporation, MCA Inc. and Metro-Goldwyn-Mayer Film Co. to distribute and license on an exclusive basis feature films, short subjects and trailers produced by the parent companies (OJ L 226, 12 July 1989, pp. 25–26). The purpose of forming UIP was to reduce fixed overhead expenses (p. 27). UIP had not been the first company to represent exclusively a group of U.S. studios in Europe. In 1970, Paramount and MCA founded CIC to jointly distribute their films outside the US; in 1973 CIC became the exclusive agent for the two studios. The Commission notes that for eight years, CIC therefore did for Paramount and MCA what UIP does for Paramount, MCA and MGM/UA (p. 26).

²¹⁵Article 85(1) of the Treaty of the European Economic Community prohibits any collaborative activity by more than one company that "affects trade between Member States" by "the prevention, restriction or distortion of competition within the common market" (OJ C 224, 31 August 1992, p. 28). However, Article 85(3) states that an antitrust exemption can be granted if the collaborative activity contributes "to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit" (ibid). In July 1989, the Commission granted UIP an antitrust exemption, citing as benefits to consumers an increase in film availability and production in the Community, a result of the efficiency enjoyed by UIP and its partners in avoiding duplication of distribution (*Hollywood Reporter*, 18 July 1989, p. 31). The exemption was backdated to July 1988 and remained in effect until July 1993. At some point in July 1993, UIP filed an application with Directorate-General IV, the Commission department responsible for competition, for

became a lightning rod particularly for the French and Portuguese delegations, which used UIP's antitrust expiration and the success of *Jurassic Park* as a way of highlighting the 'dinosaur-like' presence of the U.S. film industry in Europe.²¹⁶

Mr. Toubon, speaking at the Deauville Film Festival of U.S. cinema in September 1993, declared that *Jurassic Park* "threatens the French culture; with 450 copies, it will take over one cinema out of every five in towns with less than 20,000 inhabitants" (*Liberation*, 14 September 1993, p. 42). Toubon concluded his speech by saying: "We like the Americans provided that they do not want to crush everything" (*ibid*). At Venice Film Festival in the same month, Mr. Toubon and Jack Lang, former minister of culture, issued their 'Venice Declaration,' which announced the creation of a 'World Film Directors Union' for the protection of copyright. Mr. Toubon and Mr. Lang said: "American works occupy 80 percent of European screens while European works occupy 1 percent of American screens: where is the protectionism?" (*Le Film Francais*, 17 September 1993, p. 9).

renewal of its exemption regarding its theatrical film operations (UIP News Release, 20 July 1992, p. 2). However, earlier the same day the Commission had announced its intentions to probe UIP's pay television operations for possible violations of Community competition law pursuant to Article 85. On 19 November 1993, the European Parliament adopted a non-binding resolution that called upon the Commission not to renew UIP's exemption (European Parliament Resolution B3-1639/93).

²¹⁶A week before the conclusion of the Round, the *New York Times* put it this way: "A wide variety of French resentments and doubts have coalesced around a dark vision of Hollywood's dinosaurs gobbling up the last vestiges of cultural independence in Europe" (8 December 1993, p. 1).

Just as the U.S. film industry had met with President Clinton, so French film executives lobbied President Francois Mitterrand at the Elysee and had been assured of his support (*Le Film Francais*, 17 September 1993). The French Minister of European Affairs, Alain Lamassoure, met with members of L'ARP, to whom he gave his support (*ibid*). And Alain Carignon, French minister for communications, accompanied a delegation of French actors to Strasbourg to lobby the European Parliament. On the 15th of September, Ambassador Miyet went before the European Parliament to remind MEPs that in 1992 the European Commission had tabled a proposal to include a 'cultural exception' in Article XIX of the Draft Final Act of the GATT (Waregne, 1994, p. 35). Ambassador Miyet commented: "This proposal wouldn't have been supported by others involved in negotiations and was therefore dismissed by the GATT Secretariat. We have returned to that position" (*ibid*). Although the European Parliament had been in favour of a 'cultural specificity' annex, on 30 September they chose instead the principle of the cultural exception (*ibid*). On 20 September in Brussels, at a meeting of European foreign affairs ministers in Brussels, Alain Juppe, then French foreign minister, defended the 'cultural exception' (*Le Film Francais*, 17 September 1993).

On 17 September Turner Broadcasting launched TNT Classic Movies and the Cartoon Network in eight European languages; both networks were based in London. On 23 September, Reuters reported that Commissioner Joao de Deus Pinheiro, a former Portuguese foreign minister, who was head of DG-X during the Round, had sent a letter to the British government warning that its decision to grant Ted Turner's TNT and Cartoon Channel a license might violate the Television Directive (Reuters, 23 September 1992). France and

Belgium had banned cable transmission of Turner's network because it did not comply with quotas on European programming. Reuters also notes that the letter coincided with French lobbying efforts to influence the GATT talks (ibid). In November Prime Minister Edouard Balladur would promise French film stars and directors that he would defend French culture with a 'cultural exemption' (Reuters, 17 November 1993).

French Press Reaction: 'Aggressive Chauvinism'

Liberation notes that "it is not completely by chance either that the bullets are whistling around the head of United International Pictures" (14 September 1993, p. 42). The paper traces the targeting of UIP back to Mr. Antonio Pedro Vasconcelos, who, in Beaune the previous year had protested against the dominant position of UIP in his native country, Portugal. Mr. Vasconcelos, chairman of the Commission's audiovisual Think Tank and a Portuguese TV and cinema producer, reported to Commissioner Pinheiro in DG-X. Indeed, Portuguese distributors claimed that UIP controlled 75 percent of the distribution market in Portugal (*Hollywood Reporter*, 9 July 1993, p. 10).

The French press criticised the French government for scapegoating the U.S. film industry rather than addressing the true problem with the French cinema: French films.²¹⁷ *Le Point* describes the source of fear of the French

²¹⁷A study by the Economics and Finance Ministry of France argues that the traditional scapegoat for the crisis in the French film industry is the United States. However, the real reason for the crisis is that the supply of French films is poorly adapted to demand (Cluzel and Cerutti, 1992). The authors write: "French movies offer neither the themes nor, according to some, the faces that respond to the expectations of an increasingly younger public.... The American film industry, meanwhile, has filled this very niche of adventure, action, comedy, science-fiction and animated movies for the past ten years

Government over the fate of the country's cinema and TV industry as "a very simple diptych: a real crisis, an improper campaign" (18 September 1993, p. 47). *Le Figaro* queried: "Was it necessary for the world of the French cinema to sink into aggressive chauvinism and lose its cool to the point of denouncing once and for all 'American cultural imperialism'? Frankly, I don't think so" (24 September 1993, p. 2). The paper points out 'two embarrassing truths': that the French cinema industry is based on small-scale production and the U.S. industry is not; and that the French film is 'typically French' — "more talk than action and the angst in them takes the place of intrigue" (ibid). Furthermore, *Le Nouvel Observateur* challenges Mr. Toubon's assertion that numerous copies of *Jurassic Park* hurt French culture by noting that the Centre National de la Cinematographie (CNC) takes a percentage of the film's receipts and allocates it to French cinema.²¹⁸ Moreover, the paper states that Daniel Goldman, head of UIP's French company, often receives requests from the French authorities to obtain more copies of successful U.S. films to boost the production fund (23–29 September

with conspicuous success" (1992, p. 11). However, compared with the film industries of other European countries, the French industry is the only one that can be considered 'a significant force.' Cluzel and Cerutti (1992) write: "In other European countries, attendance at domestic films ranged in 1991 from 5.5% of total cinema attendance (UK) to 24% (Italy), and broadcasting of domestic films on television channels is even rarer, given that other European countries' broadcasting quotas, for the most part based on the EU directive 'Television sans frontieres'..., are less stringent than in France" (p. 9).

²¹⁸This point is punctuated by Daniel Toscan de Plantier, president of Unifrance, the French film lobby: "We receive 100 percent of the [foreign film tax] and US movies account for 57 percent of the box-office return, so Hollywood supports us. What is good for France is not good for the United States and other countries" (*New York Times*, 8 December 1993, p. 1). According to the *Times*, the French foreign film tax amounts to 11 percent on a ticket (ibid).

1993, p. 62). [See Appendix B for the post-Round war of words between DG-X and UIP set off by inaccurate news reports.]

Myth of Mons

The French campaign's main political event was an *informal* Cultural Affairs Council meeting, arranged by the Belgian presidency of the Council,²¹⁹ held during the first weekend of October 1993 in Mons, Belgium. At the meeting's conclusion, cultural affairs ministers issued the 'Mons Declaration,' a set of principles aimed at excluding Europe's audiovisual sector from the GATT-WTO regime.²²⁰ At the same time, the Commission had been

²¹⁹The fact that the informal meeting of cultural affairs ministers took place in Belgium is significant for two reasons: first, French is one of Belgium's official languages, and Belgian cultural and political elites have customarily been drawn from the francophone population; second, and more importantly from a procedural point of view, from July 1993 to January 1994 Belgium's Premier Jean-Luc Dehaene was president of the Council of the EU; therefore, one of the committees he presided over was the 113 Services Committee.

²²⁰The Conclusions of the Presidency (Mons, 5 October 1993) states: "The audiovisual sector is the most powerful instrument of culture of our century. It emerges from the discussions of the Audiovisual Ministers of the European Community the unanimous conviction that Europe must be able to support and develop the creation of the Audiovisual Industry" (Vasconcelos, 1994, p. 41). Cultural affairs ministers developed the following six principles in Mons:

- MFN exemptions for all support schemes to the audiovisual sector, both at Community and Member States level.
- Maintaining and protecting public support and operating subsidies, both at Community and Member States levels, when considered appropriate.
- Maintaining the ability to regulate existing and future technologies and audiovisual programmes transmission techniques, for the Community and its Member States.
- Maintaining the freedom of the Community and Member States to develop in the future all policies and measures aimed at supporting all aspects of the audiovisual sector, in particular creation, production, transmission, broadcasting, distribution and exploitation.
- The audiovisual sector not to be subjected to the principle of incremental

conducting its own campaign for a 'cultural specificity' to cover the audiovisual sector under the GATS and to schedule audiovisual services commitments on market access and/or national treatment.²²¹ Mr. Falkenberg noted that a primary goal of the Commission was to protect Europe from unilateral trade pressure by placing the audiovisual sector under the GATT regime. Indeed, this was one of the EU's fundamental objectives in the Round (Reflection Paper, 1993, p. 2).

Dehousse and Havelange (1994) and Joachimowicz and Berenboom (1994) focus on the informal meeting of Cultural Affairs Ministers in Mons as the pivotal moment in the audiovisual sector negotiations when, ostensibly, all EU Member States set strict negotiating guidelines for the Commission to protect the audiovisual sector.²²² However, in Chapter 2 it was noted that the

progressive liberalization as defined under Article XIX of the draft Agreement.

- Maintaining the 'acquis communautaire,' first of all and as a minimum the effective implementation of the 'Television Without Frontiers' Directive provisions (*Inside U.S. Trade*, 15 October 1993, pp. 18–19).

²²¹The cultural specificity would have placed language in Article XIX (progressive liberalisation) of the GATS, acknowledging the special nature of the audiovisual sector by protecting against unconditional 'roll-back,' but allowing commitments to market access and/or national treatment to be made (Reflection Paper, 1993, pp. 3–4). Article XIX(1) states in part that future negotiations "shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations" (GATT, 1994b, p. 343).

²²²Dehousse and Havelange write: "Les conclusions de ce Seminaire revetent une double importance. Les objectifs communautaires ont ete enfin clairement definis et un consensus europeen se dessinait, faisant passer au second plan le debat de principe entre l'exception et la specificite" (1994, p. 123). ["The conclusions of this Seminar take on a double importance. The Community objectives had at last been clearly defined, and a European

General Affairs Council had the final say on trade negotiations in the Uruguay Round, and that all other Councils could only offer opinions in their *official* capacity. The scholars do not discuss the General Affairs Council meeting held in Luxembourg on the same weekend as the Mons meeting (4–5 October) in which foreign affairs ministers voted *in favour* of allowing the Commission to draft an offer on market access to present to U.S. negotiators, albeit commitments deemed by the General Affairs Council as ‘defensive’ in nature (Draft Minutes of General Affairs Council Meeting, Luxembourg, 4–5 Oct. 1993).

What France could not achieve pursuant to EU protocol in the General Affairs Council meeting in Luxembourg it heralded as a *fait accompli* in Belgium that same weekend with the Mons Declaration that purportedly meant that the Cultural Affairs Council backed French efforts to protect Europe’s audiovisual sector. However, in the General Affairs meeting, ministers voted 10–2 in favour of letting the Commission craft an audiovisual services offer with commitments to present to the USTR. Two Member States expressed reservations: France and Spain²²³ (Draft Minutes of

consensus was forming which put the debate about the exception and the specificity in the background.”] Similarly, Joachimowitz and Berenboom write: “Mais la position des Européens s’est durcie au fur et à mesure qu’on s’approchait du terme des négociations. Reunis à Mons le 5 octobre 1993, les ministres européens de l’Audiovisuel ont adopté une position commune....” (1994, p. 111). [“But the European position grew tougher as the end of the negotiations grew nearer. Joined in Mons on 5 October 1993, European Audiovisual Ministers adopted a common position....”]

²²³Recall that these were the two Member States mentioned by the DG-X official in Chapter 6 as particularly anti-American in the Uruguay Round audiovisual sector talks and therefore the U.S. government’s focus in post-Round bilateral negotiations.

General Affairs Council Meeting, Luxembourg, 4–5 Oct. 1993). Ambassador Miyet admits that the Luxembourg meeting gave the Commission a green light to negotiate (interview with author, 23 April 1996). However, as the leader of the French campaign to exclude the audiovisual sector from the Round, he also argued that the Mons Declaration curbed Sir Leon's ability to negotiate. Karl Falkenberg responded that EU protocol rendered the Mons Declaration irrelevant.²²⁴

Indeed, the Belgian delegation appears to have breached EU protocol by organising and participating in the Mons meeting. According to the Council of the EU's General Secretariat, each Council presidency, held for six months, may organise informal ministerial meetings: "The aim of the informal meetings is to consider jointly and exchange ideas on topics of a general scope" (General Secretariat, Vol. II, 1996, p. 6). However, the Secretariat adds:

They are not Council meetings and cannot replace the Council's activities. In order to preserve their informal character, there is no agenda and *the discussions cannot give rise to the drawing-up of documents prior to or after the meeting. Informal meetings obviously cannot adopt decisions in spheres falling within the field of competence of the institutions, under the Treaties* (italics added for emphasis) (ibid).

²²⁴Mr. Falkenberg quipped: "Every now and then, one has situations like in Mons, where at the cultural ministers level there was more willingness to have an open ear to limitations for cultural reasons than the same Member States felt was necessary at General Affairs level. Throughout the negotiations we had the possibility to negotiate based on the General Affairs Council's guidelines, and the French, despite all their efforts, never managed to block us in the process" (interview with author, 18 April 1997).

In a separate Secretariat document can be found the following passage on the presidency: "The Presidency must, by definition be neutral and impartial. It is the moderator for discussions and cannot therefore favour either its own preferences or those of a particular Member State" (General Secretariat, Vol. I, 1996, p. 5). Therefore, the Mons Declaration was a violation of Council rules, as was the Belgian presidency's involvement in the event.

Chemistry in the General Affairs Council

Earlier I noted that EU Member States had formed two groups in the development of the Television Directive: the free-traders and the protectionists. According to David Hollister, Mr. Heaton's deputy during the Round, EU Member States that had originally been very keen on the Television Directive when it was developed in the late 1980s continued to be so during the Uruguay Round (interview with author, 11 April 1997).²²⁵ He recalls a clear line between Member States in the 113 Services Committee that had originally supported the Television Directive (France, Spain, Italy,

²²⁵Member States have implemented the Television Directive according to their roles as free-traders or interventionists. For example, the 1993 Annual Report of the U.S. President notes that Member States' implementation of the Directive varies considerably. Belgium, Denmark, Ireland, Luxembourg, the Netherlands, Portugal and the UK have incorporated "where practicable" into their own legislation (p. 75). Moreover, the Commission's analysis of the EU's application of Articles 4 and 5 concludes that compliance among Member States is overall on an 'upward trend,' but the 'where practicable' and 'progressively' language is problematic (Commission of the European Communities, 1994a). The Commission, not surprisingly, found strict compliance among French broadcasters, but not among UK broadcasters, particularly satellite channels. A recent report on Member State compliance raised concerns over the differing methodology used to show adherence to the Directive, as well as technical and legal problems that complicate the Commission's monitoring task (Commission of the European Communities, 1995a).

Portugal) — what Mr. Heaton calls 'Club Med' — and those that took a more liberal view towards the audiovisual sector (Britain, Germany, Denmark, Holland) (interview with author, 11 April 1997).²²⁶ However, if one takes into consideration Mr. Andriessen's earlier comments regarding the frustration of EU Mediterranean Member States over the Blair House agreement, one must add a North/South division over agricultural reform to the division over the Television Directive. Nevertheless, the free-traders appeared to be in the majority in the October 1993 General Affairs Council meeting in Luxembourg (Draft Minutes of General Affairs Council Meeting, Luxembourg, 4–5 Oct. 1993).²²⁷

²²⁶Even within the European Commission, the Directorates responsible for aspects of audiovisual policy differ on the appropriate level of intervention. According to Mr. Scheele, during the Uruguay Round DG-X and Commission President Delors' Cabinet represented the interventionists, while DG-I, DG-XIII and DG-XV were the free-traders (interview with author, 17 April 1997). In 1994, during a similar abortive effort by the European Commission to propose tighter quota language in the Television Directive, the French newspaper *Le Monde* (29 December 1994, p. 9) published an intercepted communique between officials of the MPA on the potential of such changes coming to fruition. The communique is important not only because it shows the thoroughness and intensity of the MPA foreign operation, but because it shows the *support* many Commission officials had for the lobby's objectives. Indeed, the communique indicates that DG-I and DG-XV officials were sympathetic to the MPA's goals, as several MPA officials and film executives estimate the likelihood of the Directive not being changed based on information from informants within the directorates themselves. In 1996, efforts by the European Parliament failed to remove the 'where practicable' loophole in the Television Directive, making the content quota (51 percent European works) nonbinding.

²²⁷Collins (1998) writes: "La France s'est ainsi efforcee de traduire dans le cadre de l'Union europeenne ses politiques interieures bien etablies de quotas et d'aide a la production. Elle a defendu le programme MEDIA, a fait inserer un quota de diffusion d'oeuvres europeennes dans la directive de 1989 (article 4) et a regulierement, quoique jusqu'ici sans succes, tente d'obtenir des quotas plus importants dans une nouvelle directive Television sans frontieres" (p. 142). ["France sought to translate into a European Union context its well established domestic policies of quotas and production support. It established

However, the chemistry in the General Affairs Council related to the issue of national treatment of audiovisual levies was far from split, as EU Member States showed solidarity against the United States. A primary reasons for the solidarity was the different approaches taken by the EU and United States to IPRs within the audiovisual sector. Dr. iur. Jorg Reinbothe commented that in Europe the emphasis is on protecting performers' rights, while in the U.S. the concern is with producers' rights (interview with author, 28 November 1995).²²⁸ Verstrynge (1993) notes that the two approaches dictate the way each

the MEDIA programme and inserted a European content quota (Article 4) into the 1989 Directive and has consistently, but thus far unsuccessfully, sought stronger quotas in a new Television without Frontiers Directive." The development of the directive highlights the lobbying muscle of the French delegation, yet it more importantly shows the influence of more liberal Member States on the French position. The *Los Angeles Times* reported that on 13 March 1989, Edith Cresson, then French Minister for European Affairs, backed down from her demands to make the Directive binding by acquiescing to the insertion of the words 'where practicable' and 'by appropriate means' as well as 'progressively' in Articles IV and V. Minister Cresson commented that France was totally isolated on the matter (12 April 1989, part 6, p. 1). One month later, a 'common position' on the Directive was reached among the Council of Ministers, which included the 'watering down' of the French-led quotas on European programming. Instead of being bound by the 60 percent quota on European origin programmes, advocated by France, Member States were given flexibility to implement a 'majority proportion' of broadcast transmission time 'where practicable' and 'by appropriate means' as well as 'progressively' (House of Representatives, 1989c, p. 8). In early October, the Council voted 10:2 in favour of the non-binding directive — Belgium and Denmark were the two dissenting nations. According to the *New York Times*, Denmark, the Netherlands, Britain and W. Germany pressured France to accept the 'majority proportion' quota and the non-binding language in Articles IV and V (4 October 1989, pp. A1, D20).

²²⁸Dr. Reinbothe commented: "Our legal tradition and practice call for the protection of performing artists' rights. In the U.S., the producer is considered to be the author of the film or work; there is no other author; other contributors, such as screenwriters, actors, etc., get there payment for services, but have no other rights in the marketing, modification and financial exploitation of the film. Risk is on the producer in the U.S. In Europe an

country applies the principle of national treatment of rightsholders when distributing revenue from audiovisual levies. According to Mr. Turkewitz, EU Member States were primarily focused on the outflow of money from the levies and did not want a broad national treatment provision in the TRIPs that proscribed their ability to allocate revenue as they saw fit (interview with author, 12 June 1997). Mr. Turkewitz added that because the United States was not a member of the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, this gave EU Member States an excuse not to give U.S. entities their full share of revenue from the levies.²²⁹

Nevertheless, according to Mr. Hannu Wager, legal affairs officer for TRIPs at the WTO, the EU politically linked issues in the GATS and TRIPs together, meaning that although the Television Directive's quotas technically fell under the jurisdiction of the GATS, and the issues of levies and subsidies

audiovisual work has all sorts of rights holders — sometimes more than 10 to 20 groups of rightsholders involved in a film (interview with author, 28 November 1995).

²²⁹Porter (1991) notes that the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations extends intellectual property protection to 'neighbouring rights,' while the 1908 Berlin Act revised the Berne Convention to protect authors of works reproduced by photography, sound recording and cinematography. Reichman (1995) comments: "International protection of so-called neighboring rights often leaves foreign rights holders to the vagaries of domestic laws and at the mercy of residual conditions of material reciprocity" (pp. 364–65). According to Porter (1991), the Rome Convention's "inconsistent, and sometimes arbitrary, provisions" stem from three fears of authors: that protection of neighbouring rights might take precedent over authors' rights in some countries; that the right of a performer to refuse the broadcast or recording of a work might supersede the right of an author to do the same; and that authors might receive fewer royalty payments as a result of sharing with performers (p. 17).

fell under the TRIPs, the EU treated audiovisual services and IPRs related to copyright as a package (interview with author, 13 September 1996). Mr. Turkewitz concurs, noting that the audiovisual aspects of both agreements became part of a 'political package' in the final months of the Round, despite the GATS and TRIPs having been treated separately throughout most of the Round's seven-year period (interview with author, 12 June 1997).

PART II

— LEVEL I ANALYSIS —

BATTLE OVER SIR LEON'S NEGOTIATING MANDATE

From the last week in November 1993 to the end of the Round, Ambassador Kantor and Sir Leon Brittan met several times to discuss a variety of sectoral issues including audiovisual. Sir Leon continued to negotiate in consultation with the 113 Services Committee pursuant to the cultural specificity drafted by DG-I. However, in the final moments of the Round, Sir Leon exceeded his negotiating mandate from the General Affairs Council by offering to include the Television Directive under GATS rules and disciplines. Ambassador Paemen commented that he and Sir Leon took a great risk because their negotiating instructions did not cover such an offer. He added: "We were ready to go into a package where we would have consolidated the TV without Frontiers commitments. At a certain moment, Mickey Kantor was ready to do this. And then he got the famous telephone call from President Clinton" (interview with author, 25 April 1997). France appears to have succeeded in rallying support for its protectionist cause among EU heads of state. But Mr. Falkenberg and Ambassador Paemen once

again assert that General Affairs Council guidelines took precedent in the Round, even over Council meetings of heads of state. Therefore, while the 'exceptional and separate' decree attracted headlines, it was the final General Affairs meeting on 13 December that was most important. Moreover, Ambassador Paemen notes that the 'exceptional and separate' decree was acceptable to the Commission because it did not *exclude* audiovisual issues from the negotiations. He argues that the decree was in fact the Commission's specificity (interview with author, 25 April 1997). Mr. Falkenberg notes that what the Hollywood hawks ultimately rejected was not an offer from France but an offer from *all* of the EU Member States (interview with author, 18 April 1997).

When the General Affairs Council rejected the USTR's final offer on audiovisual services and IPRs related to copyright, and when Ambassador Kantor, under the instruction of the Hollywood lobby, then declared that the United States would not make audiovisual commitments in the GATS, the Commission pulled its own schedule of GATS commitments and the French government secured its victor, claiming that it had successfully dictated the outcome of the audiovisual sector talks. However, the primary influence on the outcome of the GATS audiovisual services talks was the hawkish element of the Hollywood lobby, which misjudged its influence on the U.S. president. In the TRIPs talks, a majority of Member States, interested in preserving their right to operate audiovisual levy and subsidy systems as they wished, dictated the outcome on IPRs related to copyright.

The Commission, led by Sir Leon and Ambassador Paemen, had battled through the French campaign to exclude the audiovisual sector and the

'horse-trading' in the waning moments of the Round on audiovisual, maritime, financial services and civil aircraft issues; only to face U.S. negotiators imbued by the hawkish element of the Hollywood lobby and therefore unwilling to forge an agreement that, in essence, would have allowed Member States to be defensive in their approach to Hollywood's success in Europe. When the Hollywood lobby rejected the Commission's final offer and initially decided not to make GATS commitments, leading to a comedy of errors that left the Commission without a schedule of its own, French Prime Minister Balladur seized the moment by declaring a French victory — that France all along would never have signed an agreement that jeopardised its cultural identity (*Financial Times*, 16 December 1993, p. 6). In the end, the Hollywood hawks made the greatest contribution to Mr. Balladur's declaration.

CHAPTER 8

CONCLUSION

Why did Hollywood lose the Uruguay Round? Jarvie's (1992) scholarship on the U.S. film industry's export system during the first half of this century turns out to be a good place to begin formulating an answer. Mine is based on primary research completed over a three-year period, which involved gathering primary documents and conducting over thirty interviews with key U.S. and EU negotiators and film executives, and I conclude that Hollywood's loss stemmed in part from the U.S. government placing the interests of other U.S. industrial lobbies ahead of the those of the Hollywood lobby, and in part from the hawks' aggressive approach to international trade negotiations.

Despite assertions by Acheson and Maule (1989), Golding and Murdock (1996)²³⁰ and Mosco (1996) that the communication commodity is unlike any other commodity because of its capacity to 'affect cultural evolution,' 'organise images and discourses' or 'shape consciousness,' U.S. and EU negotiators haggled over movies and television programmes in the Uruguay Round as if they had no such capacity — as if they had the same monetary and cultural value as crops, financial services and civil aircraft. By examining communication as a commodity during the Uruguay Round, Schiller's (1969

²³⁰Acheson and Maule (1989) write: "An obvious difference between program and goods trade is that media content directly affects cultural evolution, assessments of domestic life, and not unimportantly in explaining policy, the popularity of the incumbent government" (p. 47). Golding and Murdock (1996) argue that while cultural industries share features in common with other areas of production, cultural goods "play a pivotal role in organizing the images and discourses through which people make sense of the world" (p. 11).

[1992]) belief that U.S. media corporations dictate the U.S. government's foreign trade agenda does not stand up. In the end, the U.S. government's agenda for the Round placed a higher priority on commodities other than communication.

As Jarvie's (1992) work indicates, in international trade negotiations involving many industry sectors, the U.S. government tends to place the interests of other U.S. industrial lobbies ahead of the those of the Hollywood lobby. How did the U.S. government find itself in a position of having to choose between satisfying the Hollywood lobby and risking the entire Round, or securing gains made in other sectors and enduring the wrath of the lobby? From the USTR's perspective, U.S. domestic politics involving Congress and the U.S. maritime transport services industry had forced the U.S. government to protect the domestic maritime transport services sector from liberalisation. This, in turn, hindered efforts to satisfy the Hollywood lobby because EU Member States to varying degrees had forged linkages early in the Round between progress in the audiovisual sector talks and progress in the maritime talks. Moreover, the signing of the Blair House agreement in November 1992 prompted Member States with strong interests in agriculture to direct their frustration over the agreement by backing the French government against the United States on audiovisual services and IPRs issues. EU concessions on U.S. domestic anti-dumping laws also erected an obstacle to satisfying Hollywood. In the TRIPs agreement, when the Commission's lead IPRs negotiator offered to make concessions on the issue of national treatment of levies on blank tapes in return for concessions on the use of appellations associated with wines, California wine-makers quickly put an end to such a potential trade. And, in the final hours of the Round, the 'horse-trading'

between U.S. and EU negotiators involving maritime transport services, financial services, aeronautics and audiovisual services also created obstacles in the audiovisual sector talks. However, the USTR's choice to secure the Round without satisfying the Hollywood lobby should not lead one to believe that the Hollywood lobby was a victim of the bargaining in the Geneva 'marketplace.' Evidence suggests that the one truly insurmountable obstacle U.S. and EU negotiators faced while trying to reach a bilateral accord on audiovisual and IPRs issues was the Hollywood lobby itself.

Through Putnam's (1988 [1993]) level II analysis of domestic influences on trade negotiations, a clearer picture of the relationship between the U.S. film industry and government in Europe begins to emerge. There are really two relationships: one at a national or bilateral level and one at a multilateral or supranational level. Schiller (1969 [1992]) believes that U.S. media corporations have more authority than most governments, and are no longer dependent on the U.S. government in removing trade barriers. This proposition needs to be unpacked. At the national or bilateral level, evidence suggests that the 'little State Department' both negotiates on its own with governments and calls in the U.S. government when it needs help. It is difficult to determine the film industry's success rate on its own versus its rate with the help of government officials. However, it is clear that U.S. government intervention is important to the film industry's overall strategy in individual foreign markets, particularly markets in the EU. While the U.S. film lobby has had success in removing barriers on its own on a bilateral or national level, even Valenti (1992) himself concedes that government pressure from such trade weapons as Special 301 is vital to correcting market access, copyright and piracy problems. Based on Valenti's list of problem

markets throughout the world, Schiller's proposition will remain discredited for some time to come. But even if the U.S. government intervenes, there is no guarantee that political pressure will in the end make a difference, particularly in major industrialised markets in which the threat of retaliation tends to counter aggressive actions.

At a multilateral or supranational level in Europe, a relationship also exists between the U.S. film industry and government. On the surface, the relationship appears similar to the bilateral relationship: In the case of adverse legislation such as the Television Directive, the U.S. government will intervene on behalf of the film industry brandishing Special 301. In the case of the Uruguay Round talks, the government will offer assurances 'from the highest levels' that the interests of the film industry will be met. But at least three constraints can be seen to work against the productivity of this relationship. First, the U.S. government's treatment of the U.S. film industry at the end of the Round was less important than the film industry's treatment of the government throughout the Round. Jarvie's research indicates that historically, influential Hollywood moguls tend to expect industry lobbyists and government officials to approach international negotiations aggressively. In the Uruguay Round, the aggressive style of the hawkish element of the U.S. film lobby precluded U.S. negotiators from pursuing more subtle, creative approaches to trade barriers in the EU. Second, as the outcome of the audiovisual negotiations in the CUFTA, NAFTA and GATT suggest, the political influence of the U.S. film lobby is not as great as the influence of more powerful U.S. industries, which have the clout to set the U.S. government's trade agenda well before actual negotiations begin. Third, as Guback (1969) and others have suggested, at a supranational level the EU has

historically turned the U.S. film lobby into 'interested observers' and resisted U.S. pressure to remove barriers to U.S. audiovisual products.

Mosco (1996) writes that the challenge has been to locate the role of the state in the media industry between the extremes of either an "independent arbiter of a pluralistic field of pressures" or as the "instrumental and dependent arm of capital" (pp. 91–92). The relationship between the U.S. film industry and government in the Uruguay Round 'marketplace' suggests that the U.S. government is a *dependent* arbiter of a pluralistic field of corporate pressures. However, despite the high profile of the Hollywood lobby during the Round, and President Clinton's intervention on behalf of the lobby during the final two days, the U.S. government is less dependent on pressure from the U.S. media industry as it is on pressure from more powerful industries such as maritime transport services and agriculture. In the end, President Clinton would not block the conclusion of the entire Round because the Hollywood hawks thought he should. And yet Mr. Clinton, with the help of the USTR, showed a great deal of interest in the outcome of the audiovisual sector talks by making phone calls and sending follow-up letters to EU leaders. This suggests that the U.S. film industry was still an important constituent of the Clinton Administration because of the industry's fundraising capabilities.

Indeed, by concluding the Round without satisfying the Hollywood hawks, the Administration has begun to feel the consequences. An article in the *Guardian* notes that Hollywood donations to the Republican Party since the Round have increased dramatically. In 1995, 58 percent of Hollywood's political donations went to the GOP, an increase of 31 percent in 1993 and

1994. Fox, MCA, MGM and Time Warner contributed more to the GOP than to the Democrats. According to Jonathan Freedland, "the shift is partly a punishment for Mr. Clinton's failure in 1994 (sic) — during the final negotiations of the GATT trade deal — to guarantee unlimited access for U.S. films to the European market" (2 July 1996, p. 11).

The hawks' aggressiveness fuels campaigns by protectionist countries such as Canada and France to remove the audiovisual sector from trade agreements. Their aggressiveness also portrays *all* members of the Hollywood lobby, particularly Jack Valenti, as hard-driving Americans who are insensitive to the cultural and commercial concerns of import countries. Moreover, the nature of the hawks' aggressiveness is worth examining because it ostensibly stems from the tough negotiating style of Hollywood executives. Yet comments by Mr. Terkowitz suggest that the reason for the hawks' table-pounding approach was their lack of understanding of EU's institutions and policy formation. Perhaps the U.S. film industry needs to develop a new breed of legal advisor trained in law *and* diplomacy. Indeed, more research is needed on the influence of the hawks during the CUFTA and NAFTA negotiations. It is conceivable that audiovisual deals could have been struck in those agreements were it not for the hawkish influence on U.S. negotiators. Research is also needed on the U.S. film lobby's post-Round public relations and public affairs campaigns to improve relations between the United States and the EU. Have the doves really begun to set the agenda for the U.S. film industry, or have the hawks continued to set the agenda using more subtle means?²³¹

²³¹An MPAA official commented: "Valenti was indeed aware of the negotiating style directed from California. He was aware of the subtleties of negotiating at the multilateral level and at the congressional level. But his

A senior U.S. trade official described one of the hawks as 'obsessed' with the subsidies issue," even though, as the official noted, the MPA had a history of encouraging subsidies to indigenous film industries because the association's figures showed that people would go to the movies more often if their domestic industry were a healthy one (interview with author, 2 February 1996). A senior Hollywood executive, speaking on behalf of the doves, said: "We really didn't care about subsidies. It was a negotiating chip to trade away for something else later. In fact, the U.S. in retrospect didn't really care anymore that it didn't get what it wanted. Jack Valenti just wanted to change the tone and style so it wouldn't happen again" (interview with author, 30 November 1995). It is common for negotiators to push for concessions, only to give in at the last minute to meet other objectives. But when this tactic is employed aggressively in negotiations involving cultural issues, the tactic can backfire.

superiors were not" (interview with author, 23 February 1996). However, according to several U.S. sources, the Hollywood lobby has begun to take a more diplomatic approach to negotiations. One example of the new approach is the MPA's decision after the Round not to seek immediate Special 301 trade sanctions against the EU from the USTR (*Variety*, 28 February–6 March 1994, p. 12). According to a DG-X official, after the Uruguay Round the U.S. strategy switched to a more cooperative, subtle, bilateral approach, negotiating directly with each Member State, isolating anti-U.S. Member States — France and Spain, for example (interview with author, 28 Nov. 1995). When the Commission introduced a proposal to revise the Directive in December 1995 to cover new technologies, the official notes that the proposal was aborted because of pressure felt by Commissioners from the national governments, in particular, those of Britain and Germany. In 1995, Europe's culture ministers voted to give jurisdiction over programming content and advertising to the Member States. In 1996, efforts by the European Parliament failed to remove the 'where practicable' loophole in the Television Directive, making the content quota (51 percent European works) non-binding.

Perhaps Commission negotiators intended all along to wait until the last minute to make an offer on audiovisual services and IPRs related to copyright in order to place the Clinton Administration in a dilemma. And perhaps the Commission's final offer fell short of what could have been offered. But perhaps, too, the hawks' demands could never be met by Commission negotiators. Yet the hawks did not go home empty-handed. The audiovisual sector was covered under GATT-WTO rules and disciplines, meaning, *inter alia*, future negotiations would take place, and domestic laws related to audiovisual issues would have to be transparent. The French government might have declared victory, but it was not a total victory.

More research is also needed on the methods the U.S. film industry uses to open foreign markets themselves, and on the reasons why bilateral government intervention on behalf of Hollywood fails. Do Hollywood lobbyists negotiate with other U.S. industry lobbyists to get them to change their positions on an issue posing as an obstacle to Hollywood's interests? When the U.S. government intervenes at a bilateral level, what issues unrelated to the audiovisual sector tend to be linked to progress on audiovisual talks? Moreover, research is also needed on post-Round inter-corporate summits, such as the 1995 Transatlantic Business Dialogue, to determine if CEOs of the global entertainment corporations, frustrated over need for government intervention on a supranational level, have begun to negotiate among themselves for the reduction of trade barriers, leaving government officials to fulfil the administrative details. Perhaps Schiller's proposition, modified to include the power of EU *and* U.S. media corporations, might stand up in the future.

In the case of scholarship on France's role in the audiovisual services and IPRs negotiations, the problem is not so much an incongruity between theory and empirical evidence, as an incongruity between legal argument and empirical evidence. Put another way, the problem is one of 'spin' placed on events during the Uruguay Round. For example, Joachimowicz and Berenboom served as legal counsel to the Belgian presidency during the Mons meeting. However, Schiller's assertion that U.S. negotiators could not overcome French resistance to an audiovisual accord is less 'spin' and more irony to contrast with his diatribes against the dominance of Hollywood in foreign markets. Yet both legal scholars and political economists alike have failed to appreciate the importance of EU protocol during the Round and the Commission's efforts, in consultation with the 113 Services Committee, to reach an audiovisual sector accord with the United States.

Another oversight in scholarship to date on the audiovisual sector talks is the sparse analysis of the role of EU Member States *other* than France. Indeed, France was one of 12 countries acting as constituents to Commission negotiators. Alliances among dirigiste and more liberal Member States were formed out of political necessity, often for reasons unrelated to the audiovisual sector talks. The French/Belgian alliance was based on a shared language among governing elites, while the liberal/'Club Med' split observed by several sources was related not only to the development of the Television Directive but also the Blair House Agreement and agricultural issues in general. And the alliance formed by France with maritime countries such as Greece and Denmark to open the U.S. maritime services industry to foreign competition also affected the audiovisual sector talks. Yet the talks are generally viewed as a battle between the commercial concerns of the United

States and the cultural concerns of France. Indeed, it is far easier to encapsulate the negotiations in this way, rather than attempting to explain cross-sectoral Member State alliances that reduce the importance of communication — the ‘shaper of consciousness’ — to a mere commodity ‘horse-traded’ with crops, shipping, financial services and the like.

On a more theoretical level, conceptions of media globalisation that focus on abstract notions such as time/space compression cannot flesh out Carey’s (1989) observation of Innis’ ‘tensions, contradictions, and accommodations’ between trading and communications partners. These conceptions certainly cannot bring to light micro power struggles (Mosco, 1996) among film lobbyists, let alone misunderstandings between media moguls and heads of state. Yet it appears that in the case of the Uruguay Round, these power struggles played a decisive role in shaping the conditions in which the U.S. film industry was able to ‘go global’ under the auspices of GATT rules and disciplines. Perhaps political economists of mass communication should focus less on the power of media TNCs and more on the legal and business minds *behind* the individuals who run the TNCs.

Moreover, Mosco’s (1996) micro-macro approach, operationalised with Putnam’s (1988 [1993]) two-level analysis, offers political economists of communication a new interdisciplinary method with which to examine the state’s role in the media industry. By paying careful attention to units of analysis, and by conducting more rigorous primary research, scholars of political economy can begin to move away from broad themes of government ‘support’ for media corporations to more specific themes that explain

situations in which the government/industry relationship does and does not remove foreign barriers to trade.

APPENDIX A

POST-ROUND POLITICS

In a statement published in the appendix of ACTPN's (1994) report on the Uruguay Round, Jack Valenti urges the Clinton Administration to "re-set the imbalance in the EU marketplace which the final GATT treaty sanctifies" (p. 163).²³² To secure the support of the U.S. film industry for fast-track approval of legislation to alter U.S. law in accordance with the Uruguay Round's results, the Clinton Administration on 8 December 1994 agreed to several provisions on intellectual property that address some of the Hollywood lobby's concerns. Section 315 of the Uruguay Round Agreements Act (PL 103-465, 103rd Congress, 108 STAT 4809-5053) lists several objectives related not only to the TRIPs but to the NAFTA. Section 315 complements the intellectual property provisions in the Omnibus Trade and Competitiveness Act of 1988. However, the U.S. film industry seems to be simultaneously relying on U.S. domestic legislation to change EU supranational and Member State law, and moving away from using aggressive weapons such as Special 301. Recall that after the enactment of the Television Directive and after the Uruguay Round the U.S. film industry chose *not* to increase pressure on the EU with Special 301 provisions beyond the 'priority watch' request granted by the USTR in 1991. It remains to be seen how the U.S. film industry plans to enforce Section 315.

²³²It is interesting to note that Mr. Valenti mentions the EU's withdrawal of its audiovisual commitments in the GATS in the final moments of the Round, but he does not mention that his hawkish superiors set off the chain reaction that led to the EU's action.

Section 315(2) states as an objective “to seek enactment and effective implementation by foreign countries of laws to protect and enforce intellectual property rights that supplement and strengthen the standards” of the TRIPs and NAFTA” (108 STAT 4942). What is interesting about Section 315 is that its language seems to cover both national treatment of IPRs *and* market access, the latter during the Uruguay Round associated with audiovisual services, the Television Directive and the GATS. Section 315(2b) states, “to prevent or eliminate discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property” (108 STAT 4943). Section 315(3) states, “to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection” (ibid). In a sense, the Administration allowed the Hollywood lobby to codify in U.S. law its frustrations over the Round.

However, the U.S. film industry was not the only industry to shape the language of the Uruguay Round Agreements Act. Note, for example, that U.S. trade lobbyists succeeded in countering many of the concessions made by the U.S. government in the Round’s anti-dumping talks (*Financial Times*, 1 August 1994, p. 4). Recall that the EU’s acquiescence to the U.S. position on its tough anti-dumping laws was considered by U.S. negotiators as a quid pro quo for not satisfying Hollywood during the final days of the Round. Indeed, the Round’s anti-dumping accord was hailed as a watershed because it required clearer guidelines for deciding injury and investigating claims (*Financial Times*, 16 December 1993, p. 5). However, trade lobbyists, particularly those representing the U.S. manufacturing sector, inserted language in the Agreements Act that in some cases nullified the ground-breaking measures

agreed to at the conclusion of the Round (*Financial Times*, 1 August 1994, p. 4).

Here the importance of strategy in international trade negotiations involving several industry sectors crystallises. What the U.S. government concedes at the conclusion of a Round might be revoked by U.S. industries interested in correcting any perceived 'imbalances' during the domestic ratification stage of the trade treaty. As discussed in Chapter 2, this ratification stage involves a battle in the Senate Finance Committee and House Ways and Means Committee over the U.S. president's ability to gain fast-track approval of the treaty in Congress. However, Hollywood's ability to take advantage of this strategy during the Uruguay Round was diminished by the fact that its goal was not to protect U.S. law, but to weaken the EU's Television Directive and its strict implementation in dirigiste Member States.

APPENDIX B

POST-ROUND WAR OF WORDS

The battle over UIP continued well beyond the 15 December deadline. In a press conference on 22 February 1994, the Associated Press and the *Wall Street Journal* reported that Commissioner Pinheiro accused UIP of “controlling 80 percent of US film distribution in the EU,” and opposed renewal of the company’s antitrust exemption (Associated Press, 22 February 1994; *Wall Street Journal*, 23 February 1994, p. A14). However, Reuters, the *Financial Times* and Agence Europe, as well as other media worldwide, reported that Prof. Pinheiro said UIP “controlled 80 percent of film distribution in Europe” (Reuters, 22 February 1994; *Financial Times*, 23 February 1994, p. 6; Agence Europe, 23 February 1994). This difference in reporting set off a confrontation between Europe and UIP.

In its defence, UIP claimed its average market share (in box-office receipts) across Europe for 1992 was only 18 percent, a figure “lower than UIP’s market share when the Commission granted UIP’s original exemption in 1989 (UIP, News Release, 23 February 1994, p. 2). *Le Monde* corroborates UIP’s assertions:

In fact, these shares of the market fell considerably between 1989 (date of the exemption) and 1993: from 35% to 18% in Great Britain, from 39% to 16% in Germany, from 51% to 31% in the Netherlands and from 23% to 11% in France (20–21 March, 1994, p. 8).

On 25 February, Prof. Pinheiro responded to UIP’s defence, saying that “I have never said that UIP controlled 80 percent of film distribution in Europe, but that roughly 80 percent of films shown in Europe were of American origin and that UIP was a main supplier” (European Commission Press

Release, 25 February 1994). On 25 February, a spokesperson for Prof. Pinheiro said: "Of course the UIP share of U.S. film distribution in the EU is less than 80%. When he (Pinheiro) used that figure, he was referring to the overall market share of US films in the EU. The press must have misunderstood what he was saying" (*Variety*, 28 February–6 March 1993, pp. 59–60).

Screen Finance, citing Anthony Davis of London Economics, notes that between 1988 and 1992, UIP was the second largest distributor behind Warner Bros. (in box-office receipts) in the UK, France, Spain and Germany, which as a group make up about 70 percent of the total EU market (Hobdell, 1993, p. 11). However, Davis notes that in countries where UIP shareholders control a large number of local cinemas, the screen time allocated to UIP films is higher than might be expected from the films' box-office performance (p. 12). While the Commission — DG-IV (Commission directorate for competition) in consultation with DG-X and DG-XV (internal market) — considers UIP's status, UIP remains exempt from Article 85(1). Eventually the Commissioners themselves will decide the matter (Hobdell, 1993, p. 2). The UIP case study illustrates the extent to which media reports can differ on a single event.

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Arnaud Bordes, services specialist, DG-I

Karl Falkenberg, deputy head of unit, Services and External Dimension, Directorate M, DG-I, and EU chief services negotiator, January 1992 to present

Catherine Field, associate general counsel for IPRs, USTR

Dr. Jacques Gorlin, U.S. lobbyist in IPRs sector

Philippe Kern, director of European Affairs, Polygram

Mike Kirk, chief U.S. negotiator for IPRs, 1991–1993

Trevor Heaton, head of Trade Policy Unit, Council General Secretariat

David Hollister, deputy head of Trade Policy Unit, Council General Secretariat

Marie-Therese Huppertz, legal advisor, Bertelsmann

David Lowe, secretary, Federation Against Copyright Theft UK

Ambassador Bernard Miyet, French roving ambassador on audiovisual issues

John Newbiggin, director of public affairs, Engima Productions

Ambassador Hugo Paemen, head of Commission's negotiating team

Don Phillips, chief civil aircraft negotiator, USTR

Raymond Raith, head of section on IPRs, DG-I

Dr. iur. Jorg Reinbothe, assistant to the Director General, DG-XV

Pascal Rogard, secretaire general, Chambre Syndicale des Producteurs et Exportateurs de Films Francais

Jonathan Scheele, chief services negotiator, 1986 to December 1992, DG-I

Neil Turkewitz, executive vice president international relations, Recording Industry Association of America

Hannu Wager, legal affairs officer for TRIPs at the WTO

*titles of sources pertain to the Uruguay Round

In addition, 10 people were interviewed under a strict condition of anonymity. A list of these people, along with their titles and phone numbers, was given in strict confidence to my examiners, Professor Vincent Porter and Professor James Curran.

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