CONTENDING WITH ‘UNITY IN DIVERSITY’ THROUGH TELECOMMUNICATIONS POLICY: THE EU’S TELEVISION WITHOUT FRONTIERS DIRECTIVE AND THE ELECTRONIC COMMERCE DIRECTIVE

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ABSTRACT

The European Union is the world’s most prominent supranational organization, lauded by many as a model for regional integration. Despite its success in unifying a continent plagued by violence and discord for most of the twentieth century, however, current events have revealed underlying structural flaws in the organization. The EU suffers from a fundamental tension between the practical need for a common market and inclusive identity and the simultaneous need to protect and encourage national and local identities. Deeper unification of the continent is crucial for its long-term economic and political viability, in the wake of both the Euro crisis and a general shift away from the traditional power centers of the West.

Two major pieces of legislation—the Television without Frontiers Directive (now the Media Services Directive) and the Electronic Commerce Directive—serve as cornerstones of the EU’s telecommunications policy, intended to strengthen intra-European production and trade and thus increase the size of the unified economic bloc. Yet neither directive has succeeded in fostering intra-European production and trade or in building a common European cultural identity.

This thesis examines these two legislative policies in the larger context of European identity historically and in the present day, focusing on obstacles each faces related to their implications for European cultural identity. As its political institutions play an increasingly large role in the lives of European citizens—a group of people that is likewise becoming increasingly
diverse—living up to its motto of “United in Diversity” has proven to be an enormous challenge of legitimacy for the EU. Issues of cultural identity and language have become more problematized with the geographic and economic expansion of the regional organization. As a crucial mechanism for the transmission and preservation of culture, telecommunications policies lie at the forefront of these debates.
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INTRODUCTION AND LITERATURE REVIEW

Introduction

Despite its continued expansion and ample legislation providing for the realization of a unified, European market, the EU suffers from a fundamental tension between “the lofty goals of integration and member states’ collective unpreparedness to think through the consequences of their ambitious project” (Sarotte, 2011). While questions of state versus supranational sovereignty lie at the heart of the conflict, questions of identity are likewise central to the debate. The EU remains stuck between a rock and a hard place: on the one hand, it has a practical need to forge a common regional identity, while on the other the simultaneous necessity to protect and encourage national and local identities. However, deeper unification of the continent is crucial in order to succeed, and compete, in the new world order in which economic dominance is moving south and eastward, away from the traditional power centers of the West. Two major pieces of legislation—the Television Without Frontiers Directive (now the Media Services Directive) and the Electronic Commerce Directive—serve as cornerstones for EU telecommunications policy, intended to strengthen intra-European production and trade and thus increase the size of the unified economic bloc. Yet each directive illustrates this tension between a single European market and the persistence of diverse local identities, and neither has met its intended goals.

This thesis examines these two documents in the larger context of European identity historically and in the present day, focusing on obstacles each faces internally and externally related to their implications for European cultural identity. At their core, these two initiatives are economic policies, created with the goal of fostering intra-European growth, cross-border trade, and job creation. However, both policies also touch upon a fundamental issue within the
European Union—namely, the tension between the practical need for a common market and a unified European identity, as well as the organization’s role as the protector of a multitude of national and local identities. As its political institutions play an increasingly large role in the lives of European citizens—a group of people that is likewise becoming increasingly diverse—living up to its motto of “United in Diversity” has proven to be an enormous challenge of legitimacy for the EU. Issues of cultural identity and language have become more problematized with the geographic and economic expansion of the regional organization. As a crucial mechanism for the transmission and preservation of culture, telecommunications policies lie at the forefront of these debates.

While the ongoing Euro crisis has returned cultural clash in Europe to the headlines in a way not seen since the fall of the Berlin Wall, media attention focuses almost exclusively on the economic and fiscal reasons for continental unease. In reality, however, the problems of the union run far deeper. The ongoing failings of the supranational currency are the most visible symptom of a larger malaise that is fundamentally political, rather than economic. Upon the establishment of the Italian state in 1861, Massimo d’Azeglio famously remarked, "Now we have made Italy, we must learn to make Italians" (Gilmour, 2011). The same might be said about Europe and Europeans. As Fligstein notes by way of explanation for his writing of *Euro-Clash*—which focuses on the tensions simmering below the surface in Europe, published just before the start of the global financial downturn and the European currency crisis—“the issue of what was going on in Europe had the most to do with the changing effects of European economic integration on the life chances of people who live in Europe. It is the perception of these life changes that drive European attitudes toward the EU. From this perspective, political scientists were missing the deeper dynamics and were trying to explain only part of the story” (2008, pg.
The perspective of sociology can supplement a purely realist perspective on the future of the EU and its form of “benign globalization.”

The structure of the thesis will proceed as follows. Following a brief literature review, the first chapter explores the origins of the European Union, its founding principles and objectives, and an overview of its key policy making bodies, including an explanation of how European directives at the regional level interact with national laws in helping to bridge the gap between regional and national identity. The second chapter focuses on the question of national—and by extension, supranational—identity formation, the historic cultural tension within Europe specifically, and the various challenges facing the continent moving forward—from the spread of Euroscepticism and the resurgence of nationalism to the rise of immigration and geographic expansion of the union. Chapter three begins with an introduction to the structure of the world trading system and the EU’s role within it, focusing specifically on the complexity surrounding trade in services and the EU’s infamous cultural exception, as well as the unique characteristics of audiovisual services as vectors of identity and the complications this engenders. The second half of the chapter examines the Television without Frontiers Directive in particular, with a focus on its attempts to quell the spread of American cultural dominance, effects on the European television market, and the modernization of the directive to reflect the increasing digitization of audiovisual products. The fourth chapter shifts to the subject of electronic commerce and the EU’s Electronic Commerce Directive, aimed at creating a single market for European electronic commerce. The final chapter provides both a summation of the thesis as a whole, as well as opportunities for further research focusing on the developing Transatlantic Trade and Investment Partnership between the United States and EU.
Literature Review

The body of scholarly research on the European Union is vast and growing. Approaches to the interpretation of the EU as a political actor and the question of cultural identity tend to fall into the three traditional paradigms of international relations. The classic realist perspective, focusing on power, tends to write off cultural unity as irrelevant to the economic clout of the organization. The liberal perspective focuses on the role of the EU as an international organization and on the interdependencies among the global system. The constructivist approach, however, highlights the crucial role of social norms and identity in explaining the actions of the EU both internally and in relation to the rest of the world. As the Euro crisis has brought to light in the last few years, issues of culture and identity are of crucial importance to the future of the EU and its ability to maintain legitimacy in the eyes of its 500 million citizens. For this reason, a constructivist approach is the most appropriate fit for this thesis.

Much has been written about the underlying tension in the regional organization, its structural weaknesses, and its lack of popular support among its expanding group of diverse citizens. As a result, this literature review—and the sources referenced in the thesis as a whole—is by no means exhaustive. Rather, it represents a selection of material available on the subject. Because this thesis approaches the EU’s attempts at balancing the creation of unified, supranational identity with the preservation of national and local identities through the lens of two particular pieces of telecommunications legislation, it utilizes sources from a variety of disciplines, ranging from international relations and global governance to sociology and economics.

First, information from the European Union itself, accessed primarily through the organization’s official website, “Europa,” is invaluable to this project. The EU publishes an
extensive amount of material online, and this website provided direct access to a variety of specific pieces of legislation, as well as links to related materials like external surveys and reports, press releases, and summations of complex legislation and organizational structures. In addition, the two pieces of legislation themselves—the Television Without Frontiers/Media Services Directive and the Electronic Commerce Directive—serve as primary, referential texts for this project. Follow-up reports from consulting firms, internal EU review bodies, and public opinion data from Eurobarometer polls likewise provide insight into the objectives, challenges, and unforeseen barriers to the realization of each directive. Further insight on the inner workings of the EU and its role in world trade comes from a lecture given by EU expert and political strategist Jon Worth at the Graduate Institute in Geneva.

A vast array of sources on cultural identity in Europe, conceptions of citizenship, and challenges posed by immigration, Euroscepticism, and nationalism are central to the sociological approach of this thesis. Among those referenced include: Harmsen and Spiering’s *Euroscepticism: Party Politics, National Identity and European Integration*, Talani’s compilation of essays on the topic of *Globalisation, Migration, and the future of Europe*, and Martiniello’s *Citizenship of the European Union: a critical view*. Checkel and Katzenstein’s *European Identity* provides a comprehensive overview of the complexities of cultural identity in Europe and the gap between “elite-level politics” and the views of the general public, while Castles and Davidson’s *Citizenship and Migration: Globalization and the Politics of Belonging* offers a global view of the evolving nature of citizenship in our globalized world. An article by Alok Das as well as Peter Kraus’ comprehensive *A Union of Diversity: Language, Identity, and Polity-building in Europe* provide necessary background information on European linguistic policy, one of the key elements in forging a common cultural policy for the organization.
Benedict Anderson’s *Imagined Communities* provides crucial background information on group identity and how national (and, by extension, supranational) identity is formed, cultivated, and legitimized by the state in the minds of its citizens. Anderson’s classic text also helps to contextualize the reasons for the particular challenges of the European Union, the first regional organization of its kind. Similarly, Neil Fligstein’s *Euro-Clash*, which emphasizes the lack of attention to the sociological element among EU scholarship, is a key text for this thesis. In addition, information on nation branding comes from the writings of Simon Anholt, as well as newspaper articles by Bounds and Berry that focus on the challenge of EU branding in particular.

The WTO’s General Agreement on Tariffs and Trade and General Agreement on Trade in Services and UNESCO’s Universal Declaration on Cultural Diversity are primary documents of fundamental importance to this project that not only provide necessary information on the global trading structure, but also demonstrate the clash between trade and cultural policies on the international stage. Likewise, numerous works, including articles by Galperin, Graber and Footer, Magder, and Shore, address the dimension of international trade policy and the EU’s challenge of aligning its trade objectives and obligations through the WTO and regional agreements with its cultural policy goals. Additional writing from J.P. Singh, Voon, and Joost Smiers deal more specifically with the concept of cultural diversity and cultural production in the era of globalization.

Data on the impact of the directives themselves comes from a variety of sources, most notably Graham’s 2005 exhaustive impact study on the Television without Frontiers Directive and a 2007 multi-author report on the economic impact of the Electronic Commerce Directive. In addition, a multitude of articles—both legal and mainstream—offer insight into the trade implications of Television without Frontiers. Texts from Donaldson, Greenhouse,
Schlesinger, Conley, and Curwen are fundamental to a comprehensive understanding of the
directive and the American reaction to its passage.

The biannual Eurobarometer and the ad hoc subject matter-specific polls, conducted by
the EU, are another crucial resource for this project. These polls provide crucial data on the
attitude of European citizens towards the regional organization, the extent to which they identify
as “European,” and their views on the appropriate role of the organization in various aspects of
political and social policy making. Finally, a variety of articles from mainstream media outlets
including Foreign Policy, Time, CNN, and EurActiv.com provide up-to-date information on the
unfolding Euro crisis as well as the potential free trade agreement between the US and EU.
CHAPTER 1: THE ORIGINS, PURPOSE, AND GOVERNING STRUCTURE OF THE EUROPEAN UNION

The Legacy of Two World Wars

Europe, the continent that largely went out of style in the post-colonial twentieth century, has reemerged as a region of interest in the twenty-first. Though the processes of global development, democratization, and digitization have helped to distribute power and influence around the world, elevating the young voices of the BRICS over the tired proclamations of their former colonizers, the countries of Europe remain key players on the world stage, crucial allies of the United States and the rest of the western world, and—with the countries of the EU taken together—the world’s single largest economy.

The amount of scholarship and media coverage of the EU has skyrocketed in the last few years as the regional integration project has faltered. While the future of the organization remains uncertain, plagued by rising tensions with an increasingly nationalistic tone, in all likelihood the current financial difficulties of the continent will lead to more, not less, integration. At this point, national economies are too intimately connected to realistically risk a break-up. With the assumption of the EU’s resilience and continued relevance on the world state, this chapter will examine the origins of the supranational organization, its primary objectives, overall governing structure, and the evolution of its membership and power over time.

Before the troublemaking economies of Portugal, Ireland, Italy, and Spain were baptized as “PIIGS,” before the collapse of three of those pesky national economies, and before the term “Brexit” was coined, the EU was less of a newsmaker, at least outside of the European continent, and more of a fascinating specimen for political scientists. Viewed as a model of successful regionalism in an increasingly integrated world economic system, the EU seemed to represent
the future of global institutions and perhaps a preview of a world in which the supremacy of nation-states was replaced with the more expansive power of transnational, regional organizations. While the world was shocked as the EU was named the 2012 recipient of the highly esteemed Nobel Peace Prize against the backdrop of rising regional tensions and the ongoing Euro crisis, the honor undoubtedly applies to its historic unification of a continent plagued by conflict rather than its current state of crisis at the hands of its currency.

The origins of today’s European Union took root in the aftermath of the devastation that ravaged the continent in the first half of the twentieth century. The timing, of course, was no accident. Having suffered death tolls in the millions not once, but twice, in less than three decades, in addition to the systematic killing of the Holocaust, and the ruin of entire cities and countless historical and cultural artifacts, the European continent was broken almost beyond repair. After close to a half-century of war and a slew of nation-states too damaged, divided, and disillusioned to get back on their feet by themselves, the supranational integration project was born. While the fledgling organization was unique in its regional nature, it was accompanied by the emergence of today’s major international organization, which today span all continents and count among their members the overwhelmingly majority of countries.

A remote town in New Hampshire hosted over 700 delegates representing 44 nations for three weeks in July of 1944. Despite its unlikely location, the now infamous Bretton Woods Conference has left an indelible impact on the global economic system. Two overarching principles emerged from the meeting—that the opening of markets and resulting expansion of cross-border trade is a crucial peacekeeping tool, and that the world needed a supranational structure to promote its political and economic well being. As a means to carry out these goals, conference delegates agreed to the establishment of three key institutions: the General
Agreement on Tariffs and Trade (reborn as the World Trade Organization at the conclusion of the Uruguay Round in 1994), the International Monetary Fund, and the International Bank for Reconstruction and Development (the basis for today’s World Bank).

Beyond the obvious need for international peacekeeping after an unbelievably bloody half-century, the experience of the Great Depression emphasized the accompanying need for greater economic integration. According to the US Department of State’s Office of the Historian, “The policies adopted by governments to combat the Great Depression—high tariff barriers, competitive currency devaluations, discriminatory trading blocs—had contributed to creating an unstable international environment without improving the economic situation. This experience led international leaders to conclude that economic cooperation was the only way to achieve both peace and prosperity, at home and abroad” (Milestones 1937-1945: The Bretton Woods Conference, 1944). Though not technically a product of Bretton Woods, the United Nations did not follow far behind. Preceded by the League of Nations of 1919, American President Woodrow Wilson’s unsuccessful, but groundbreaking attempt at forging international peace, the UN was officially established in October of 1945.

Much like the three institutional products of Bretton Woods, the primary reason for the formation of the EU was political—albeit politics accomplished through economic means. This fundamental fact is largely misunderstood, with the EU frequently mischaracterized as a sort of “United States of Europe” designed to counter the economic supremacy of its North American peer. Though providing a counterbalance to the strength of the US is undoubtedly one goal of the current EU, its underlying purpose is the unification of the continent through the deep integration of national economies, in order to prevent conflict of the like seen in the early twentieth century. Though the vast majority of the news coverage of the EU remains centered
around the economics of regional integration, the political imperative for its economic policies cannot be ignored. In fact, focusing on the inherent political nature of the organization sheds light on its current financial woes, which are fundamentally as much a crisis of politics as economics.

**Geographic Enlargement and Political Expansion**

Jean Monnet, a French diplomat and political economist, is credited with developing the original idea of a unified European continent. One of the so-called “founding fathers” of what has become today’s EU, Monnet argued for the integration of the continent towards the end of World War II, astutely recognizing its necessity for the preservation of a hard-earned peace. Robert Schuman, French foreign minister and later prime minister, took up Monnet’s mantle and proposed the establishment of the European Coal and Steel Community (ECSC) in 1950. The underlying concept, a seemingly obscure basis for today’s EU, was simple: by centralizing the production of coal and steel, resources of tremendous importance at the time, especially to France and Germany, the countries that had been bitter enemies during the war would be banded together as allies out of economic necessity. In other words, “In a practical but also richly symbolic way, the raw materials of war were being turned into instruments of reconciliation and peace” (Europe in 12 Lessons). The Schuman Declaration was officially proposed on May 9, 1950. The subsequent Treaty of Paris of April 18, 1951 formalized the organization, a group of six nation-states: Germany, France, Italy, Luxembourg, Belgium, and the Netherlands. The ECSC marked the first humble step towards the European single market.
The 1957 Treaty of Rome furthered the process of European integration through the establishment of the European Economic Community (EEC) and the European Atomic Energy Community. It was not until the 1970s, however, that the process of geographic expansion began. Ireland, Denmark, and the United Kingdom became members of the community during the 1973 enlargement, followed by Greece in 1981, Spain and Portugal in 1986. Another milestone of the process of the European integration came with the passing of the Maastricht Treaty in 1992, which provided the formal establishment of European citizenship. This treaty, which set the stage for the euro and the next level of economic integration, stands as one of the most important policy documents in the EU’s history. Maastricht established key economic convergence criteria and, more importantly, “According to several observers, the Maastricht Treaty buried the old technocratic, economic and elitist Europe and opened the way for a new political Europe where the citizens were to play a central part in the making of it. In other words, the Treaty of the European Union was supposed to mark a complete change in the nature of the integration process” (Martiniello, 1994, pg. 30).

Still, Maastricht lacked (and continues to lack) the political clout to effect real change or adequately reinforce its tenets. Another key milestone in 1993 was the establishment of the so-called “Copenhagen Criteria,” which specify the requirements that must be met by a candidate country before it can be accepted into the EU: “stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy, as well as the ability to cope with the pressure of competition and the market forces at work inside the Union; the ability to assume the obligations of membership, in particular adherence to the objectives of political, economic, and monetary union” (Europe in 12
Lessons). A subsequent addendum also emphasized the necessary administrative infrastructure to put the EU rules and procedures into effect.

Three more rounds of enlargement have followed the establishment of the Copenhagen Criteria, beginning with Austria, Sweden, and Finland in 1995. An enlargement of historical significance, took place in 2004, lauded as the reunification of eastern and western Europe, a notable accomplishment only about sixty years after the conclusion of World War II. Several countries of the former Soviet Union and the Balkans ascended to the EU at this time: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Romania and Bulgaria took a bit longer to meet the necessary criteria, but both became members in 2007. At least one more country, Croatia, is slated to join the organization later in 2013. These most recent accessions have marked a significant turning point in the integration of the continent, erasing the traditional Cold War separation of East and West in favor of a post-conflict, unified regionalism. The 2004 and 2007 expansions have had a particularly noteworthy impact on the population, as most new entrants were former communist states, largely from Eastern Europe. As these countries have become full-fledged members of the EU, the organization’s demographics have changed dramatically.

Finally, the Treaty of Lisbon, passed in 2007 and officially in force at the end of 2009, represents a significant step forward for the union and a great political victory for those in favor of deeper European integration. The road to its passage, however, was arduous. First proposed in the form of a new European constitution that would replace all existing EU treaties—vetoed by referenda in both France and the Netherlands—the Treaty of Lisbon represents a less dramatic version of the original document that amends, rather than overrides, the Treaty of Rome and Maastricht Treaty. Even still, its passage required two referenda in Ireland. Created to meet the
needs of the dramatically enlarged union, the newest European treaty updates existing core
documents and focuses on increasing the EU’s transparency, democracy, and supranational
authority.

The Complex Relationship between National and Supranational Government

Fligstein uses the idea of positive and negative integration to explain the EU’s primary
activities (2008, pg. 49). Positive integration occurs through legislation that constructs rules in
order to create common European policy and help forge regional unity. Negative integration, on
the other hand, refers to efforts to break down barriers among member states, an obvious
example being the removal of trade barriers, which eliminates privileges for national firms and
encourages widespread liberalization, at least within the EU borders (Fligstein, 2008, pg. 49-50).
As might be expected, managing regional affairs that impact almost thirty member states requires
a strong, centralized administration. Predictably, however, the highly bureaucratic nature of the
EU has been heavily criticized by observers both within and outside of its boundaries because of
its inefficiency, lack of transparency, and technocratic nature.

The organization’s deserved reputation for bureaucracy compounds its cultural identity
issues because of a lack of symbolic rallying points for citizens and a sense of division—a “trust
gap” (Foroohar, 2013)—between elected officials and the general public. In the wake of the
Euro crisis, the criticism has escalated, as journalists, national politicians, and citizens alike have
questioned the ability of the supranational organization to govern effectively. Much of the
underlying tension, of course, mirrors the larger subject of this essay. Namely, in order to
govern more efficiently, transparently, and effectively, the EU institutions must be given more
power, resulting in the sacrifice of some national sovereignty for greater regional integration,
which is the very outcome that many EU citizens dread. Quoting Mohamed El-Erian, the CEO
of PIMCO—the world’s largest bond trader—Foroohar notes that since the Euro crisis the European population “is quickly losing confidence in the political order” (2013). Foroohar further argues, “There’s a sense among Europeans that politicians are willing to hang them out to dry when things get tough” (2013). While he emphasizes that the “trust gap” phenomenon is by no means exclusive to the European continent, the lack of societal cohesion and perceived distance between the policymakers and their constituents certainly exacerbates the issue in times of crisis.

The complexity of governing the European continent stems from both the innovative nature of the supranational union, as well as its dramatic evolution over the past several decades. Fundamentally unlike any other international organization, the EU has been characterized by some political scientists as “an intergovernmental organization constituted by a voluntary pooling of sovereignty” (Fligstein, 2008, pg. 39). Other scholars view the EU as a confederation not unlike the early American version under the now-defunct Articles of Confederation, and many others describe it as simply a “multilevel polity. The differences among these viewpoints stem from divergent perceptions of the interaction between supranational and national governments.

The frequent waves of EU expansion obviously add complexity through increased numbers of people to govern as well as larger numbers of country representation in each of the governing bodies, not to mention the growing diversity of cultural, political, and historical backgrounds of the various member states. The organization is divided into four primary bodies responsible for ensuring both its daily operations as well as building towards the region’s larger strategic goals: the European Commission, European Parliament (EP), the Court of Justice of the European Union, and the European Council of Ministers. In addition to these four institutions,
three more hold crucial roles: the Council of the European Union, the European Central Bank, and the Court of Auditors.

*European Commission*

The European Commission is the EU’s executive branch, composed of twenty-seven commissioners—one from each member state—who represent the interests of the EU as a whole. The commissioners are appointed to five-year terms, and serve under the leadership of a president, who is nominated by the European Council and must receive approval from a majority of the EMPs. Each member state selects potential commissioners, but it is the president-elect’s responsibility to make the final selection (which, to ensure the balance of powers, must be approved by the Council of Ministers and European Parliament).

The European Commission’s main responsibilities include drafting and executing policy, leading trade negotiations, managing the EU budget, monitoring member state compliance with EU law, and reviewing the applications of candidate countries. Unlike other EU institutions, the Commission is charged with the task of acting as an independent authority outside of national governments and interests. In contrast, the Council represents the interests of the national governments and the Parliament represents those of the citizenry.

*European Parliament*

As the legislative branch of the EU, the European Parliament, in terms of both its elections and the nature of its governing, mirrors the American congress to a certain degree, in the sense that its members are elected to represent their home country while simultaneously working towards regional legislation. Unlike most national parliaments, however, the EP does
not have the power to propose new legislation. The European Commission proposes laws, which the EP must accept, reject, or amend. The EP is also responsible for approving trade agreements and the EU budget, and they may write their own “initiative reports,” which the Commission has no legal obligation to comply with. However, the Treaty of Lisbon, promulgated in December 2009, has changed this to a certain degree. According to Europa, “the increase of co-decision procedure in policy-making ensures that the European Parliament is placed on an equal footing with the Council, representing Member States, for the vast bulk of EU legislation.”

The EP is the only directly elected segment of the EU governing structure. In its current iteration, it consists of 754 members who collectively represent the EU’s roughly 500 million citizens (Europa), the second largest democratic electorate in the world after India. The first of these elections was held in 1979, though the EP actually dates back to 1952 (at which point members were appointed rather than elected by democratic process). All MEPs are elected to five-year terms, though each member state holds its own elections and decides the rules for how these elections will occur. Again like the American counterpart, EP seats are doled out in approximate proportion to the population of each member state, varying between a low of six and high of 99 seats. To provide some context, Malta and Cyprus have only six seats each, the United Kingdom and Italy each have 73, and Germany currently boasts 99 (European Parliament). However, the maximum number of seats per country will be capped at 96 for the next election, an outcome of the Treaty of Lisbon.

Once the MEPs begin their period of service in Brussels and Strasbourg—the two cities serve as dual hosts for the representative body—they are grouped into political groups that are organized along political and ideological, rather than national, lines. There are currently seven in total, though new political groups can be formed under the following conditions: twenty-five
members must agree to join, and at least one-quarter of all EU member states must have representation within the group. MEPs may only belong to one group at a time, though some are “non-attached,” unaffiliated with any of the seven options. Still, despite the relatively small number of groups, the current EP represents over 100 different political parties (Worth, 2012). In addition to their general political affiliation, MEPs can serve on any of the twenty parliamentary committees, ranging from Fisheries to Culture and Education.

When pieces of legislation are passed at the European level, each member-state must incorporate it into their own national law. Both because it is the only EU governing body elected through universal suffrage and lacks the fundamental power of a traditional legislative branch—namely, the ability to propose laws—the EP has been described as suffering from a “democratic deficit.” Furthermore, the somewhat nuanced nature of its role has contributed to a great deal of confusion and frustration on the part of the European electorate regarding its purpose. Such confusion, exacerbated by the continuously evolving nature of EU institutions as a result of member state enlargement, the changing role of the EU under new treaties, and its seeming lack of relevance for the average EU citizen, has lead to low turnouts in parliamentary elections.

*The Court of Justice of the European Union*

The Court of Justice of the European Union, housed in Luxembourg, functions as the judiciary branch of the regional organization. In this capacity, it has the power to review the actions of all other branches of the EU, ensure the compliance of member states with EU treaties, and interpret EU law for national courts upon request. Like the federalist system in the United States, national and EU law have equal force. However, since the 1960s, the EU has operated
under the doctrine of supremacy, which means that when national and EU laws come into conflict, EU law prevails (Fligstein, 2008, pg. 41).

While the EU treaties, described as “primary legislation,” serve as the fundamental legal documents of the organization, a host of pieces of “secondary legislation” dictate how EU law is carried out on a daily basis. This type of legislation consists of regulations, directives and recommendations adopted by the EU institutions. Because of the doctrine of supremacy outlined above, any and all of these types of legislation take precedence over national law and are binding for all national and local authorities. Of particular interest to this essay are European-wide “directives,” which require individual member states to determine the best way to achieve a particular result. According to the European Commission, “Directives are used to bring different national laws into line with each other, and are particularly common in matters affecting the operation of the single market” (Application of EU Law, 2012). Unlike regulations, which are more straightforward and self-enacting, directives leave room for individualized national strategy within general compliance with the regional law. The official language, in article 288 of the Treaty on the Functioning of the European Union, reads as follows: “A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”

While in some cases national laws are already compliant with new directives, more often, each country must make adjustments to its own legal structure, a process called transposition. Each EU directive includes a transposition date, typically about two years after its passage, which functions as a deadline for all member states to adapt their national laws in accordance with the new piece of EU legislation. In effect, this means that while EU policymakers are the primary producers of European law, national bureaucracies are the parties
responsible for its enforcement. Still, the European Commission is charged with ensuring compliance with EU law, which it achieves through the imposition of sanctions, in the case of individuals and companies, or “formal action” against national authorities, which includes involving the European Court of Justice if necessary.

European Council of Ministers

The European Council of Ministers functions as an integral second legislative branch, a small group that complements the breadth of the European Parliament. Composed of the executive branch representatives of each of the twenty-seven member states, functionally the various ministers of each country, the Council represents the interests of national governments at the European level. Together with the Parliament, the Council examines, adopts, and passes legislative policies, though its focus is on the overall direction of the organization rather than the legislative details. Council meetings, as well as the ministers who attend them, vary depending on the issues at hand (Worth, 2011). While the foreign, economic, and finance ministers typically meet monthly, other configurations—for example the agriculture and fisheries group—occur on a case-by-case basis. Leadership of the Council rotates among the EU’s member states every six months, a process that both ensures that smaller countries do not lose out to their larger counterparts, but also contributes to inefficiency.

According to current law, legislation must be approved by qualified majority voting. This means that any new law must reach a “triple majority” of 255/345 total votes, a simple majority of member states (at least 14 of 27), and at least 62 percent of the EU population (as represented by ministers of the Council). However, the passage of the Lisbon Treaty—which will take effect in 2014, in this case—adjusts these requirements to either 55 percent of member
states or sixty-five percent of the EU population as a whole. Regarding trade policy, of particular relevance to the telecommunications sector, the Lisbon Treaty demands this qualified majority voting except in particular cases, notably: where “commitments on cultural and audiovisual services risk prejudicing the EU’s cultural and linguistic diversity” (Worth, 2011).

**Looking Ahead**

The current Euro crisis aside, the European continent as a whole, as well as the EU’s individual member states, has enjoyed astounding economic success over the past sixty-plus years. Still, as the current crisis has brought to light, the growth has been uneven, disproportionately disruptive to certain countries and economic sectors, and incomplete because of its lack of true political integration. The adoption of a common currency for 17 of the 27 member states has exacerbated the regional inconsistencies and illustrated the need for European institutions with the political clout to match their economic power. Of course, political integration requires widespread popular support, something the EU lacks of late.

The EU faces an uphill battle as it struggles to rebuild its economy and maintain favorability in the minds of its 500 million citizens. A statement on Europa, the official website of the EU maintained by the European Commission’s communication department, sums up the challenges with the following:

- EU countries account for an ever smaller percentage of the world’s population.
- They must therefore continue pulling together if they are to ensure economic growth and be able to compete on the world stage with other major economies.
- No individual EU country is strong enough to go it alone in world trade. The European single market provides companies with a vital platform for competing
effectively on world markets. But Europe-wide free competition must be counterbalanced by Europe-wide solidarity. (Europe in 12 Lessons)

As EU institutions play an increasingly large role in the lives of European citizens, issues of cultural identity have become more common and prominent, as opposition to the forces of cultural homogenization grows. This tension mirrors the larger conflict of economic and cultural globalization on a global scale. While most people have come to accept the closer integration of national economies as inevitable, and even necessary, the backlash over globalization’s cultural effects continues.

In addition to being credited with the ideological conception of the EU, Jean Monnet also recognized the fundamental importance of cultural unity to the regional bloc, and seemed to predict the current tensions. He infamously stated that “if we were to do it all again we would start with culture” (qtd. in Shore, 1993, pg. 785). As the EU looks to bounce back from the Euro crisis, and thus necessarily moves from a strictly economic union to one backed by stronger political unity, it must increase its focus on the development of a pan-European identity. As the EU’s reach expands and its policy decisions have a larger impact on the everyday lives of its citizens, the tension between the desire for efficiency and the genuine representation of the continent’s cultural diversity will only increase. In the European Commission’s own words, “Raising public awareness about the EU and involving citizens in its activities is still one of the greatest challenges facing the EU institutions today” (Europe in 12 Lessons). Despite the huge economic gains and its swift geographic expansion, the EU must continue to prove its relevance to its own citizens, many of whom have become disillusioned with the regional organization.
The debate about the future of the European project has produced ample scholarship in the field of political science. However, as Fligstein aptly notes, most writing remains focused on the relationship between national and EU politics, while missing the crucial sociological piece. In explaining his rationale for writing *Euro-Clash*, he reveals: “the issue of what was going on in Europe had the most to do with the changing effects of European economic integration on the life chances of people who live in Europe. It is the perception of these life changes that drive European attitudes toward the EU. From this perspective, political scientists were missing the deeper dynamics and were trying to explain only part of the story” (27). The next chapter will delve more deeply into this sociological perspective, focusing on the historic tension between the preservation of local and national identities and the simultaneous need to forge a common regional culture.
CHAPTER 2: NATIONAL AND REGIONAL IDENTITY FORMATION, HISTORIC TENSIONS, AND THE CULTURAL QUESTION

“‘Identity’... tends to mean too much (when understood in a strong sense), too little (when understood in a weak sense), or nothing at all (because of its sheer ambiguity)”

(Brubaker and Cooper, 2000, pg. 1).

“Imagined Communities”

The literature on cultural identity in Europe is expansive. Scholars and journalists alike have written extensively about the historical trends in cultural identity on the continent from the aftermath of World War II to the reunification of east and west with the dissolution of the Soviet Union and the fall of the Berlin Wall. More recently, much attention has focused on the issue of culture in the context of the expanding, both politically and geographically, union. As the shockwaves of the Euro crisis continue, the number of immigrants from North Africa, Asia, and Eastern Europe expands, and the resurgence of nationalism and right-wing extremism spreaders, academics and policymakers alike are eager to determine what Europeans share—and don’t share—in common. As Sobrina Edwards notes, “Questions concerning institutional legitimacy, the future limits of European borders, the future shape and scope of the European polity and the issue of the Europeanness of Europe have collided in a wider debate centred upon the potential ambiguity and a potential crisis of European identity” (2012, pg. 127).

The construction of a common European culture is integral to the long term viability of the EU. As Fligstein reinforces: “If the EU is just an intergovernmental institution, then the issue of an EU identity is irrelevant to its future” (2008, pg. 136). While this may be the predominant view in the UK, where rumors of a potential “Brexit” dominate the country’s relationship with its peers, British identification as European is also among the lowest in the EU. Contrary to popular opinion in the UK, the organization was always intended to be much more than an intergovernmental organization, and its development from a purely economic body to an
increasingly political one beginning in the 1980s has seen this intention come to fruition. In other words, the cultural identity of the EU is not only relevant, but of the utmost importance to its survival.

When Benedict Anderson wrote his seminal treatise on nationalism, *Imagined Communities*, in 1983, he set out to describe the conditions that led to the origins and spread of nationalism and, fundamentally, how nations harness the power to enable citizens to live or die in their name. Anderson’s book focuses on the nation-state, the building blocks of the European Union, rather than on any type of post-national or supranational organization. However, his insights, widely recognized as having contributed to the birth of a new genre in the field of political science, are crucial to understanding the new phenomenon of the EU as a supranational organization.

Anderson proposes the following definition of a nation:

it is an imagined community—and imagined as both inherently limited and sovereign. It is *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.... The nation is imagined as *limited* because even the largest of them, encompassing perhaps a billion human beings, has finite, if elastic, boundaries, beyond which lie other nations.... It is imagined as *sovereign* because the concept was born in an age in which Enlightenment and Revolution were destroying the legitimacy of the divinely-ordained, hierarchical dynastic realm.... Finally it is imagined as a *community*, because, regardless of the actual inequality and exploitation that may
prevail in each, the nation is always conceived as a deep, horizontal comradeship.

(1983, pg. 6-7)

Despite its composition as an organization of individual countries, the legitimacy of the EU in the eyes of its citizens hinges on the same elements of nationhood famously outlined by Anderson. In fact, the resolution of these dual goals—the necessary preservation of national unity on the one hand, since this is a prerequisite for European identity, as well as the establishment of a more inclusive European identity on the other—serves as one of the primary structural tensions of the organization. While the basis for a common culture can stem from language, religion, ethnicity, or “a common formative experience” (Fligstein, 2008, pg. 130), this collective identity formation is a bit more complex on the supranational scale of the EU. As Eurobarometer data demonstrates, opinions vary dramatically about the characteristics that define Europeanness and serve as unifying forces for the continent.

The time period between the late 1980s through the early 1990s saw enormous strides towards the cultural unification of the continent. The Single European Act, effective in 1987, guaranteed freedom of movement within the member-states for all EU citizens. The groundbreaking Maastricht Treaty just a few years later in 1992, formally established European citizenship. Between these two pieces of legislation, of course, was the fall of the Berlin Wall and subsequent reunification of Germany, a watershed moment in Europe as throughout the world. Edwards notes that “Mirroring the post-Cold War narrative of reunification, the enlargement journey was reconstructed as resuming a process of continental integration that had been thwarted by the Cold War division of Europe (2012, pg. 136).

Worth emphasizing is the fact that people can, and of course do, have overlapping identities. While many do so, scholar Bryon Fong emphasizes that it is “wrong to conceptualize
Europeanness and nationality in zero-sum terms. A person can be a woman, a mother, a leader of a company, a flag-draped spectator at a football match, and a European-minded, European all at once” (2012, pg. 179). Especially in the case of the EU, where every European citizen is also the citizen of a particular nation, multi-identities are inevitable. In fact, given that national identities are unlikely to disappear in the near future, the preservation and legitimacy of the EU fundamentally depends on the viability of these complementary identities. Even though some of these identities—local, regional, national, and supranational—may seem to conflict, it is common for an individual to self-identify along all of these lines simultaneously (Fligstein, 2008, pg. 128). An average citizen, for example, may describe herself as Bavarian, German, and European. In all likelihood her level of attachment to each group will vary, but she may describe herself differently depending on the social context. Fligstein elaborates on this phenomenon, noting that “strong national and European identities are not incompatible because they refer to different communities which are nested in relationship to one another and are activated under different social conditions” (2008, pg. 128). Still, the overall primacy of national identities remains a salient issue for the EU. Fong notes that while the situation is often mischaracterized as one in which there is an utter lack of European identity, in reality breakdown occurs “not because there is no sense of Europeanness, but because nationalities still remain prevalent—a and often superior” (2012, pg. 179). However, Fligstein emphasizes that a rise in sub-national identifications in opposition to national governments often goes hand in hand with the development of European identity (2008, pg. 157).

(Supra) National Branding
Defining what it means to be European in the first place is no easy task. Fligstein notes that scholar Diez Medrano has proven that “for Germans being a European means atoning for their guilt from World War II. For Spaniards, being European is being ‘modern.’ And for the British, it means an identity that proves useful when contrasting oneself with others, such as Americans” (2008, pg. 138). In other words, European identity can mean any number of things, depending on whom you ask, and in what context. Furthermore, a common contention is that the sense of Europeanness may be more legalistic rather than emotional, which more typically describe one’s sense of national belonging. This fact should come as no surprise, since the basis for European unification, at least until recently, came almost exclusively through legal means. However, it points to the need for more emotive, symbolic sources of unification on a European-wide level.

The advent of the Internet and other digital technologies has made the phenomenon of nation branding a major objective of governments throughout the world. The twenty-four hour news cycle has likewise exposed governments to both local and international scrutiny and thus contributed to an increased need to shape their image both at home and abroad. In addition, the “democratization” of diplomacy enabled by social media, the desire to find new markets for cultural products, and the need to attract tourists have all contributed to the necessity of image-building and management at the national level. Scholar Peter van Ham emphasizes the importance of such efforts by drawing a distinction between the “modern world of geopolitics and power,” or international politics until the last few decades, and the “postmodern world of images and influence” in which we currently live (2001). Simon Ahnolt, famed nation branding expert, further drives this point home with his statement that “the only remaining superpower is public opinion” (Simon Ahnolt website). In the case of the EU, of course, the task is even more
crucial, since the supranational government must legitimize and unify its own diffuse citizenship in addition to presenting a convincing and attractive identity to the outside world. Anholt once proclaimed the EU “the biggest branding challenge in the world after Nigeria and the USA” (qtd. in Bounds, 2006).

Despite the complexity it entails, European politicians are eager to forge a common cultural identity to strengthen the bonds among EU inhabitants. Martiniello identifies two distinct attempts at formalizing this cultural linkage. The first, which she calls the “traditionalist option,” emphasizes the common Judeo-Christian and humanist experience of the member-states and their inhabitants. The second, so-called “modernist option,” attempts to construct a common cultural space through “plurilingualism, education, secularism, modern communication techniques and so on” (Martiniello, 1994; Castles and Davidson, 2000, pg. 98). Common to both attempts is the creation of an external other “which is constructed as culturally, politically, and technologically inferior” (Castles and Davidson, 1994, pg. 99).

The last decade has seen a sharp increase in the politicization of European identity (Checkel and Katzenstein, 2009, pg. 11), a phenomenon that coincides not only with the union’s rapid expansion into new geographic territory, but also with its efforts to strengthen its centralized governing power, and, of course, the soul-searching brought on by the Euro crisis. Any transfer of power to the EU institutions necessarily leads to a decrease in national sovereignty, a fact that leads to widespread unease among its citizens. Attempts at the construction of a robust, formalized European constitution resulted in failed referenda in both France and the Netherlands in 2005, a clarion call to the preservation of national sovereignty from two of the six original member states. The referenda also emphasize both the supremacy of public opinion generally, as well as the specific challenges of managing this public opinion
within a vast spread of member states with different histories and present challenges. Similarly, though the passage of the Treaty of Lisbon in 2007 was a key victory for those in favor of deeper European integration, its debate and passage was heavily criticized, arguably causing more nationalist dissent rather than regional solidarity.

While concern over the loss of national sovereignty and culture to the centralized union is present, to greater and lesser degrees, in all member states, the older and more prosperous countries seem to have more to lose. For the newest, only recently democratic and former communist states of the Balkans and Eastern Europe, on the other hand, the EU offers a promise of affluence that may outweigh the cultural concerns of their peers. The end result being that European leaders must find new ways to legitimate the union for its old and new members alike in the era of a reunified, peaceful continent. The founding narrative of a peacebuilding organization through economic means has lost much of its relevance for those young and fortunate enough not to experience the destruction of World War II (Bounds, 2006).

Still, Martiniello emphasizes that the economic goals of facilitating a single market and reaping the benefits this enables remain the primary objectives of the EU. However, forging a common culture is a crucial means of support for this overarching goal. In other words, cultural and social cohesion is a means to an end: a stronger economy and more powerful political structure. Fligstein continues: “Much of the conflict and occasional stalling of the European process in the past twenty-five years can be understood this way: if citizens see themselves as Europeans, they are likely to favor Europe-wide political solutions to problems. If not, then they will not support Europe-wide policies. Since the swing voters around any European project are mostly national in identity, but sometimes think of themselves as Europeans, people who live in
Europe can be swayed for or against the European project depending on how the particular issue at stake is presented and how it plays out” (2008, pg. 5).

The Language Question

As a crucial mechanism for the transmission and preservation of culture, language lies at the forefront of debates about cultural identity, serving as an issue of importance to the controversy over the Television Without Frontiers Directive in particular. As the process of European integration moves forward, accompanying fears of cultural homogenization have followed, leading to tension within the EU over its policy of linguistic diversity as well as a revival of many national and sub-national (minority) languages.

In his explanation of the factors that gave rise to the emergence of nation-states, Benedict Anderson cites “the “fatality of human linguistic diversity” (1983, pg. 43) as one of the three most important. Overcoming this “fatality” has proven one of the most burdensome tasks for the EU. In its current iteration of twenty-seven member states, the organization has a total of twenty-three official languages “which all enjoy formal equality” (Kraus, 2008, pg. 76). While this inevitably leads to ballooning costs—the EU employs ten times the number of translators as the United Nations—and inefficiencies, the organization upholds a commitment to the authentic representation of its diverse citizenry as a founding principle. Still, despite the recognized equality of the twenty-three languages, three languages—English, French, and German—function as the linguae francae in practice.

The EU’s commitment to the preservation of its rich linguistic diversity while working towards the construction of an increasingly unified political union is evident through numerous legal documents, including the European Charter for Regional or Minority Languages, as well as
through symbolic means like its official motto of “United in Diversity.” Three regional languages—Catalan, Galician, and Basque—also enjoy official status in the EU (Europeans and their Languages, 2006, pg. 5). Deeply tied to cultural identification, language is inseparable from the EU’s efforts to further integrate its 500 million citizens, while distrust of the bureaucratic management of such a personal manner remains one of the most outspoken concerns of the EU opposition.

Acknowledging the primacy of the issue, the EU has conducted two special Eurobarometer polls focusing exclusively on “Europeans and language,” in an effort to gauge public opinion on the matter. The first version, put forth in 2001, revealed that 63 percent of respondents believe that it is necessary to protect their own languages more as the EU expands. Predictably, in smaller countries like Greece and Finland, nine out of ten people agreed with the same statement. On the other hand, 71 percent of respondents also believed that all EU citizens should speak at least one European language in addition to their mother tongue (Europeans and Languages Eurobarometer, 2001). The second iteration of the poll, conducted in 2006, saw this figure rise, with 84 percent of respondents asserting that all EU citizens should speak at least two European languages. Still, over seven in ten respondents emphasized that all European languages should be treated equally under EU law.

Younger generations, those with higher levels of education, and current students are the most likely to speak foreign languages. An overwhelming 73 percent of respondents cited better and increased job opportunities as the primary reason for learning another language (Europeans and their Languages, 2006, pg. 44). In contrast, only about one quarter of Europeans noted that they use their knowledge of a foreign language while watching television or films, or listening to the radio, a fact that helps explain the lack of European-wide audiovisual production (Europeans
and their Languages, 2006, pg.18). The linguistic balance is in constant flux as the EU expands into new territory, but the data in both iterations clearly indicates a desire for multilingualism and linguistic protection at the supranational level, despite the economic and bureaucratic inefficiencies it may cause (Europeans and their Languages, 2006). This data thus serves as a microcosm of the dual—and often contradictory—goals of the EU in terms of cultural identity.

**Inclusion and Exclusion: Immigration and Class in the New Europe**

In their comprehensive work, aptly titled *European Identity*, Checkel and Katzenstein note the gap between the cosmopolitan ideals of “elite-level politics” and the populist conceptions of the general public, which center on issues of “social citizenship and cultural authenticity” (2000, 11-12). For example, while freedom of movement, goods, services, and people are fundamental to the transnational goals of the EU, in reality very few citizens take advantage of these opportunities available outside of their nation. As Fligstein notes: “these extensive horizontal linkages are very unevenly distributed between the citizens of Europe. A very small number of people are deeply involved with other Europeans on a daily basis. A somewhat larger group has more infrequent contact. The rest have little or no contact with people in other countries” (2008, p. 4). Unsurprisingly, this small group of transnationalists belongs to the European elite.

Part of the reason for the class gap in support for, and identification, with the EU comes from the divergent impact of the union on different economic sectors and sub-national regions. While most Europeans do not interact with individuals not of their nationality on a daily basis, the net impact of the single market has led to increased prosperity at the member-state and European levels, through trade, job mobility, and widespread growth (Fligstein, 2008, pg.
11). Still, the process of economic integration has not been universally welcomed or even beneficial to all: “Millions of people across Europe, for example, worked for their state-owned telephone companies as telephone operators. Today...such jobs mostly do not exist. Needless to say, these citizens do not identify with the EU or Europe but to [sic] continue to view the nation as their main political reference point” (Fligstein, 2009, pg. 11). Despite writing *Euro-Crisis* before the emergence of the “PIIGS”, in many ways, Fligstein seems to have predicted the future economic woes, and resulting class conflict, of the continent. He notes that there is a group of less educated and less skilled workers in every country in the EU who view the emergent European economic structure as fundamentally opposed to their interests. In his words: “The effect of economic integration is not to turn these citizens [the less educated and less skilled workers] into Europeans, but instead to reinforce their national identities by making them see Europe as the enemy” (2008, pg. 18).

Fligstein’s statement above is a remarkably clear and concise summary of the overarching tension on the continent. The main source of conflict over the future of Europe can be found in the gap between socioeconomic classes—the elites who continue to financially benefit from increased integration and who are already more prone to cross-border social and cultural interaction and the working class, who have yet to experience the increased bounty of the EU on a personal level. He warns, prophetically: “As European economic and social integration intensifies, the winners and losers of these processes will harden their positions. The future of European integration thus hinges on how those in the middle will end up voting. Will they support a greater Europe or will they want to protect the nation?” (Fligstein, 2008, pg. 241).
Another complicating factor is the issue of immigration, which has emerged as a primary issue both for individual member-states and the continent in general in the last several decades. The debate over how to combat the ongoing issue of illegal immigration—largely from Eastern European countries (like Albania) which are not yet member states and therefore are not recipients of the right to freedom of movement, and North Africa—as well as the large legal influx of people from Asia and the Muslim world, have been exacerbated by the Euro crisis and resulted in a revival of nationalism, in opposition to European-wide thinking. The current era of globalization and its enabling of transnational mobility on a grand scale has complicated citizenship throughout the world, but the EU faces the unique challenge of tackling these issues as a supranational organization. Since collective identity is “by definition about the construction of an ‘other,’” (Fligstein, 2008, pg. 127) immigrants often function as a convenient scapegoat for larger social and economic inequalities, a phenomenon particularly evident in the widespread protests and spread of extreme right-wing political rhetoric in Greece.

Fligstein cites the work of Karl Deutsch to explain the reasons for the creation of a meaningful European identity on a large scale. He notes, “The central problem of modern society for Deutsch was how it would be that occupational and class groups who controlled society could convince those who had less income, wealth, and status that in spite of these inequalities, everyone could be unified by a common cultural identity” (16). In other words, a common identity will emerge only where crosscutting ties among people of divergent socioeconomic backgrounds are formed. In the case of Europe, the problem is exacerbated by the multiplicity of existing national identities and cultural differences. Fligstein argues that Europeans are going to be the people who have the opportunity and inclination to travel to other countries and frequently interact with people in other societies in
the Europe-wide economic, political, and social fields....Most importantly, blue collar and service workers are less likely than managers, professionals, and other white-collar workers to have work that takes them to other countries. Older people will be less adventurous than younger people, and less likely to know other languages, to hold favorable views of their neighbors (they will remember who was on which side of World War II), or to be curious about or want to associate with people from neighboring countries. People who hold conservative political views that value the ‘nation’ as the most important political unit will be less attracted to travel, know, and interact with people who are ‘not like us.’ Finally, less educated and less well-off people might lack both the inclination to be attracted to the cultural diversity of Europe and the financial means to travel.

(2008, pg. 16-17)

In order to overcome persistent social inequalities, which, again, are amplified on the European scale, people of different socioeconomic classes must share common places of social interaction, or a common cultural identity. Given that “‘Europe’ as a social and cultural project is clearly a social class project” (Fligstein, 2008, pg. 251), it is the latter—a shared cultural identity—that the leaders of Europe have tried to forge by means of symbolic forces, as well as legislative ones, including telecommunication policies.

The Rise of Euroscepticism

In the introduction to their aptly titled *Euroscepticism: Party Politics, National Identity and European Integration*, Robert Harmsen and Menno Spiering note that the phenomenon of Euroscepticism began as a birthright of the British, only to expand to the rest of continental
Europe in the early 1990s. While the tone and specific criticisms vary dramatically from country to country, and indeed within individual member states, the scholars argue that the “general trend toward a more critical perception of European integration is, nevertheless, inescapable” (2004, pg. 13). The increased backlash, of course, is a direct result of the expanding power of the EU, and, in the past few years, the ongoing financial crisis.

According to EurActiv, an online media group focused exclusively on EU policy and affairs, there are two forms of euroscepticism: “hard” and “soft.” The first type, as the name suggests, consists of those who either fundamentally oppose the EU altogether, or who oppose its expansion, the membership of their particular nation, etc. The second variety is composed of those who support the existence of the EU and their country’s membership, but who oppose the union’s expansion of power (Euroscepticism: More than a British phenomenon, 2013). While the hardliners remain largely on the outskirts of European society, growth of “soft” euroscepticism is on the rise. The current president of the European Commission, José Manuel Barroso of Portugal has acknowledged the creeping threat, nothing: “Of course [euroscepticism] worries me...There are old demons in Europe - extreme nationalism, populism, xenophobia. You see that in times in crisis that extremist forces, populist forces, have a better ground to oversimplify things and to manipulate feelings” (Euroscepticism: More than a British phenomenon, 2013).

Despite its expansion throughout the continent, the British seem to have reclaimed their title as the most eurosceptic member state. Current controversy over the possibility of a “Brexit”—the catchy name given to the potential British exit from the EU in the wake of a planned referendum on the union promised by UK Prime Minister David Cameron—has made
the issue of euroscepticism a headline not only in Europe but throughout the world. Political scientist Kathleen McNamara writes:

Highlighting developments within the eurocrisis, declining European competitiveness, and a lack of democratic accountability, Cameron hammered home the idea that Britain should opt out of most of the EU’s activities—but continue to participate as a full member of the EU’s Single Market. This is an understandable position—the Single Market accounts for roughly half of all British exports and investment — but Cameron’s desire to have his cake and eat it too is a nonstarter. While calling for an unwinding of Britain in the broader EU is a crafty political stance for domestic reasons, it ignores the reality that deep market integration is always and everywhere unsustainable without a broader panoply of laws, institutions, and political community to support such integration.

(2013)

Of particular interest is McNamara’s description of the British desire to benefit from the single market without the necessary sacrifice of national sovereignty as a “nonstarter.” She makes a compelling case for the broader reasons for the construction of a European-wide identity by emphasizing the inseparable nature of the two efforts—economic integration on the one hand and the “broader panoply of laws, institutions, and political community to support such integration” on the other.

**The Role of the Media and Popular Culture**

Benedict Anderson describes three factors that enabled the rise of the modern nation-state: “a half-fortuitous, but explosive, interaction between a system of production and
productive relations (capitalism), a technology of communications (print), and the fatality of human linguistic diversity” (1983, pg. 43). All three, of course, are relevant for the EU’s efforts of forging a new variety of supranational union. The first, the economic structure of capitalism, forms the underlying basis for the grouping of member states. The third, the reality of our post-Tower of Babel world, was discussed earlier in this chapter. The final element, a technology of communications, lies at the heart of this essay and serves as the subject matter for its final two chapters.

Anderson cites the emergence of the novel and the newspaper, both inventions of eighteenth century Europe, as providing key technological means for “‘re-presenting’ the kind of imagined community that is a nation” (1983, pg. 25). While the traditional newspaper may be on its way out (though European newspapers, in fact, continue to enjoy much more success than their American counterparts), Anderson’s point is a crucial one. In the digital age, where news and images cross borders, and indeed travel through handheld Internet-enabled devices in addition to cable stations and radio channels, the role of the media as both a news and entertainment provider has become omnipresent. In addition, Fligstein notes that Deutsch and other theorists of national identity cite the crucial role of the media as an enabler of a common culture, which is a prerequisite for the creation of a compelling national identity.

Fligstein contrasts the situation in the US, where “the cable market contains, on the one hand, the content providers who run general and specialty channels, and on the other hand, the cable companies” and Europe, where language differences prevent the distribution of many cable channels across national borders (2008, pg. 200). He describes the fragmented system of media in Europe as partly a result of linguistic barriers, but also notes that language does not tell the whole story. He states that: “Ironically, one source of cultural convergence across European
societies is US-produced media” (2008, pg. 167). Though the piece of legislation goes
unmentioned by Fligstein, it is precisely this fact that the Television Without Frontiers Directive
hopes to combat. The next two chapters will focus explicitly on two key pieces of European
legislation that lie at the forefront of EU telecommunications policy and the organization’s
efforts to forge this European-wide cultural identity through a regulated media
structure. Fligstein makes no mention of the Television Without Frontiers Directive, but it is to
this cornerstone of European audiovisual policy that we turn in the next chapter.
CHAPTER 3: TRADE IN SERVICES: THE TELEVISION WITHOUT FRONTIERS
DIRECTIVE AND THE CULTURAL EXCEPTION

The EU and The World Trading System

International trade is both one of the arenas in which the EU acts as a single entity, without exception, as well as one the most visible manifestations of European-wide policy making on the world stage. The organization’s trade policy, often called the common commercial policy, is primarily established through the European Commission’s negotiations both at the WTO and, increasingly, in bilateral and multilateral trade agreements. As we have seen throughout the past two chapters, however, geographic expansion of the union often leads to increased tension between old and new members, as well as issues of national and supranational sovereignty. At the same time, as the euro crisis has highlighted, the European economies are increasingly unable to go it alone. The emerging powerhouses of the BRICS—Brazil, Russia, India, China, and South Africa—and perhaps other developing nations, will soon overshadow even the strongest European economies like Germany, France, the UK, and Italy.

The Lisbon Treaty—one of the most important pieces of EU legislation to date, brought into effect in 2009—introduced several key changes in an effort to strengthen European trade policy and increase its clout. First, it granted increased power to the European Parliament, naming the body as a “co-legislator” with the Council. In other words, the EP must now approve all basic trade legislation before it can be formally adopted or amended by the Council; all trade agreements must be approved by the EP before ratification; and the EP must be kept informed on the status of all ongoing trade negotiations. Secondly, the treaty increased the relative power of the EU (as opposed to individual member states) with regard to trade policy. In particular, trade in services and trade-related aspects of intellectual property are decidedly within the purview of the EU. Third, qualified majority voting was established as the guideline for the majority of trade
decisions. In particular situations—notably “where commitments on cultural/audiovisual services risk undermining the EU’s cultural and linguistic diversity”—however, unanimity is necessary (What did the Lisbon Treaty change? 2011).

While not explicitly trade-related, another big change brought about via the passage of the Treaty of Lisbon is the shift in focus from an extremely agriculture-heavy organizational agenda to one that is more comprehensive. As cultural policy scholar Christopher Gordon writes: “The inclusion of minority voices is a major concern of the EU, which is now particularly conscious of the democratic imperative, given the accession of eight former-Communist countries in 2004 and two more in 2007. The EU’s Lisbon Agenda is a significant move away from agricultural support, which has traditionally absorbed almost 50 percent of the EU budget, toward support for science, technology, and research” (2007, pg. 21).

**The Protection and Promotion of Cultural Diversity: What’s So Special About Audiovisuals?**

In an article aptly titled “‘Television without Frontiers’: the continuing tension between liberal free trade and European cultural integrity,” John David Donaldson (1996. pg. 148-9), writes:

On the surface, the entertainment market appears to be like most markets, consisting of both buyers and sellers...On a deeper level, however, it is a market for ideas, opinions, and, eventually, identity. Media companies, driven by advertisers, and, to a lesser extent, by government which approves licensees, sell a package of images, ideas, myths, and narrative to viewers that is intended to encourage viewers, often in their capacity as consumers, to behave in a certain way.
In other words, cultural products, especially audiovisual ones, are strongly imbued with forces of identity, and thus of crucial concern to anyone interested in the establishment of a unified nation-state or supranational organization. The EU, of course, falls squarely within these parameters.

The impact of globalization on culture is the subject of endless debate, with some scholars contending that it will inevitably lead to homogenization, while others argue that it can act “as an agent for cultural fragmentation, enrichment, and diversity” (Craith, 2010, pg. 119). Still others, like J.P. Singh, downplay the novelty of the modern era of globalization, emphasizing that “[t]he identity debate is old; only the global context is new” (2011, pg. xxiii). Singh further notes that globalization has “stirred up the demarcations of identities anchored to the ship of the Westphalian nation-state that emerged in the modern world as the preeminent actor. While the nation-state fights for dominance and legitimacy in a plurality of actors in the twenty-first century, the representational metaphors are in flux again….Likewise, identities are afloat” (2011, pg. 2-3).

Gordon notes that a “de facto transfer of authority” over cultural production from UNESCO to the GATT/WTO, “whose only guiding principle is free trade,” began in 1985 (2007, pg. 18). According to this view, such a shift in power undermined the special nature of cultural products, resulting in a fundamental policy shift that “treats culture as commodities; that is, products to be bought and sold. The belief that culture contains values that justify and require protection is alien to WTO’s credo” (Gordon, 2007, pg. 18). While his statement holds a large amount of truth, in reality, the Europeans have largely succeeded in limiting the treatment of cultural products—most notably audiovisuals—as simple commodities in global trade negotiations.
Despite the room for debate among scholars, the general public tends to be uncomfortable with the negative cultural effects of globalization, and actions at the WTO, as well as through UNESCO, have tended to side with those who fear globalization’s homogenizing influence. The Europeans, led by France in particular, as well as Canada, have been at the forefront of the cultural protection movement. We have already explored the complexity of cultural identity in Europe—a continent faced with the unenviable task of protecting and celebrating the individual cultures of each member state while simultaneously forging an inclusive, supranational sense of identity, but it is worth re-emphasizing the effects of this duality on the EU’s cultural priorities compared with individual nation-states.

In an article entitled, “Transnational Media, International Trade and the Idea of Cultural Diversity,” Magder notes that Article XX of the GATT “is evidence that GATT acknowledges the need to safeguard certain cultural objects, and certain forms of content, from the discipline of open and free trade. It should also be apparent that inclusion of an item in GATT—such as artistic treasures or objects of historic or archaeological value—can also be subject to other more elaborate international instruments and that such instruments already exist” (2004, pg. 391). The article that he refers to, “General Exceptions,” lists several conditions under which member states are exempted from their trade liberalization obligations. For this paper, the relevant ones include cases in which restrictions are necessary to protect public morals, and restrictions imposed “for the protection of national treasures of artistic, historic or archaeological value” (GATT, Article XX). In addition, Article IV of the GATT, which allows for film quotas, serves as an important precedent for the later efforts of the Europeans with the Television without Frontiers Directive (Donaldson, 1996, pg. 146).
Importantly, the only cultural products that receive explicit mention in the GATT are audiovisuals. Even before trade and services became an issue, the precedent for protectionism had been set: since both import quotas and screen restrictions are expressly permitted in the agreement (Singh, 2011, pg. 49). With the subsequent expansion of the trade agenda, the controversy surrounding these industries increased dramatically. Because liberalization measures taken in services are specific and must be approved individually by each WTO member—the so-called positive list approach to liberalization—the only significant reduction in protective cultural measures like screen quotas has occurred in one-off, usually bilateral trade agreements (Choi, 2007, pg. 273).

The 2001 Universal Declaration on Cultural Diversity—a product of UNESCO—is one of the most important international agreements on the preferential status of cultural products. While not a trade policy, its impact on the liberalization (or lack thereof) of cultural services has been extensive. Notably, the United States, among several other countries, is not a signatory to the declaration. In its introduction, the declaration explicitly acknowledges “that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy” and goes on to note that “the process of globalization, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, creates the conditions for renewed dialogue among cultures and civilizations” (2001).

Other sections of particular note in the declaration include article 1, which argues that “cultural diversity is as necessary for humankind as biodiversity is for nature,” due to its role in creativity and innovation. Similarly, article 8 expressly notes that “cultural goods and services...as vectors of identity, values and meaning, must not be treated as mere commodities or
consumer goods.” Through article 9, the declaration grants the right of formation and implementation of cultural policy to each state. Finally, article 11 gets at the heart of the trade debate, stating, “Market forces alone cannot guarantee the preservation and promotion of cultural diversity, which is the key to sustainable human development. From this perspective, the pre-eminence of public policy, in partnership with the private sector and civil society, must be reaffirmed.” In other words, UNESCO’s declaration undercuts the primacy of the WTO’s liberalization agenda, at least where cultural products and services are concerned. Voon further emphasizes the point, noting that in these cases, the unhampered functioning of the market may not “ensure a diversity of choice, access for everyone and fair competition” (2007, pg. 44).

Several factors in recent years have moved the debate on cultural production—and audiovisual services in particular—to the forefront of the trade agenda. Rapid technological development, which has enabled the deregulation of telecommunication services and thus the rise of multinational corporations and media conglomerates, lies at the heart of the issue. Similarly, the omnipresence of web-connected devices has resulted in a change “from spectrum scarcity to content scarcity” (Hoskins in Galperin, 1998, pg. 5). In addition to the old world of linear services— “push” content passively received by viewers and consumers—the era of the Internet has led to the proliferation of non-linear "pull" content, which is actively requested by users. Streaming content from anywhere in the world has become an easy task for those with reliable Web access and basic search skills. In addition, audiovisual products and services exhibit public good characteristics—minimal reproduction costs and non-depletablity—which “render[s] foreign sales particularly attractive, and at the same time exacerbate[s] the advantages of producers from countries with large domestic markets” (Galperin, 1998, pg. 4).
While the United States remains the global champion of cultural production—and thus, unsurprisingly, the most prominent advocate for its liberalization—and Europe remains its most protectionist opposition, the rest of the world tends to fall somewhere in the middle. Schlesinger succinctly sums up the transatlantic difference with the statement: “For the USA, audiovisual trade is just a business, whereas for Europeans it is both a business (and when convenient) a cultural matter” (1997, pg. 375). The phrase—“and when convenient”—is crucial to understanding the inability of the US and EU to find common ground. In the eyes of Hollywood producers and US trade negotiators alike, the European cultural protection argument is nothing more than thinly guised economic protectionism, rather than a legitimate effort at cultural preservation.

The philosophical tradition of communitarianism underlies the views of those who consider products of the cultural industry as fundamentally different from other goods and services. Emphasizing the centrality of community and collective identity, this worldview forms the basis of the argument for the specialized treatment of cultural products on the world market. Joost Smiers, author of *Arts Under Pressure: Promoting Cultural Diversity in the Age of Globalization*, articulates the sentiment concisely with this statement that “[t]he arts—however entertaining they may be—educate us and present registers in which our feelings develop. These communication processes should not be disturbed by commercial messages” (2003, pg. 169). With the growing “trade and...” agenda—in this case trade and culture—communitarianism and protectionism have become surprising bedfellows.

Criticisms of this approach are of particular relevance to the case of Europe and the so-called cultural exception. First, the tradition is hierarchical and paternalistic. Collective identity, even among a seemingly homogenous population, is always subject to variation. As Schlesinger
underscores: “National cultures are not repositories of symbols, beliefs and practices to which the entire population must stand in identical relation. Rather...they may be thought of as sites of contestation in which competition over the very boundaries and nature of the national community routinely occurs” (1997, pg. 372). Furthermore, with the rapid rise in migration, the existence of a homogenous population in the first place is increasingly becoming a phenomenon of the past. The “melting pot” is no longer confined to the United States. Countries like China—with its dozens of ethnic groups—and Germany—home to a growing percentage of immigrants, including a Turkish population representing about ten percent of the country—are likewise countries of cultural diversity.

In contemporary society, communitarianism thus has the potential to over represent the beliefs and interests of a particular segment of the population—typically the most economically and politically powerful—at the expense of its less mainstream and less wealthy counterparts, creating a false sense of cultural unity in the process. France, the premier European and global advocate for the unique nature of cultural products, has fallen victim to heavy criticism both internally and externally for this very sin. As Magder further asserts,

The challenge should be obvious: in the international arena, states speak and act on behalf of collectivities and they have a long and dubious record of doing so in ways that are less than democratic, both in terms of their respect for the individual right to freedom of expression and in terms of their respect for the multiplicity of collectives (or cultures) that exist within their borders. If all states consisted of primarily homogeneous populations and, at the same, granted their citizens full rights to self-expression, there would be less cause for concern. But very few states measure up to that description. (2004, pg. 383)
Of course, when applied to the supranational scale of the EU, the tension becomes even more pronounced and concerning. Not only are multiple national identities in competition for legitimacy and protection, but also a myriad of sub-national, local identities. Christopher Gordon summarizes the complexity of the European situation with the following statement: “The EU’s engagement with culture exhibits certain schizophrenic symptoms. On the one hand, as a major world trading bloc, Europe’s creative economy is of increasing importance; on the other hand, the EU is expected to act as the supranational guardian of cultural subsidiarity and ownership at the nation-state level” (2007, pg. 26).

GATS, the Expansion of the Trade Agenda, and the Infamous Cultural Exception

Nushiravan Maharramov, chairman of Azerbaijan’s national television and radio council:

“Sometimes to stimulate local production you need to close the borders” (qtd. in Weaver, 2012).

In 1994, at the conclusion of the Uruguay Round, the General Agreement on Tariffs and Trade (the GATT) was reborn as the more comprehensive, structured, and legalistic World Trade Organization. Despite its inability to bring the Doha Development Round to a successful conclusion (negotiations, theoretically, are ongoing) the WTO remains one of the premier global institutions of the modern world, with an impressive 159 participating member states. Three underlying characteristics dictate its rules and operations: transparency; most-favored nation status (MFN), which specifies that a WTO signatory cannot discriminate among foreign trading partners, but most rather provide the same treatment to all members of the WTO; and national treatment, which forbids the discrimination of imported goods in favor of those produced domestically. Though it shares the same general functionality as its defunct predecessor, the WTO enjoys a broader mandate and more power of enforcing the policies it enacts than the
GATT. Rather than simply focusing on reducing tariffs on physical goods, the new organization has taken a more comprehensive approach to trade liberalization. A major part of this expansion is the addition of services and intellectual property onto the global trade agenda. However, the more ambiguous nature of these non-physical goods has complicated the negotiation process and brought issues of cultural diversity to the fore.

Services are of increasing importance to national economies of all shapes and sizes. Industries like banking and finance, healthcare, and communications provide the crucial underpinnings of modern society. According to a statement from Eurostat, “Increased trade in services and the widespread availability of services may boost economic growth by improving the performance of other industries, since services can provide key intermediate inputs, especially in an increasingly interlinked, globalised world” (International Trade in Services, 2012). Trade in services is defined by the WTO in article 1 of the General Agreement on Trade in Services (GATS) as the supply of a service in any of the following scenarios, known as the four modes of supply: from the territory of one member state to that of another, within the territory of one member state to the service consumer of any other member state, by a service supplier of one member state through the commercial presence in the territory of another, or by a service supplier of one member through the presence of its citizens in the territory of another member (General Agreement on Trade in Services). Thus, while a physical DVD is a product according to current world trade classifications, a digital download is a service. Despite accounting for more than two-thirds of total EU GDP, the value of trade in goods is typically about two or three times higher than in services (International Trade in Services, 2012). This imbalance can be attributed to several factors, including the fact that many professional services operate under distinct national legislation, the non-transportable nature of many services, the
difficulty (and, in certain cases, impossibility) of mass production, and the relatively new efforts at liberalization of the services sector at the level of the WTO. Furthermore, drawing a clear distinction between services and the physical goods they are associated is no easy task.

In both the United States and EU, services account for more than seventy percent of total GDP (Sparding, 2013), including more than fifty percent of the GDP in each of the EU’s twenty-seven member states (International Trade in Services, 2012). While the percentage is significantly less in developing countries, the rapid spread of digital technology and Internet-enabled devices to even the most remote locations continues to contribute to the increasingly prevalence of services to each and every national economy, regardless of its level of economic development. One of the most important effects of new technology is its ability to make services quickly and easily transportable, including across national borders. Finally, given their elusive nature, defining what does and does not fall into the elusive category of “services” (versus goods) can be tricky, and it has lead to numerous battles within the WTO and in smaller trade negotiations. In the case of the audiovisual industries, this distinction is fundamentally contested, but the EU has thus far successfully classified all audiovisual products as services, much to the chagrin of their American peers.

This seemingly semantic issue of classification is of crucial importance to the US, since identifying items as digital goods—or “digital products,” a term coined in their bilateral free trade agreements—allows for better market access for American products. In text of US-Korea trade agreement, for example, digital products are defined as “computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically” (KORUS FTA, 15-4). An accompanying footnote also notes that
“The definition of digital products should not be understood to reflect a Party’s view on whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods” (KORUS FTA, 15-4). Despite the expansion of the trade agenda into services, the rules governing goods—found in the original GATT—remain much stricter than those governing services—found in the GATS. For the EU, of course, treating digital products as services legitimizes their audiovisual exception and allows for restricted distribution under local law. The ongoing goods versus services debate will likely rear its head again in the forthcoming Transatlantic Trade and Investment Partnership negotiations, which will be examined in more detail at the end of this thesis.

As we have already seen, the United States enjoys what might be characterized as a comparative advantage in the market of cultural production and distribution. The supremacy is partly due to its military prominence during and after World War II, and economically, because of its effective establishment of economies of scale, which strongly incentivize exports, significant vertical integration—Hollywood functioning as the epitome of the term—and the enormity and superior wealth of the English-speaking market. As Voon notes, audiovisual products have the unique quality of generating revenue based on the number of customers reached, rather than the price paid per customer (2007, pg. 44), in contrast to most other products bought and sold in the marketplace. In other words, because the US has the built-in advantage of a large, mostly monolingual, wealthy customer base, its cultural products have the ability to reach an enormous number of customers in its domestic market alone. The global reach of English has allowed for the domestic success of American audiovisual products to extend throughout the world.
During the Uruguay Round, when trade in services first made its way into trade negotiations, the EU succeeded in ensuring that audiovisuals were mostly left out of the liberalization efforts, much to the chagrin of the United States. Led by the French, with significant support from the Canadians, the Europeans appealed to the power and divergent agenda of UNESCO to counteract the tendencies of the purely economically minded WTO. As Singh notes, “[t]he French, especially, articulated their cultural anxiety in making a case for cultural exception while the economic argument was made in terms of MFN exception” (2011, pg. 64). The United States, the most strident and powerful voice of opposition at the time as in the present, tried to keep the discussion strictly economic, rather than cultural, though it lost out to the voice of the Europeans. As a result, a total of 108 most-favored nation exemptions were taken in the audiovisual sector from forty-six different countries. During the current Doha Development Agenda negotiations, only nine additional countries have proceeded with some form of multilateral liberalization in this sector (Singh, 2011, pg. 63). Audiovisual liberalization has met slightly more success in bilateral and multilateral institutions, but overall significant protectionism endures.

The digitization of cultural products—including the vast array of file-sharing technologies and numerous online streaming platforms—has had a dramatic economic impact on the audiovisual industry. Because the omnipresent Internet facilitates the rapid, seamless transition of cultural goods and services across national borders, national policymakers have struggled to control, measure, and capitalize on the transnational travels of their products. Though the EU has led the charge with its cultural exception, Suave and Steinfatt predict that cultural battles will become commonplace on the world trading scene, occurring more frequently as digital technologies advance:
As policymakers seek to respond to the challenges posed by the new information and communications technology environment through the formulation and implementation of new and untested cultural policies, and as the borders between various segments of cultural industries further erode, the frequency of ‘trade and culture’ conflicts is likely to increase. (2000)

The United States, of course, is not technically the exclusive victim of the cultural exception. However, in the current market, the American dominance of the industry makes it an easy target, or perhaps scapegoat, for the protectionist measures.

**Competing with American Soft Power**

In our modern, global marketplace, in order to preserve economic strength, one must preserve national culture—and better yet, effectively export it to the rest of the world. Since the conclusion of World War II, and more definitively since the conclusion of the Cold War, the United States has served as the hegemon of cultural production. Primarily via Hollywood’s television and film production, the US has successfully established the predominance and wealth of its cultural industries, with the fruits of its labor thriving in even the most remote corners of the globe. Of course, despite its approval by rabid consumers around the world, many leaders concerned with the establishment and preservation of national power resent American dominance in the public sphere at best, and condemn it for its poisonous influence on traditional cultural values at worst. While compared to the rest of the world—the Middle East and sub-Saharan Africa, for example—Europe seems to share much in common with the United States, European policymakers remain eager to distinguish themselves from their American counterparts and preserve their own rich and diverse cultural traditions.
Policy makers eager to create the foundation of the more integrated European Union in the late 1980s recognized the necessity of creating a supranational culture as a means to building economic strength. As Schlesinger notes, “Europe was mired in its national systems, with a low rate of trans border circulation of its programmes, weak production structures and a shortage of marketable product. ‘Europeanization’ was needed to cure the ills of the European condition...for otherwise the European Union could not compete in a transnationalizing economy” (1997, pg. 378). While planning for the increased economic integration of the early 1990s (ultimately accomplished through the Maastricht Treaty and the formal establishment of the EU), the European Commission sought to expedite the cross border flow of cultural products within the EU, in an effort to aid the establishment of a common European narrative and heritage (Conley, 1993, pg. 91). In addition, European policy makers were also eager to combat the omnipresence of American media, “which perpetrated a phenomenon sometimes called Wall-to-Wall Dallas, a catch phrase for the capitulation of the European television market to U.S.-produced and culturally-centered television shows such as Dallas and Dynasty” (Conley, 1993, pg. 91). Conley further notes that in 1989—the year of the first iteration of Television without Frontiers—more than 70 percent of fiction programs aired within the borders of the EC were imported from countries outside of the economic community (1993, pg. 93).

The original directive was passed on October 3, 1989 by the Council and went into effect in October 1991, giving member states two years for transposition into national law (Conley, 1993, pg. 88). Interestingly, due to fears over the perceived legislative overexpansion of the European Community, the directive went through multiple iterations prior to its adoption by the twelve member states. While the European Parliament initially approved the legislation in May 1989, it was ultimately rejected by a fully half (six) of the organization’s member states, largely
because of questions over the EC’s sovereignty over media law (1993, pg. 88). A few months later, with some slight revisions to the legislation, the directive passed with ten of the twelve states approval—Belgium and Denmark remaining on the outside. Conley explains that broadcasting has always been considered an important piece of national sovereignty. The passage of this piece of legislation at the supranational level, therefore, represented “both a step toward cultural and economic unity and an indication of the EC’s sovereignty to the Member States” (1993, pg. 94).

The directive serves as the cornerstone of the EC’s (now EU’s) audiovisual policy. While it provides some means for increased protection of children through more restrictive rules on violence and sexually explicit programming as well as a ban on content considered hate speech—against race, gender, nationality, or religion—the crux of the legislation is aimed at the facilitation of intra-EU trade in audiovisuals, established through limits on imported content from outside its borders. The directive established standardized laws for advertising time and content among member states, crucial to the facilitation of trans border trade. Rather than worry about differing national laws, European companies were now able to more freely transmit their products across state lines, protected by a harmonized legal framework. In addition, through article five, the new law stipulated that broadcasters must reserve at least ten percent of their total transmission time, or ten percent of their budget, for the work of independent producers, “where practical and by appropriate means” and “excluding the time appointed to news, sports events, games, advertising, and teletext services” (Curwen, 1999). The most anger-inducing part of the directive—at least from the point of view of the US—however, was the 49.9 percent limit on programming from non-member states (Conley, 1993, pg. 90), considered a blatant violation of the GATT.
The two primary objectives of the directive, as stated by the European Commission, are the facilitation and increased transmission of intra-Europe television programs and the reservation of more than half of television transmission time for European works through broadcasting quotas. Conley adds that the European Community also hoped that "[t]elevision will play an important part in developing and nurturing awareness of the rich variety of Europe's common cultural and historical heritage. The dissemination of information across national borders can do much to help the peoples of Europe to recognize the common destiny they share in many areas (1993, pg. 90). As the quote above emphasizes, in addition to (and even before) worrying about external markets and trading partners, the directive sought to solve the significant problem of precious little cross-border programming and advertising within the borders of the European Community itself.

The European justification for the directive was to emphasize its cultural, rather than economic protection, a point hotly disputed by the United States. The somewhat vague language of article four, however, which stipulated the reservation of more than half of broadcast time for European works “where practical and by appropriate means,” did create a certain amount of leniency for European member states (Conley, 1993, pg. 97). While the EC Commission President Martin Bangermann thus argued that the 49.9% quota on non-member state programming was a political commitment rather than a strict legal obligation, such a statement did little to quell the outrage across the Atlantic (Conley, 1993, pg. 90). In fact, on October 23, 1989, the US House of Representatives voted 342 to 0 in opposition to the new directive, which it regarded as protectionist and clearly in violation of the GATT. The European response was to argue that audiovisuals were a service, and thus not subject to the conditions of the GATT, which only regulates the trade of physical goods (Donaldson, 1996, pg. 109). Furthermore, Jacques
Delors, former French president of the European Commission, famously stated: “‘Culture is not a piece of merchandise, like other things....There will not be protection of the European market, but nor will there be laissez-faire. I say to the United States, ‘Have we the right to exist, to perpetuate our traditions?’” (qtd. in Greenhouse, 1993). Delors’ dramatic statement illustrates the perceived severity of the American threat to European culture.

The reasons for the US opposition are clear. The entertainment industry at the time was the US’s second largest export after defense. In 1988, this amounted to just shy of $2 billion worth of television and film sales just to the twelve countries of the European Community (Conley, 1993, pg. 104). Clearly, as the dramatic congressional vote demonstrates, the new directive would have a severely negative impact on American exports to their largest overseas customers, the countries of Western Europe. Additional data cited by Conley indicates that sales to these countries were the equivalent of “fifty-six percent of U.S. film and television sales overseas, and amount[ed] to a trade surplus of $2.5 billion” (1993, pg. 104). Furthermore, the new impact of the new directive seemed inherently biased towards the presence of American products in Europe, a result of the undisputed American dominance of the cultural marketplace in the post-World War II era. Writing in 1993, and thus only two years after the initial entrance into effect of the directive, Conley argues that “While the quota appears benign now, it has no clause preventing Member States from raising it from 50.1% to ninety-nine percent European shows; nor does it have time limitations lifting the quota when Europe's cultural identity is no longer in danger” (pg. 104).

While he was known for his distrust of technology and its negative impact on the traditional business model of the entertainment industry—he once told Congress (in 1974) that cable television was “a huge parasite in the marketplace” (qtd. in Brown, 2009) and a few years
later argued that “the VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone” (qtd. in Brown, 2009)—in the case of the Television without Frontiers directive Jack Valenti sided with the House of Representatives. As the head of the Motion Picture Association of America from 1966 to 2004, Valenti’s opinion was the voice of Hollywood, and his condemnation of the European legislation was damning. He bluntly stated, “The European Community today, in my judgment, took a step backward in time. They said no to competition and viewers' choice, and yes to trade barriers” (qtd. in Greenhouse, 1989).

The Post-1989 Television Market in Europe

Despite the short, two-year time frame between the official enactment of the directive and her writing, Conley makes some important observations about the potential ineffectiveness of the Television without Frontiers directive, harkening back to the criticisms of the communitarian philosophical approach discussed earlier in the chapter. She emphasizes the ironic danger of allowing the European member states with an already strong television presence to overshadow the weaker markets (1993, pg. 107). In addition, Schlesinger notes that the directive has inspired significant criticism throughout the continent from minority groups of the linguistic, ethnic, and cultural variety because the current media system in Europe serves the interests of the majority (1997, pg. 382). Conley further argues that a better solution to the problem of preservation and promotion of European production would be to increase funding for independent production rather than imposing quotas that could leave airtime unfilled since there may not be enough European-produced content to fill all of the technology-enabled expansion of broadcasting (pg. 108).
Though the Directive was updated in an attempt to adapt the existing rules to the modern telecommunications and audiovisual market (changes that will be explained in more detail towards the end of this chapter) the audiovisual policy has largely failed in its attempts to create a unified market with economies of scale like those in the US. Cultural industries now account for 4.5 percent of total EU GDP and employ 8.5 million people across the audiovisual sector, publishing, and craft industries, but the collective power of these industries remains a largely untapped resource (France draws red lines for EU-US trade negotiations, 2013). Galperin notes that, “in theory, a single European market would be almost as large as the American in terms of volume. Yet, the idea that the free-flow of audiovisual products would bring to the fore the 'common European identity', thus creating a pan-European audience, has proven overly simplistic” (1998, pg. 16). Despite the restrictive measures put in place in 1989, the diversity of member states—amplified since the original twelve signatories has expanded to twenty-seven—has been the largest obstacle to the establishment of a dominating pan-European audiovisual industry. In effect, the significant linguistic and cultural diversity within the EU, which grows with the addition of each new member state, makes the creation of a European market to combat the dominating power of Hollywood unlikely. In the words of Schlesinger: “Strengthening production capacity at the level of the national state, therefore, does not obviously translate itself into a European capacity to compete with the USA” (1997, pg. 374-5).

In addition, despite her obvious bias as former U.S. trade representative, Carla Hills (quoted in Conley, 1993, pg. 108) aptly articulated one of the reasons for American opposition to the legislation, stating:

European cultural identity is not necessarily protected by European-produced works: We do not understand why the Spanish culture is more protected by a film
produced in Germany by 'Europeans' than by a Spanish film of Mexican origin .... We do not understand why a film about French cultural history, in the French language, promotes French culture any less simply because it is not of 'European origin.

Hills' proclamation lies at the heart of the European cultural identity debate. In effect, her statement falsifies the claim of European technocrats that any sort of common European identity exists in the first place, and highlights the wide diversity of identities within the continent. Donaldson furthers her point with the pithy statement that “national boundaries simply are not a reasonable proxy for cultural boundaries” (1996, pg. 151). Expanding his point to the supranational level of the EU, it is easy to see where the continent gets into trouble. Still, European policymakers would argue that despite the organization’s internal diversity, individual member states tend to share more in common with each other than they do with the rest of the world. Though Greece may seem to share little in common with Belgium, for example, it shares more in common with Belgium than it does with China.

Moreover, despite its best efforts to the contrary, the directive has not quelled the European thirst for American culture. According to a recent article by Richard Wike (2013), associate director of the Pew Research Center’s Global Attitudes Project, “The continent may have a long tradition of intellectuals deriding U.S. culture, but average Europeans embrace it.” Wike goes on to cite data from a 2012 Pew Research Center poll that found “solid majorities” in all eight of the unspecified EU countries surveyed admitting that they like American cultural output, whether in the form of film, television, or music, “including 72 percent in France, home to the Cannes Film Festival, Jean-Luc Godard, and (until recently) Gérard Depardieu” (Wike, 2013). Wike’s emphasis on France is, of course, no surprise. As the
ringleader in the battle for cultural protection, it remains an easy target for derision. He goes on to note, still picking on France, that:

The reality is that resistance to American culture often goes hand in hand with a strong attraction to it. French sheep farmer José Bové may have become a hero to the anti-globalization movement by famously helping ransack a McDonald’s in 1999, but it hasn’t stopped the proliferation of golden arches in Europe or elsewhere. Similarly, the international demand for American films is growing, and Hollywood’s profits are increasingly driven by the foreign box office.

Ultimately, the Television without Frontiers Directive has had a tangible, positive impact on many aspects of the European audiovisual market despite its failure to quell the American influence in its television and film industries. According to a comprehensive study led by David Graham in 2005, the average ratio of European works in “qualifying transmission time” has grown from 52.1 percent in 1993 to 57.4 percent in 2002. Similarly, the average proportion of independent productions given airtime throughout Europe has increased from 16.2 to 20.2 percent over the same seven-year time period (Graham et al, 2005, pg. 14). The study emphasizes that the particular ways that member states interpret and implement articles four and five has a significant impact on the effectiveness of the growth, noting that countries—including Finland, France, Greece, Italy, and Luxembourg—“with a national average for European works greater than the EU average” are the countries that have the strictest interpretation of the articles in question (Graham, 2005, pg. 17).

However, though it may have stimulated European and independent content production through its flexible quota system, the directive has not led to the establishment of a quality, broadly appealing, supranational culture. Pauwels and Donders (2011) note that, in practice, the
flexible quota system introduced by the directive has resulted in more broadcasting of domestic rather than a dramatic increase in the broadcasting of non-domestic European works (pg. 529). In addition, the final report from Graham’s study found that “While the hours of non-domestic European works...have grown, there has not been a significant shift in the tastes and viewing habits of Europeans towards the development of a more pan-European cultural identity” (Graham et al, 2005, pg. 18). The study even goes on to emphasize that US programming has a broader appeal than European productions, which “has a national cultural appeal which does not travel well” even within the boundaries of the EU (2005, pg. 18). Furthermore, according to the final report, the vast majority of member states enforce additional content requirements on broadcasters “to reflect linguistic or cultural specificities” within their national borders. Ironically, such efforts act as trade barriers within the European market “because (a) they set conditions on programme content that only domestic programme producers can meet; and (b) they lead to channel schedules that are specific to a Member State, thereby limiting the appeal of these channels in other markets (Graham et al, 2005, pg. 174). Finally, Curwen notes, “At the present time, European culture is epitomised by many of the lowest-denominator offerings such as the Eurovision song contest. It is not only the chattering classes who want to see a meeting of cultures on a somewhat higher plane than this, but it is foolish to imagine that it will happen simply by shutting out ‘foreign’ material” (1999). While the EU remains deeply committed to free trade within its borders, it maintains a high level of protectionism with respect to the rest of the world.

**Beyond Television Without Frontiers: The Evolution of the Media Services Directive**
The world of cultural production has obviously changed dramatically since 1989, the year when Television without Frontiers first became official policy in the European Community. The unrelenting expansion and prevalence of the Internet has fundamentally altered the production and consumption habits of audiovisual products, rendering the old business model virtually useless. First modified in 1997, just following the arrival of the Internet as a commercial tool, the Television without Frontiers directive has been in the process of amendment ever since. Gordon notes that all EU member states must submit a report and accompanying analysis every two years “to monitor the transmitted European quotas and to demonstrate that the opportunities for independent producers (currently running at about one third of the total authorized broadcasting time, or around half of the European output) are being upheld” (2007, pg. 26).

In 2003, the European Commission launched a public consultation on the Television without Frontiers Directive with an eye towards its revision (Europa, “The future of European regulatory audiovisual policy,” 2004). Of the major trends listed, one of particular significance is the continued, and substantial, trade imbalance with the US in the audiovisual sector, cited as $8 billion plus in 2000 (Europa, 2004). Interestingly, however, the consultation found that most of the input received by the Commission was in favor of maintaining the status quo, or even strengthening the requirements, for the promotion of independent European cultural works and the maintenance of quotas for European products.

The most recent version of the legislation, significantly named the Audiovisual Media Services Directive, underlining the new reality of the digital era and the somewhat post-television reality of the new millennium, came into effect in 2010. The major changes include a key distinction between linear and non-linear services, increased leniency related to advertising regulations and product placement, and a renewed effort at the promotion of both pluralism in
the media and the promotion of cultural diversity. The acknowledgement and extension of legislation beyond the traditional push content is of primary importance, as the model of audiovisual consumption moves increasingly online, though critics argue that this distinction relies on an overly simplistic classification of content (Pauwels and Donders, 2011). Among the adaptations to on-demand services is the extension of the benefits of the “country of origin principle” (in practice for traditional broadcasting since the original 1989 directive). This principle ensures that producers are only responsible for compliance with the national laws in the country in which the content is created, rather than struggling with the legal complexity of the totality of European member states together. Significantly, and perhaps surprisingly, the new directive does not extend its flexible quota system to non-linear content. According to a 2006 Europa press release, “the Commission sees no justification for regulating audiovisual content supplied at the viewer’s request (“pull content”), beyond safeguarding essential public interests such as protecting minors and preventing incitement to hatred.” The statement goes on to acknowledge the inherent global nature of the Internet, and ultimately admits the powerlessness of the EU to effectively regulate content accessed via the borderless network of the Web, noting: “In the end, consumer demand will determine whether providers of non-linear audiovisual media services will want to offer more local and regional content” (Europa, 2006). While the EU certainly hopes that on-demand services will follow the precedent set by linear broadcasting, the new directive does not set quotas or specific guidelines for implementation in digital space.

Despite the instance of European policymakers that the Television without Frontiers and Media Services Directives are primarily concerned with preserving the cultural integrity of the continent, the economic rationale is hard to ignore. In fact, Pauwels and Donders emphasize that the provisions of each directive—in which member states have the “opportunity to define strict
or divergent rules in the name of cultural and social policy interests”—actually undermine the efforts at cultural cohesion in favor of the more strictly defined economic obligations. They further argue that the principle of subsidiarity dictates that the EU cannot and should not be expected “to adopt a clear, or even a convincing, stance on cultural policy issues” (Pauwels and Donders, 2011, pg. 538) in the first place, but rather leave this task to the member states. Finally, the authors draw attention to the inherent difficulty, perhaps impossibility, of cultural preservation through these two directives. In their own words: “although the TWF and AVMS directives aim to further the internal market in an economically sustainable and culturally diverse way, combining both cultural and economic objectives proves to be a difficult exercise, often resulting in the subordination of culture to economics. Due to its legal rationale, the EU is first and foremost committed to the realization of the internal market objectives” (Pauwels and Donders, 2011, pg. 526).
CHAPTER 4: HARNESSING THE POWER OF THE INTERNET THROUGH ELECTRONIC COMMERCE

ICT-Enabled Services and the Internet Economy

Despite its military and academic origins dating back to the 1960s, the Internet as a commercial entity is still in its teenage years, not even two decades old. The pace of technological development and diffusion of Internet access throughout the world since 1995 has, of course, been rapid and unprecedented, prompting scholars and policymakers to describe it as an inherently borderless network with the potential to transform the global economy. Frances Cairncross even famously declared that the growth of the Internet would lead to the “death of distance.” While the unmitigated optimism of Cairncross and other netizens is contested, the transformative economic power of the ICT-enabled trade is widely accepted. Still, global trends are difficult to calculate due to a general lack of data from the majority of developing countries. The OECD keeps detailed statistics, but its membership is limited to a select group of relatively more developed states. Among the countries tracked by the OECD—which include its thirty-four member states and a few others—almost half (47 percent) of their exports and a full 43 percent of their imports were ICT-enabled in 2002. Six years later, these numbers stood at 53 and 47 percent, respectively (Borga and Koncz-Bruner). Focusing on the US in particular, the share of total service exports from ICT-enabled services grew from 45 percent in 1998 to 61 percent in 2010, while the corresponding numbers for imports skyrocketed from 34 to 56 percent” (Borga and Koncz-Bruner).

The data on e-commerce, especially of the cross-border variety, is even less complete. While there is a very large body of studies on traditional offline cross-border trade in goods and services, very few researchers have looked into online cross-border trade in
detail. This is largely due to an absence of concrete data, which is primarily housed by private companies rather than government and policy institutions. While more research is needed, a working paper by Bertin Martens published in 2013 emphasizes that questions remain about the ability of the Internet to overcome geographic boundaries and that, in fact, other barriers may emerge in the realm of online trade. In his words, “Some earlier research suggested that distance is not entirely dead on the internet” (2013, pg. 3).

Still, despite these uncertainties, data from a 2012 press release from the European Commission offers a concise explanation for the union’s eagerness to stimulate e-commerce, especially within its borders. The Commission notes that the Internet economy creates 2.6 jobs for each off-line job lost, and it estimates that electronic commerce and growth in online services could provide up to one-fifth of total employment and growth within the EU over the next five years (Stimulating growth and employment: an action plan for doubling the volume of e-commerce in Europe by 2015, 2012). Besides the potential employment boost—of primary importance to the EU in the wake of the Euro crisis and its accompanying widespread unemployment—the Commission also emphasizes the advantage of “lower online prices and a wider choice of available products and services are estimated at EUR 11.7 billion, equivalent to 0.12 % of European GDP” (2012). In addition, the press release emphasizes a cultural component to e-commerce, noting, “Access to goods and services will also be made easier for geographically isolated or vulnerable people, fostering cohesion across Europe” (2012).

**The Electronic Commerce Directive**

The Electronic Commerce Directive, adopted in 2000 (with the transposition deadline of January 17, 2002) was created with the aim of increasing cross-border trade within EU member
states, thus avoiding unnecessary fragmentation of the single market and forging a more unified trading bloc leading to increased global competitiveness. An explanation of the motivation for the directive within the text itself reads: The European Union is seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress...the development of information society services within the area without internal frontiers is vital to eliminating the barriers which divide the European peoples” (2000). The directive establishes European-wide rules on a variety of online issues, including transparency, information requirements for online service providers, electronic contracts, and the limited liability of intermediary service providers, thus guaranteeing legal protections for consumers and producers alike.

A key element of the directive is the Internal Market clause, also known as the “country of origin principle,” (article 3) which stipulates that online services are subject to the law of the member state in which the service provider is established, rather than the differing laws of twenty-seven different countries. This principle is crucial to the geographic expansion of e-commerce throughout the continent, freeing suppliers from undue legal burdens and simplifying their fixed legal costs (Nielsen et al, 2007, pg. 33). The principle mirrors a stipulation articulated in the Television without Frontiers Directive, discussed in the previous chapter. Similarly, the directive’s introduction also explicitly address cultural concerns, noting that:

The adoption of this Directive will not prevent the Member States from taking into account the various social, societal and cultural implications which are inherent in the advent of the information society; in particular it should not hinder measures which Member States might adopt in conformity with Community law to achieve social, cultural and democratic goals taking into account their linguistic...
diversity, national and regional specificities as well as their cultural heritage, and
to ensure and maintain public access to the widest possible range of information
society services; in any case, the development of the information society is to
ensure that Community citizens can have access to the cultural European heritage
provided in the digital environment. (2000)

Furthermore, section six of article one states that: “This Directive does not affect measures taken
at Community or national level, in the respect of Community law, in order to promote cultural
and linguistic diversity and to ensure the defence of pluralism” (2000). Despite these overtures
to both the preservation of national culture and increases access to European cultural heritage as
whole, however, the directive does not address the complications that arise from divergent
cultural and linguistic structures among its member states, an issue that will be explored in more
detail in the following section.

**Ten Years Later, What Barriers Remain?**

The EU has devoted significant attention to its e-commerce policy because of the
surprising lack of increased cross-border trade in the wake of the directive. In a comprehensive
study of its economic impact, Nielson et al emphasize that a lack of extensive information on
levels of cross-border sales before and after the directive make it difficult to accurately measure
its success (2007, pg. 5). Despite these data gaps, the consensus is that the directive has
underperformed relative to expectations. While e-commerce at a national level has rapidly
increased over the past few years, it has not been accompanied by a similar rise in cross-border
purchases of goods and services within the EU. According to data from 2009, between 2006 to
2008, “the share of all EU consumers that have bought at least one item over the internet
increased from 27% to 33% while cross-border e-commerce remained stable (6% to 7%)” (Report on cross-border e-commerce in the EU, 2009, pg. 2). This gap between domestic and cross-border electronic commerce thus indicates the persistence of barriers to trade for cross-border purchases that are not present at the national level. In addition, while 51 percent of retailers in the EU offer online sales, only 21 percent of these conduct cross-border transactions, according to 2009 data (Report on cross-border e-commerce in the EU, 2009, pg. 3). Similarly, as the European Commission notes by way of explanation for a public consultation on the directive completed in 2010, retail e-commerce remains less than 2% of European total retail trade (Public consultation on the future of electronic commerce in the internal market and the implementation of the Directive on electronic commerce, 2012).

According to a 2011 survey and report, conducted by The Gallup Organization Hungary, only 9% of the 25,000+ polled made a cross-border purchase—via the Internet, phone, or postal service—within the last twelve months (with data collection taking place in September 2010). Depending on the country, however, the percentage ranged from a low of 3% in Romania and Bulgaria to a high of 47% in Luxemburg (Gallup, 2011, pg. 5). Still, the vast majority of those who made remote cross-border purchases used the Internet, rather than phone or postal service orders. Just over a quarter of the EU population (26 percent), made “face-to-face” cross-border purchases in the same twelve-month timeframe (Gallup, 2011, pg. 6). Citing data from the 2012 EU Digital Scoreboard, Martens notes that by 2011 a slight increase (from nine to ten percent) of the EU population was involved in cross-border transactions, with 43 percent of the EU citizens participating in e-commerce of any variety (Martens, 2013, pg. 2). Unsurprisingly, young and highly educated individuals—the same population most supportive of and involved in the European project—are the most willing to make cross-border purchases.
Furthermore, despite attempts at forging a single market in the realm of e-commerce, the twenty-seven countries of the EU could more accurately be categorized into three distinct levels of maturation. The northernmost countries, including the UK, Germany, and the Nordic states, are fully developed markets, which already exhibit high levels of e-commerce: between 60 and 80 percent of Internet users have also participated in online purchases. In the middle lie France, Italy, and Spain, which have not reached the level of their northern peers but “where the number of new online purchasers is growing fast, signaling a strong potential for growth in the short and medium term.” On the other end of the spectrum—“for which statistical data are lacking”—are the countries of Eastern Europe, the newest entrants into the EU and generally the poorest countries of the organization. (Report on cross-border e-commerce in the EU, 2009, pg. 5).

Interestingly, while lack of a clear, unified legal structure for e-commerce remains one of the key factors prohibiting its growth throughout the EU, public opinion remains sharply divided on the issue. On the one hand, 44 percent of respondents agreed that uncertainty about their rights discouraged them from pursuing cross-border purchases (Gallup, 2011, pg. 5) but fully half of consumers “disagreed that an uncertainty about their rights meant that they were not interested in shopping in another EU country; just over a quarter (27%) said they totally disagreed with this opinion as opposed to 22% who said they totally agreed” (Gallup, 2011, pg. 10). Furthermore, when asked whether they would be more willing to make an online purchase from a supplier abroad if uniform EU law applied rather than the law of the seller, only 31 percent indicated yes, with a nearly identical percentage (29) noted that they would be less willing to make a cross-border purchase under unified EU law (Gallup, 2011, pg. 5). These numbers may be indications of a general lack of knowledge on the subject, or perhaps a distrust
of an expansion of European-wide legislation and its erosion of national sovereignty, an issue of particular sensitivity in the last few years.

Consumer protection is likewise of fundamental importance to this directive. While the country of origin principle protects the interests of suppliers, consumers are also in need of legal assurance for cross-border transactions. Recognizing this gap, the EU recently passed a comprehensive Consumer Rights Directive, which has a transposition deadline of December 13, 2013. According to the European Commission, the new legislation will bring about several key changes on behalf of consumers who make purchases online, including protection against “cost traps,” increased price transparency, increased refund rights, and an obligation for suppliers to provide information on compatibility and legal restrictions for digital products (Consumer Rights: 10 ways the new EU Consumer Rights Directive will give people stronger rights when they shop online, 2011).

Distance, even in the realm of e-commerce, still matters since it “reduces the likelihood of a shared cultural context” (Martens, 2013, pg. 3). Martens argues that the trade costs related to cultural distance “may increase six to tenfold when moving from offline to online trade” (2013, pg. 4), a phenomenon described as the “border effect” or “home bias.” As the name indicates, the home bias refers to the extent to which consumers have a natural preference for domestic versus foreign purchases. He further notes that, “in some estimates” this domestic preference is even more pronounced in online purchase versus those conducted in person (2013, pg. 4). This home bias may also be the cause of a lack of increased price competition, which provides little incentive for buyers to pursue alternative supply sources. As Nielson et al note, “in the short run as cross border online trade begins, domestic firms, online as well as offline, do not necessarily need to lower prices as much in the face of foreign online competition. Within
specific market segments and along border areas where linguistic and cultural differences are small, we may see stronger impacts on mark-ups from foreign online competition, even in the short run” (2007, pg. 14). The last part of this statement also indirectly draws attention to the impact of culture on the success of the directive, a barrier not given significant attention by the EU in the directive.

Ironically, the very nature of the Internet as a borderless medium makes the European focus on creating a regional e-commerce bloc somewhat implausible, since the Web itself is resistant to geographic boundaries. Furthermore, as Martens proclaims: “On balance, there is no evidence yet that suggests that consumer preference for domestic over foreign purchases is lower online than offline. The promise of the “death of (geographical) distance” may to some extent be replaced by a strengthening of cultural and linguistic distance” (2013, pg. 7). He also cites a study from Gomez, Martens, and Turlea (2013) that goes into more specifics related to the trade costs associated with e-commerce within the twenty-seven EU member states. Their research indicates a one-third reduction in geographic distance-related trade costs in the online versus offline realm, but also a doubling of costs due to language barriers online. Something as simple as language has a huge impact on both the ability and willingness of consumers and suppliers alike to participate in cross-border exchange. Only one in three EU consumers indicate a willingness to purchase goods or services in another language, and only 59 percent of retailers have the capability to carry out transactions in multiple languages (Report on cross-border e-commerce in the EU, 2009, pg. 2). Marten describes the net effect as evidence of “an online border effect that remains similar in magnitude compared to offline trade in the EU” (Martens, 2013, pg. 4).
Launched in May 2010, The Digital Agenda for Europe (DAE) represents a new policy program to “help Europe's citizens and businesses to get more benefits out of digital technologies” (Martens, 2013, pg. 2). The DAE sets an ambitious goal for growth in e-commerce, especially given the relatively low numbers noted above. According to its targets, a full 50 percent of the EU population should be participating in online purchases by 2015, with 20 percent of the population (up from the current 7 percent who already do so) engaging in Web-enabled cross-border purchases. Small and medium enterprises are likewise expected to increase their online activity, with a goal of one-third conducting online purchases in the next two years (Martens, 2013, pg. 2).

The study by Nielson et al does note some positive impact of the directive in terms of clarifying and harmonizing legal provisions, though these improvements have not necessarily led to an overall increase in cross-border e-commerce. For example, they note “we find that the country of origin principle has reduced legal heterogeneity across Member States in the areas covered by the Directive. This has reduced search costs for firms as the need for keeping up to date with foreign legislation has been reduced. Yet, we have difficulties finding clear evidence of the Directive having boosted cross border trade in information society services so far” (Nielson et al, pg. 4). In addition, the study notes that many firms experience barriers that are not directly addressed by the directive, including differences in fiscal legislation, taxation, difficulties in complaint resolution, and language differences: “The result is that many firms even though they may be successful in selling goods or services online domestically do not suddenly engage in cross border selling despite the application of the principle of country of origin to certain areas of law” (Nielson et al, 2007, pg. 5). In other words, while the directive’s “country of origin” principle is a step in the right direction, the barriers to cross-border trade are much more
complex. For many firms, lack of cross-border trade is due not to a complicated legal structure, but rather stems from a lack of ICT infrastructure or even linguistic incompatibility.
CONCLUSION AND OPPORTUNITIES FOR FURTHER RESEARCH

Conclusion

Widespread digitization and the proliferation of Internet-connected devices have revolutionized the telecommunications sector. Digital cross-border flows are the way of the future, and trade in services will become an increasingly large share of the economy. In such a context, a regional trading bloc of the sort the EU seeks to create seems antithetical to the evolving global economy. While numerous government censorship regimes throughout the world have undermined its presumed borderless nature—Iran’s “halal” intranet and the “Great Firewall of China” serve as two of the most egregious examples—the Internet remains a fundamentally transformative medium. The global nature of the Internet makes it harder, not easier, to erect geographic boundaries and enforce borders.

At the same time, as individual European economies diminish in strength relative to the rising power of developing countries from the south and east, deeper integration of the continent represents its best bet for continued relevance on the world stage. While few, if any, of its member-states will count themselves among the world’s top economies in the next few decades, collectively, the twenty-seven nation-states of Europe represent the largest economy in the world. A unified Europe can compete with the ballooning economies of China, India, and Brazil in a way that the UK, Belgium, or Spain could never accomplish alone.

While each of the directives examined in this thesis has had some marginal impact on the European telecommunications sector, neither has accomplished its intended goal. The Television without Frontiers Directive, now over two decades old and despite its metamorphosis into the more aptly-titled and modernized Media Services Directive, has not significantly slowed the influx of Hollywood products nor created a pan-European cultural identity through the
expansion of European production. In addition, the Electronic Commerce Directive, while arguably in need of maturation before its full impact can be felt, has not stimulated a tangible increase in cross-border trade within Europe due to a home bias, a complex legal structure, and at the most basic level, linguistic barriers.

The economic downturn of the last several years will undoubtedly leave a lasting impact on the European continent. Ironically, though the crisis highlights the need for increased, rather than decreased, integration, conventional wisdom indicates that much of the progress towards integration is threatened by the ongoing Euro crisis. Without the promise of increased economic prosperity through deeper unification, and without a strong basis of societal cohesion to begin with, the EU has lost much of its legitimacy. A recent article entitled “Continental Commitment Issues” analyzes Europe’s current state of affairs within the larger global context. Foroohar writes: “the E.U. represents the best of globalization. And this brings up an even bigger question: Are we finally witnessing real pushback against globalization, the sort that has been widely (and thus far falsely) predicted since the financial crisis of 2008?” (2013). The proposed Cypriot bailout provides the immediate context for Foroohar’s statement, but the song remains the same with the collapse of each new national economy. He continues, “The Cypriot bailout...has upset markets and renewed fears about whether the euro zone will survive in its current form. That matters not only because Europe is about a quarter of the global economy but also because the E.U. is perhaps the world’s most benign example of globalization. If it fails, that has big consequences” (2013). As Foroohar’s statement underscores, the fate of the EU matters not only for its twenty-seven member states, but it also resonates and carries wider implications for the global community. The EU represents the world’s premier and most successful model of globalization to date. Once lauded as the first iteration of an increasingly trans border
international political system, the EU has come to symbolize the pitfalls of the supranational state.

Europe faces an uncertain future. Even as the union expands its reach to new corners of the diverse continent, the EU’s path towards deeper regional integration is paved with difficulty due to its recent economic hardships, the digitization of traditional media, and its lack of societal cohesion. Despite its frequent mischaracterization as a solely economic union, the EU will increasingly depend on its cultural cohesion and political viability for survival. While European citizens were willing to endure the erosion of national sovereignty during times of economic flourishing, the last few years have seen increased pushback against regional integration. In other words, legislative attempts at cultural and political unification, such as the two directives discussed in this thesis, may be overwhelmed by the current financial crises.

One of the major consequences of the Euro crisis thus far has been a remarkable resurgence of nationalism throughout the continent, accompanied by growing distrust of European solutions to problems perceived as national in scope. In a recent article “The Euro is Killing Europe,” economist Daniel Altman notes that one Germany’s European Parliament representatives, Jorgo Chatzimarkakis, “who is of Greek extraction, warned that Brussels and Frankfurt had already awoken Europe's ‘nationalist demons’” (2013). Nationalism, the twentieth century bane of the continent, has returned with increased fervor from Greece to Germany, fueled by a rejection of austerity measures, fears of immigration, and distrust of regional governance. Altman continues:

The people of Europe's south are understandably unhappy. Indeed, the daily indignities of their economic Calvary would be bad enough if they were of completely domestic origin. But southerners also have the irksome feeling that
bureaucrats and politicians in Frankfurt, Brussels, and other northern capitals are forcing these troubles upon them. Not long ago, some of the same bureaucrats and politicians were the ones luring the southern countries into the euro, often paying scant attention to their questionable fiscal situations. Savvy operators in the south have not hesitated to exploit this volatile brew of economic hardship and hypocrisy, mixed with a generous dash of historical resonance. Parties at the extremes of the political spectrum have been gaining adherents, with nationalism a strong current on both sides. And so, in most of the southern countries, the balances of political power have been starting to fragment. (2013)

Current events aside, the EU’s attempt to create unification through legislation represents a fundamentally flawed causal relationship. The organization is attempting to unify its citizens and forge a common culture through legislative policy. In reality, however, this is a nearly impossible task. In order for legislative policies to work, more cultural unification needs to be in place beforehand. In other words, the efforts of European policymakers to accomplish cultural and political unification are too little too late. Recall Jean Monnet’s famous proclamation that “if we were to do it all again we would start with culture” (qtd. in Shore, 1993, pg. 785). In matters of cultural identity, the EU’s hallmark technocratic solutions are highly imperfect.

The Transatlantic Trade and Investment Partnership

While the European continent remains mired in a state of ongoing political and economic crisis, policymakers are once again looking to trade as a cure for some of the region’s ills. While WTO negotiations remain at a stalemate, the mantle of trade liberalization has not been abandoned. On the contrary, the last decade has seen a dramatic proliferation of trade
agreements on a bilateral and regional level. Infamously labeled the “spaghetti bowl” by economist Jadish Bhagwati, this ever-changing web of trade patterns shows no signs of slowing down. The EU is one of the most prolific negotiators of regional trade agreements, and its pursuit of a preferential deal with the US could have a tremendous positive impact on an ailing system.

During his 2013 State of the Union address, “in one short sentence,” President Barack Obama informed both Congress and the American public about forthcoming negotiations with the EU on what would be the largest bilateral trade agreement of all time. As Peter Sparding notes, “It was a brief passage in the State of the Union address, but it might well prove to be one of the more consequential” (2013). The concept, of course, is hardly new. Several attempts to complete such a transatlantic trade bloc have been initiated and stalled, with agriculture and audiovisual services functioning as spoilers. So what’s new this time around? In short, the global financial crisis has left the EU in desperate need of economic revival. Similarly, some speculate that the shift in balance of power on the continent—namely the declining influence of France and the corresponding shift to Germany—is a contributing factor (Milouv, 2013).

Despite the rising global powers in Asia and throughout the world, the EU-US transatlantic economy remains enormous, representing approximately half of world GDP. As Sparding highlights,

The United States and Europe remain each other’s most important economic partners, and together are responsible for almost 50 percent of the world’s GDP and 30 percent of global trade. Europe accounts for half of U.S. investments abroad – some $2.1 trillion in 2011 – and remains the most important source of
foreign direct investment in the United States. More than 13 million jobs on both sides of the Atlantic are supported by transatlantic trade and investment. (2013)

Furthermore, despite all the focus on China, the US actually exports three times as many goods to the EU (Galston, 2013). This means that an EU-US trade agreement could have significant economic consequences for both partners. In terms of services, the US and EU are the world’s economic leaders. According to data from 2011, the US exported 38 percent of all services to the countries of the EU, taking in a full 41 percent of service imports from across the Atlantic (Galston, 2013). Though tariffs are already low between the two trading partners and services seem to flow across borders with relative ease, a study commissioned by the European Commission found that “eliminating or harmonizing half of all remaining non-tariff restrictions on transatlantic trade would add 0.7 percent to the EU’s and 0.3 percent to the American economy by 2018” (Sparding, 2013).

In a memo, dated March 20, 2013 to Speaker John Boehner, acting United States Trade Representative Demetrios Marantis notes that in the realm of electronic commerce and ICT services the US will try to “Seek to develop appropriate provisions to facilitate the use of electronic commerce to support goods and services trade, including through commitments not to impose customs duties on digital products or unjustifiably discriminate among products delivered electronically.” While open markets for its agricultural products likely remains the number one priority for the US in its negotiations with the EU, audiovisual liberalization does not fall far behind.

Galston emphasizes that France remains the most likely killjoy for trade negotiations, however, not only because it has the most to lose from changes in agricultural policy, but also because “it will resist intense pressure to relax the regime of cultural protectionism that irritates
American producers of films and TV shows” (Galston, 2013). Francois Hollande has already proclaimed that he wants cultural industries excluded from the forthcoming trade negotiations (France draws red lines for EU-US trade negotiations, 2013). At the same time, economic necessity may force the French hand. Galson notes that France’s exports have decreased by eight percent since 2008, its overall economy has been shrinking, and its unemployment rate has topped ten percent (2013).

Still, the French stance appears to have more widespread support throughout Europe, at least for now. John Clancy, spokesperson for current European trade commissioner Karel De Gucht, noted that the EU has a “Treaty obligation [Article 167] to protect cultural diversity so this will always be borne in mind in our future trade negotiations and exchanges” (France draws red lines for EU-US trade negotiations, 2013). Whether the EU will give in to the liberalization of audiovisual services for increased economic prosperity—and whether the US will demand such a sacrifice from its trading partner—remains to be seen. Regardless, not everyone is optimistic about the chances for a substantive deal between the two transatlantic powers. Patrick Smith, a correspondent for The Fiscal Times, offers the following statement: “America and the European Union remind me of a couple I knew in college. They loved one another madly, but could not agree on anything. And they never made it down the aisle. Americans and Europeans are unlikely to cut a deal because of conflicting policy priorities” (2013).
BIBLIOGRAPHY


